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# Notes on Contributors

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# Editorial Welcome

On behalf of the editorial board, welcome to the ninth volume of *The New Collection*! With a graduate body of over 350 members, this volume is a sample of just some of the great quantity and quality of research carried out in New College in the academic year 2013/4. Our postgraduates have produced a range of articles on their subjects of interest, intended to be edifying to specialist and general reader alike. The authors have received extensive feedback from both their graduate peers and members of the academic staff. We encourage you to break out of the disciplinary horizons of your own research by taking some time to peruse this collection.

The *New Collection* is a fixture of the Middle Common Room (MCR) and we are always looking out for new people to get involved, whether as an editor, contributor, or typesetter. It is an excellent opportunity to experience the peer review process early on in your academic career. Please get in touch if you are interested in contributing to the next volume; submission guidelines can be found online and at the back of this journal.

We are honoured to thank everyone who made this volume of The New Collection possible, from the contributors themselves to the team of volunteer editors and typesetters. Special thanks also to the SCR members who reviewed the articles and the Warden and Tutor for Graduates for their help and support. Finally, we would like to thank New College for its continued financial assistance.

We hope you all enjoy reading *The New Collection*, 2014!

Popy Begum, Editor-in-Chief
Chris de L'isle, Publisher

# MCR President's Foreword

The *New Collection* is a unique opportunity for members of the New College Middle Common Room (MCR) to present their work to a broad audience and participate in the editorial process of an academic journal. This edition, which will be forever preserved in the Bodleian Library, showcases the tremendous talent of the MCR. The wide range of topics published in this edition reflects the breadth of the academic interests of New College's graduate students, while the depth and sophistication of the research and analysis in each paper is a testament to the intelligence and knowledge of our MCR members.

The *New Collection* is the academic centerpiece of our MCR and facilitates the pursuit of the MCR's intellectual endeavours. I am always impressed by the high-level discourse and exchange of ideas that consistently occurs between members of the MCR. Our academic colloquia, held numerous times each term, also afford MCR members the opportunity to present their work and receive feedback from other MCR members. The rich academic culture present in the MCR is reflected in the superb papers that appear in this publication.

This edition of the *New Collection* is the result of the hard work and dedication of its editorial team. Special thanks are due to Editor-in-Chief Popy Begum and Publisher Chris de L'isle, whose tireless work enhanced the quality of this publication. Finally, I am grateful to the members of the New College Senior Common Room (SCR) who took the time to review the papers accepted for publication. The rigorous and thorough job of all our editors enhanced the publication and contributed to the high quality of the final edition.

I hope you enjoy reading the articles in our latest collection.

Alexander Fullman
MCR President 2014-2015

# The Warden's Foreword

Since its inception, the *New Collection* has published the work of current members of the MCR. To be read by the whole college community, the contents should ideally address a general as well as a specialist audience. This is easier said than done, for one has to tread a fine line between dumbing down and talking down. Principles and methods may need to be explained by analogy, avoiding jargon and quantum mechanics, yet without sacrificing sophistication or complexity.



Following in the footsteps of Richard Dawkins and Robin Lane Fox, the six authors of this volume have produced models of the genre, ranging from a hitchhiker's history of the universe, which takes me about as close to understanding dark matter as I'll ever get, to a fresh look at Lady Godiva – well, actually her politics. All six articles are entertaining and topical (China and Tibet, Russian crime fiction), and sometimes controversial (women as perpetrators not just victims of human trafficking, and justifying the 'war against terror' within international human rights law).

I congratulate the authors and editors, thank the SCR referees for their help and advice, and commend this issue to the curious reader.

Curtis Price
Warden

# Article Summaries

## A Short History of the Universe

Rupert Allison

The *Background Imaging of Cosmic Extragalactic Polarization* (BICEP2) experiment at the South Pole recently provided compelling evidence that the very early universe underwent a period of rapid expansion called inflation. In turn this can help to explain many current astronomical observations, with inflation ultimately being responsible for seeding small fluctuations in the density of the early universe, which, under gravity, grew to form the stars and galaxies we see in the universe today. In light of this revelatory discovery, in this article I take stock, summarising the prevailing view held by the modern cosmologist on the history and current state of the universe.

## Women and Human Trafficking in West Africa and the United States

Popy Begum

Crime is dominated by men, but historically there have been occasions and circumstances when women play greater or lesser roles in crime. There has been much debate about the reasons for the different rates of involvement in crime between men and women, including those that rely on biological, psychological and social foundations, but most researchers seem to accept that a combination of factors account for the difference. Yet rates of involvement in crime, and the types of crimes that women engage in change over time. The example of the West African "trafficked" women described in this article does not answer the question about whether women are more or less criminal today, or if so, what the sources of that increase might be, but it does suggests that our explanatory frameworks need to better understand the motives and the actions of the actors.

## Organised Religion and the State in Tibet

Chris de L'isle

Before the Communist Chinese takeover of Tibet in 1959, organised religion (the *sangha*) and the state were intertwined in a mutually beneficial relationship, which gave the state security and moral authority while religious institutions gained revenue and secular power. The demise of this system is presented by the modern Chinese government as the fall

of a despotic regime and the abolition of serfdom. I argue that this misrepresents the relationship between the Tibetan state and its religious institutions and that the relationship was actually beneficial to the state, the *sangha* and the Tibetan people.

## Social Criticism in Russian Crime Fiction of the 1860s

Rina Hay

This paper examines the works of a range of authors of Russian crime fiction of the 1860s, a period of great social change in Russia, which saw the emancipation of the serfs and a total overhaul of the judicial system. I will explore how authors view these changes and how they incorporate various elements of social criticism into their work.

## Citizenship, Myths, and... (Naked) Women

Evgenia Ivanova

This paper looks at how abstract ideas important for citizenship, such as justice, freedom, equality, and patriotism, are represented in order to capture the imagination of political actors. Focussing on produced fantasies and images the paper seeks to understand how the political imaginary is sexed and what role it plays in inspiring individuals to take certain political roles and actions. More specifically, it examines the function of female nudity and sexiness in the representation of many abstract political ideas. It is suggested that the feminine and sexualised character of many symbols has a significant role in motivating the political agency of male citizens by making abstract political ideas symbolically more engaging.

## Has the 'War on Terror' Undermined the International Human Rights Law Regime? An Optimist's Answer

Daniel Mwihia Mburu

This essay considers the question whether the war against terror has undermined the international human rights law regime' defined as the framework in place to ensure that substantive human rights, such as the right to life and the right to a fair trial, are respected, fulfilled and protected. I argue that the war against terror has not undermined the human rights regime. Rather, what the war against terror has revealed is a fundamental weakness in the human rights regime; one that lies in the regime's lack of an effective means to prevent states - more so the powerful ones - from committing human rights violations when fighting terrorism.

# A Short History of the Universe

Rupert Allison[*]

*DPhil Astrophysics*

The *Background Imaging of Cosmic Extragalactic Polarization* (BICEP2) experiment at the South Pole recently provided compelling evidence that the very early universe underwent a period of rapid expansion called inflation. In turn this can help to explain many current astronomical observations, with inflation ultimately being responsible for seeding small fluctuations in the density of the early universe, which, under gravity, grew to form the stars and galaxies we see in the universe today. In light of this revelatory discovery, in this article I take stock, summarising the prevailing view held by the modern cosmologist on the history and current state of the universe.

In Section 1, I consider our view of the cosmos, both in the literal sense of direct observations from Earth and also in the more abstract sense of the contemporary scientific paradigm. In Section 2, I explore the foundations of the Big Bang theory, including discussion of the three main pillars of evidence that support this model. Using the context of the Big Bang theory in Section 3, I reiterate and extend the preceding discussion, presenting a timeline for the universe to date and commenting on what this means for the future cosmos. Finally, in Section 4, I discuss the BICEP2 result and outline several outstanding questions in cosmology.

## 1. Our view of the universe

Astronomical observations tell us that the Earth is in orbit around the Sun along with seven other planets. The Solar System harbours many other celestial objects, such as moons and asteroids, all of which are connected to the Sun and the planets by gravity. The Sun is gravitationally the most dominant object in the Solar

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System due to its large mass, and is one of 100 billion stars that comprise the galaxy in which we live, the Milky Way. Like a giant version of our Solar System, the stars in the Milky Way orbit the centre of the galaxy in near circular orbits. However unlike Earth's year of 365 days, our Solar System takes 250 million years to orbit the galactic centre (which means Earth has made less than 20 orbits of the galaxy in its lifetime). This extraordinarily long period of orbit is due to the fantastically large distance we are from the centre of the galaxy: 24,000 light years, or a million trillion kilometres.

Galaxies are often found in galaxy groups or their larger cousins, galaxy clusters. The Milky Way is part of 'The Local Group', which consists of over fifty galaxies. Clusters are the largest gravitationally-bound objects in the universe and can contain thousands of galaxies. After speaking about planets, then stars, then galaxy groups and clusters, a cosmologist, who is concerned with the broadest perspective on the universe, its history and dynamics, would typically ask: what next? If we zoom out from our Solar System, the Milky Way, and The Local Group to yet larger scales, what do we see? The answer is that we see a cosmic web of galaxies, groups and clusters infinitely extended in all three dimensions, and distributed in a broadly homogenous fashion. The universe has not always looked like this; as we shall see, the universe evolves. For now, consider this picture of the universe today as a homogeneous infinite space of galaxies, groups and clusters.

To say that the universe is homogeneous on large scales is to say that the measurable quantities such as the density, temperature or number of galaxies, averaged over a large volume, is the same wherever you happen to be located in the universe. In a related – but subtly different – fashion, we also observe that from our point of view on Earth the universe looks similar in every direction on large scales. We see individual galaxies and clusters positioned randomly in the cosmic web, demonstrating super-galactic scale structure, but on yet larger scales the sky is the same in all directions in a statistical sense; there is no direction in which something peculiar is happening. This is called the isotropy of the universe. These two observations – homogeneity and isotropy of the universe on large scales – are together known as the cosmological principle [1]. Cosmologists often take this as an axiom that is assumed to hold today and throughout the history of the universe. To date this principle has yet to be refuted by an observed counter example, and its adoption allows us to interpret and explain many cosmological observations.

Finally, and crucially for the subsequent discussion, the Universe is expand-

ing. Here expansion should be understood as meaning that the space between distant galaxies is increasing over time. We observe almost all galaxies to be receding from us. The cosmological principle, in conjunction with the preceding observation, implies that no matter where in the universe you are, distant galaxies are receding from you, and furthermore that the more distant a galaxy is, the more quickly it must be receding. The American astrophysicist Edwin Hubble was the first to notice this phenomenon observationally, and hence the relationship between the speed of recession $v$ and the distance $d$ to a receding galaxy is named Hubble's Law:

$$v = H_0 d \tag{1}$$

$H_0$ is called Hubble's constant and specifies the expansion rate of the universe today [2]. Very nearby galaxies do not obey Hubble's Law. They are influenced by the gravity of the Milky Way and the Local Group and thus are not part of what is called the 'Hubble flow', or the general expansion of the universe. For instance our nearest large neighbour, the Andromeda galaxy, is in fact moving towards us and will collide with the Milky Way in about 4 billion years.

## 2. Evidence for the Big Bang: the three pillars

### 2.1. Expansion of the universe

Hubble's observations and subsequent modern surveys, which measure the recession rate of millions of galaxies, conclusively indicate that the universe is expanding. We can measure the local expansion rate of the universe – the Hubble constant $H_0$ – by measuring the recession speed and distance to many galaxies and plotting these on a graph. The slope of the line which fits through these points is then a measure of $H_0$; this how we calibrate Hubble's Law, given in Equation 1. But how do we measure the recession velocity and the distance to galaxies?

To get a handle on the recession velocity we can measure something called the redshift of the galaxy. All galaxies contain chemical elements which emit light at very particular wavelengths. The precise wavelength of the light is ultimately something which is determined by the spacing of energy levels within the atoms of that element, and, crucially, is something which we can also measure on Earth in a lab. When we receive light from receding galaxies we find that it has been shifted to longer wavelengths, towards the red end of the electromagnetic spectrum (red light has a longer wavelength than blue light). This is because the wavelength gets stretched as the universe expands, rather like how the distance between any two points on a spring increases when you stretch it. So the more the universe has

expanded since the emission of the light, the higher the recession velocity $v$ of the galaxy and the more redshifted the light has become. For nearby galaxies we can write this down as a simple relationship:

$$v = zc \tag{2}$$

where $c$ is the speed of light and $z$ is the redshift of the galaxy, which can be measured from the change $\Delta\lambda$ in wavelength of the emitted light:

$$z = \frac{\Delta\lambda}{\lambda} \tag{3}$$

Here $\lambda$ is the original wavelength of the emitted light, which we can determine from lab experiments.

The other variable in Hubble's Law is the distance to the galaxy. Distances are a complicated business in cosmology, where the numbers are so large that we have to worry about the finite speed of light. However in our local universe we essentially see all galaxies as they are today and this simplifies the discussion. Firstly we must distinguish the luminosity of a star (the total light energy emitted by the star per second) from the apparent brightness of the star. The apparent brightness of a star as measured from Earth (its 'flux') diminishes as the star becomes more distant. A domestic analogy is that of a light bulb: the luminosity of the light bulb is, for example, 100 W, but how bright the light bulb appears depends on how far we are from the light bulb. So, knowing the luminosity, we can estimate the distance to the light bulb, or vice versa.

Now, there is a certain type of star called a Cepheid variable whose luminosity varies over time. The period of this oscillation is strongly correlated (for well-understood physical reasons) with the average luminosity of the star. If we know the distance to a star we can determine its luminosity from its apparent brightness (like the light bulb). Then by observing the oscillation periods of many nearby Cepheid variables at a known distance from us we can plot a graph of the period-luminosity relationship. By extrapolating these results to more distant galaxies containing Cepheid variables, a measurement of the period of the brightness variations can be turned into a measurement of the luminosity of that star. And since we can also measure the apparent brightness of the Cepheid variable, we can thereby measure the distance to that galaxy.

Using the techniques described above and more sophisticated methods based on observations of the Cosmic Microwave Background (see section 2.3 and [3]),

the current best measurement of the Hubble constant is

$$H_0 = 67.8 \pm 0.8 \, \text{kms}^{-1} \, \text{Mpc}^{-1} \tag{4}$$

In words, this says that galaxies at a distance from Earth of one Mpc (mega-parsec, or around 3 million light years), recede from us at a speed of about 70 kilometers per second, and that for every additional Mpc in distance from us, the galaxies move at an additional 70 kilometers per second.

Consider moving backwards in time. Galaxies must have been closer together at earlier times (since today they are moving apart). As we move backwards in time, distant galaxies become closer and closer to us. Extrapolating this motion, it appears is if all galaxies began their lives in our galaxy and subsequently moved away with the expansion. Homogeneity of the universe tells us that this would also be the case whichever galaxy you were in. If the expansion rate were constant throughout the lifetime of the universe ($t_0$) then we can answer the following question: how long did it take galaxies, moving at speed $v$, now at a distance $d$, to get to where they are today? Using Hubble's Law (Eq. 1) and Eq. 4 we see this is:

$$t_0 = \frac{1}{H_0} = 13.8 \times 10^9 \, \text{yr} \tag{5}$$

or 13.84 billion years. This is a remarkably accurate estimate of the age of the universe, correct to within 1% of the current estimate using our best models of the universe [3].

We now have a picture of the universe as expanding over time. One should note that galaxies have not always existed and thus the idea in the previous paragraph of galaxies lying on top of each other at very early times is not quite correct. Instead galaxies form out of the gravitational merging of smaller galaxies, which themselves form from small groups of stars which derive from enormous clouds of gas which have collapsed under gravity (see section 3). Due to its expansion, the density of the universe (the amount of matter in a given volume) is decreasing over time. This means the density at earlier times was higher. Just as quickly compressing the air in a bike pump heats the gas molecules inside, this increased density of the universe at earlier times also corresponds to an increased temperature. So the universe at earlier times was hotter, denser and smaller (in the sense that the average spacing between neighbouring galaxies was smaller), and at later times is cooler, more rarefied and bigger. This is called the Hot Big Bang model of the universe.

## 2.2. Abundances of the light elements

We can now explore some consequences of the Hot Big Bang model, and see how they compare to our observations; if they are consistent this lends weight to the theory, providing an additional pillar of support for the theory.

The Hot Big Bang model tells us that the universe was hotter at earlier times; if we go back in time far enough, the universe was so hot that not even atoms could exist. At very high temperatures all particles in the universe had so much energy that they could not combine; whenever a proton and an electron came into close contact they simply bounced off each other like two billiard balls. The universe at this time (around a second after the Big Bang) was a hot soup of protons, neutrons, electrons and photons (particles of light). A little time later, around 10 seconds after the Big Bang, protons and neutrons had cooled enough that they could now interact to form stable nuclei (the cores of atoms). Still the electrons could not combine with these nuclei, and the universe remained ionised (the free particles were electrically charged). This is called the epoch of nucleosynthesis, when the nuclei of light elements (elements with a small number of protons and neutrons) began to form. This epoch ended about 20 minutes after the Big Bang when the universe had expanded so much that the protons and neutrons were no longer energetic enough to undergo nuclear reactions.

The precise fractions of the different elements formed during this process is very strongly predicted by the Big Bang model, given our knowledge of nuclear physics [4]. On comparing these predictions with observed elemental abundances in today's universe we find striking agreement, lending strong support for the Big Bang theory [5].
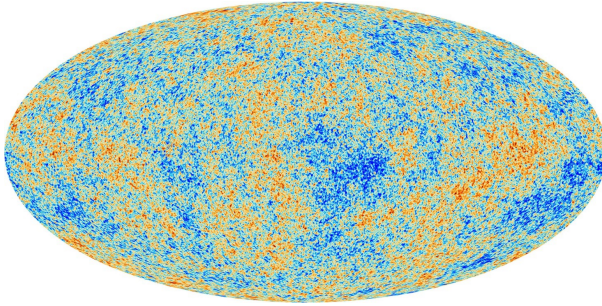
Figure 1: Figure 1: A map of the temperature of the Cosmic Microwave Background (CMB) made by projecting the full sky into two dimensions with the Mollweide projection [6] (copyright: Planck Collaboration). The different colours correspond to differences in the CMB temperature about the mean temperature of 2.726 K. These temperature variations in turn correspond to density fluctuations in the universe at the epoch of recombination. Red (blue) 'spots' correspond to higher (lower) than average temperature. The statistics of these fluctuations (their size on the sky and relative abundance) is encapsulated in the CMB temperature power spectrum; see Fig. 2.

## 2.3. The Cosmic Microwave Background

Around 400,000 years after the Big Bang the universe remained a hot soup made of protons, a small fraction of light nuclei, electrons and photons. The universe was still ionised, but the negatively-charged electrons, though unbound from protons, were coupled to the positively charged nuclei via electrostatic interaction. In turn photons were coupled to electrons via a process called Thomson scattering, whereby photons gently bounce off free electrons, changing their direction but not exchanging energy. Thus electrons, protons and photons all moved together as a single fluid, the photo-baryonic fluid. Slight differences in the local density of the universe meant slight differences in the local strength of gravity. Hence in some locations in the universe the photo-baryonic fluid would compress slightly under gravity, while in other locations it would expand due to a lower than average gravitational field. Thus the photo-baryonic fluid was constantly in flux, responding to the local gravitational field and internal pressure forces of the fluid.
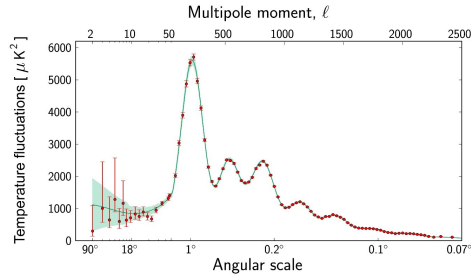
Figure 2: Figure 2: CMB temperature power spectrum data (red points) and our best-fit model (green curve) [7] (copyright: Planck Collaboration). The agreement is made all the more notable given that the model curve requires just six tuneable parameters to produce. The horizontal axis is a measure of the angular size of the temperature fluctuations as projected on the sky, and the vertical axis is a measure of their relative number in the CMB temperature map of Fig. 1. The peak at 1 deg corresponds to the typical size of the 'spots' in the map.

Expansion of the universe resulted in a cooling of the photo-baryonic fluid, and eventually the temperature was low enough that electrons and protons could combine to form neutral hydrogen without high energy photons immediately re-ionising the resulting neutral atoms. From this point onwards photons were no longer scattered by electrons, since the electrons were confined to bound atoms, drastically reducing the probability of a collision. At this stage in the history of the universe, called recombination or decoupling, the universe became transparent for the first time. That is, light (photons) began to travel in straight lines, without being scattered by free electrons. This is the state we see the universe in today; we can see distant stars and galaxies precisely because light can propagate to us coherently without being scattered.

Photons from the recombination epoch have since been travelling through the universe and today we receive a fraction of these in our telescopes. These residual photons were predicted to exist by theorists and in the 1960s were serendipitously discovered by two American physicists, Penzias and Wilson. Not only do we receive these photons, which are labelled the Cosmic Microwave Background, but we also see patterns on the sky in the temperature of these photons; these patterns precisely match those predicted by theoretical considerations of the oscillations of the photo-baryonic fluid under gravity and pressure at the time of recombination ([4] and Fig. 1). The Cosmic Microwave Background thus provides the final and most robust pillar of evidence supporting the Big Bang theory.

### 3. The history and future of the universe

The universe, then, began some 13.8 billion years ago. The precise details of the ultimate origin of the universe are as yet unknown; indeed there is no consensus amongst cosmologists, and thus discussion lies outside the scope of this article. Having said this, under certain reasonable assumptions as to the state of the universe soon after the Big Bang, our best cosmological models explain to a remarkable accuracy the subsequent evolution and current state of the universe.

About a second after the Big Bang the universe was extremely hot and dense; there were no elements, simply energetic protons, neutrons, electrons and photons, almost homogeneously distributed throughout the universe. The slight departures from homogeneity at these early times are ultimately the origin of structure in the universe today. Many cosmologists believe the inhomogeneities are quantum mechanical in origin, resulting from random sub-atomic processes. These seed perturbations in the density of matter and radiation soon after the Big Bang were to ultimately become the galaxies and stars and planets (and, eventually, life), which we see in the universe today. Gravity has provided the means for the growth of these density fluctuations.

In the epoch of nucleosynthesis the nuclei of the light elements were formed, and after cooling to a temperature of around 3000°C, about 400,000 years after the Big Bang, the universe became neutral and transparent in the epoch of recombination. At this stage the universe was still almost homogeneous and dense structures, such as stars or galaxies had not formed. But over time, regions slightly more dense than average grew, with some eventually becoming dense enough to form small groups of stars. As this growth of structure happened, the universe as a whole continued to expand, but some of these stellar groups began to merge, forming larger conglomerations of stars, and as they grew their gravity increased, pulling in yet more dense material. This hierarchical merging of stellar groups and small galaxies over time formed the enormous galaxies that we see in our universe today, including our own Milky Way.

And what of the future of the cosmos? Current measurements of the Cosmic Microwave Background and galaxy surveys suggest that not only will the universe continue to expand, but it will also expand at an ever-increasing rate. This cosmic acceleration is attributed to dark energy, which is somehow permeating the entire universe and dilating every cubic metre of space over time; this will eventually lead to a runaway, exponential expansion. Dark energy is very poorly understood

and is the topic of much of the active research in cosmology today. However, it seems that all but the nearest galaxies (whose mutual gravity with the Milky Way prevents them joining the Hubble Flow) will in time disappear from our view as their light becomes so redshifted as to make them undetectable. The Milky Way, Andromeda and other galaxies in the Local Group will coalesce and continue to be visible until all the hydrogen fuel has been spent through nuclear fusion in the cores of stars. After this time, the night sky will never again display the remarkable range of astrophysical phenomena, which are manifest today.

## 4. Outstanding questions for cosmology

Inflation is a period of accelerating expansion; not only do any two points in the universe which are initially close get spread apart over time, but in fact the rate at which they spread apart is also increasing with time. This 'inflates' every small patch of the universe from a region as small as a proton to a patch as large as the observable universe today. In March 2014 the *Background Imaging of Cosmic Extragalactic Polarization 2* (BICEP2) experiment at the South Pole announced that they had observed compelling evidence that our universe underwent an inflationary period, just a fraction of a second after the Big Bang. Cosmological theorists study models that attempt to explain how inflation can occur in terms of fundamental particles and their interactions. In addition to explaining a period of accelerating expansion, an outcome of these models is that the initially smooth universe attains tiny fluctuations in its density from place to place. These fluctuations are precisely the seeds from which stars and planets grow. Further experimental verification is required before the BICEP2 result can be called a discovery, providing a fruitful line of work for many cosmologists for years to come.

A further outstanding question relates to the origin and nature of 'dark matter'. Cosmologists infer the presence of dark matter principally through its effect on the formation of structure (stars, galaxies etc.). We can calculate the amount of normal matter (protons, electrons and neutrons) in the universe by observing the number and brightness of stars and counting up how much matter this corresponds to. If we do this, we find there simply is not enough normal matter for its gravitational effect to be strong enough that galaxies and stars can have formed, given the current age of the universe. This 'missing matter' we call dark matter, inferring its presence because it allows for the observed structure in the universe today. We still have not yet directly detected a dark matter particle, and its nature is poorly understood; this is a popular line of research in cosmology.

Finally, many cosmologists are trying to understand the physics of another elusive component of the universe, called 'dark energy'. The presence of dark energy is inferred from the observed expansion and curvature of the universe. Dark energy acts like a 'negative pressure' with each region of the universe being expanded at an ever-increasing rate, causing nearby galaxies to recede from the Earth more quickly than would otherwise be expected. This effect is observed, and along with further evidence coming from measurements of the curvature of the universe, indicates dark energy is a fundamental component of the universe. Despite this firm observational evidence, we are yet to understand the physics or mechanisms of dark energy; this is a key outstanding question in cosmology.

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# Women and Human Trafficking in West Africa and the United States

Popy Begum*

*MSc Criminology and Criminal Justice (Research Methods)*

Crime is dominated by men, but historically there have been occasions and circumstances when women play greater or lesser roles in crime. There has been much debate about the reasons for the different rates of involvement in crime between men and women, including those that rely on biological, psychological and social foundations, but most researchers seem to accept that a combination of factors account for the difference (Simon, 1975; Adler, 1975; Heidensohn, 1985). Yet rates of involvement in crime, and the types of crimes that women engage in change over time. For example, Steffensmeier and Allan (1983, 1996) pointed out that organized crime is sexually segregated because when the stakes are high and the risk is great, women are more likely to remain in gendered roles as wives or mothers, disconnected from crime. Some research has suggested that women's involvement in crime tends to be greater in societies undergoing rapid social change rather than in societies that are socially and economically stable. For example, since the 1970s, a period of rapid social change in West Africa, women there became progressively more involved in several types of crimes, especially fraud and human trafficking across national and international borders (UNODC, 2005; Ellis, 2009). Acting as "madams," recruiters, traffickers, exploiters and enforcers, the increased involvement of West African women in criminal networks has prompted policy makers, professionals and researchers to wonder about whether changes that have taken place over the last forty years have fundamentally altered women's roles in society, and in the process, led women to engage in more criminal behaviours.

The roles that some West African women are said to play in crime present a challenge to several of the dominant theories about women and crime. Unlike

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other regions around the globe, African history is replete with well-known female leaders who have exercised independent power, prestige, and performed prominent political roles (Steady, 2011). The power of women is evident in cultural art of West Africa and widespread among Yoruba people, for instance, who live in Benin, Ghana, Nigeria, and Togo. A primary example of female power in West Africa is the "queen mother" who was recognized for her extraordinary power in the nineteenth and twentieth century. Queen Mothers of Ghana and Benin (Stead, 2011) were legendary for fighting European colonial rule. These women had sovereign power over their subjects, served as chief advisors to kings, and performed independent leadership and authoritative roles, with their own royal courts, councils, and armies. Given the leadership roles that some women have played in West Africa, it should not be entirely surprising that women may be among the architects of organized crime today.

Indeed, since the 1970s, law enforcement officials have noted that West African women have taken leadership roles in transnational organized crime, especially human trafficking, where they have independently recruited, trafficked, and exploited victims. Kleemans and Van de Bunt (1999) have noted that even though women are active in organized crime, they are most often the partners of males who are involved. And yet, women do not always seem to be the passive subordinates that criminologists have taken them to be; in fact, they are increasingly reputed to be co-executive leaders with shared power in criminal networks (Arsovska and Begum, 2013). According to the UN, West African female leadership is evident in widespread smuggling of goods and fraud schemes (UNODC, 2005), where businessmen and women serve as partners-in-crime and share executive power. A common operational method for West African criminal networks involved "a successful individual entrepreneur inviting one or more junior relatives or dependents to join him or her in illicit business deals" (Addo, 2006). Reviewing the details from cases that have emerged from West Africa over the last decade illustrates the trend toward greater involvement by women in organized crime that has been noted by law enforcement professionals, but it also paints a complicated picture that shows how Western ideas about gender and family may produce explanations and understandings about trafficking, crime and gender relations that vary considerably from those shared by West Africans.

For example, law enforcement officials in the United States and Togo have documented that women act as key players in networks that employ the forced labor of young women in the US, but the women involved in these networks typically insist that they are not victims. Perhaps they are fearful of the consequences to themselves and their families if they cooperate with law enforcement, but their remarkable consistency in maintaining this story leads one

to believe that fear is not the motivating factor in their reluctance to see themselves as victims. For example, in one instance, law enforcement officials noted that they prosecuted a West African woman who cultivated a workforce of young trafficked women in East Orange and Newark, New Jersey, through the systematic misuse of "Diversity Visas" from Togo. A homeowner and businesswoman, the female organizer traveled from Togo to the United States and vice versa several times a year to organize trafficking operations. She recruited young women through friends and extended family, often telling the victims' families that the young women would work as hairdressers while going to school. This, the families were told, would allow for better living conditions and access to lucrative jobs abroad. Parents, convinced of the opportunity to escape deep-rooted poverty and other economic strains and stressors, allowed their daughters to leave. But the young women were said by law enforcement officials to have been harshly treated, given only two meals a day, they were forced to work unpaid in hair salons, sell jewelry in street markets and perform routine household chores.

To find potential "victims," the female organizer had two male subordinates help her identify "Diversity Visa" winners in Togo and negotiated deals for them to travel to the US. In Togo, young men sometimes won visas in a lottery, but couldn't afford to travel under them. The subordinates offered to fund their travel expenses in exchange for fraudulent marriages. When the men agreed, the organizer and her subordinates helped complete the application process and prepare the visa winners for their interviews. The women who they married were forced to swear to secrecy under oath and engage in voodoo rituals to discourage them from disclosing the scheme and revealing the identity of traffickers and female organizers to law enforcement officials. The trafficked women, law enforcement officials noted, were told that failure to comply would have consequences for themselves and their families. Once in the US, law enforcement sources said that the women were forced to perform several kinds of uncompensated labor, including braiding hair at salons owned by the female organizer. They were also said to be frequently sexually assaulted or raped by the male relatives of the female organizer. Law enforcement officials noted that when the trafficked women stopped resisting the circumstances of their new lives in the US, they were given cell phones and the freedom to travel unsupervised to work.

Many researchers believe that trafficked females in these circumstances are victims who are unable to understand or appreciate the circumstances of their captivity because of the psychological damage that has been inflicted upon them by their captors. But in some ways, the acceptance of their situation by the trafficked women that is described above does not appear to be simply a case of "Stockholm syndrome" where victims begin to identify with their captors. In the

case of these West African women, the recreated community that was transplanted to the US by the traffickers was in some ways, familiar terrain to them: African women are often separated from men in their daily activities and they often live in their own compounds that men only visit. In the case of the women that were trafficked and who worked in hair salons, there was a familiar ring to the description of their daily routine: The young women helped with managing the business, under the supervision of a matriarch. The oldest girl of the group was given charge of closing the hair braiding salon, bookkeeping, cash collecting, cooking, and making sure that the other women went to work. Every night after work, the younger women had to hand over their earnings to the oldest girl. Because of the role that she played, the oldest girl was given a lot of freedom and responsibility, including a third apartment to manage other women. The women involved in this trafficking ring developed a profound trust and respect for the female organizer. They referred to her as "sister" and refused to cooperate with law enforcement after the trafficking ring was discovered because they did not see themselves as victims of trafficking. The women reported that she saved them from living lives of poverty by giving them opportunities for upward mobility.

According to Western definitions of family and individual liberty, the West African women who were trafficked to the US to work in hair salons were exploited by their traffickers who brainwashed them and made them complicit in the illegal scheme. According to the logic of this system, there is little doubt about the leadership roles played by some women. But the descriptions of the daily lives that the trafficked women led in the US do not appear to be dramatically different from their lives in West Africa in some ways: the women lived and worked together in female-dominated environments where there was a clear hierarch among them. In many ways, the group – the community – was valued over the individual, another hallmark of African culture that sets it apart from Western culture. Whether the female-centric and community-based orientation of the women changed once they were transplanted to this new environment is unclear, but to the degree that they remained isolated from the outside world in their new environment, it seems likely that they would continue to see themselves as members of a community, and survivors, rather than victims.

The example of the West African "trafficked" women described above does not answer the question about whether women are more or less criminal today, or if so, what the sources of that increase might be, but it does suggests that our explanatory frameworks need to better understand the motives and the actions of the actors. Clearly, more research is needed to create social policies that take account of cultural differences as well as human universals.

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# Organised Religion and the State in Tibet

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Before the Communist Chinese takeover of Tibet in 1959, organised religion and the state were intertwined in a mutually beneficial relationship, which gave the state security and moral authority while religious institutions gained revenue and secular power. Here, I focus on how the relationship worked during the rule of the Thirteenth and Fourteenth Dalai Lamas (1895-1959), the final period of Tibet's existence as an autonomous entity and the one which is best attested by outside sources. The demise of this system is presented by the modern Chinese government as the fall of a despotic regime and the abolition of serfdom. I argue that this misrepresents the relationship between the Tibetan state and its religious institutions and that the relationship was actually beneficial to the state, the religion and the Tibetan people.

The organised religion of Tibet was the Buddhist *sangha*, a hierarchical religious organisation of monks and nuns served by and serving lay followers. These monks and nuns were bound by strict codes of conduct and resided in (or were attached to) monasteries, which fed and funded themselves from large estates, government subsidies, and gifts from the lay. The *sangha*'s primary role was to provide a vehicle by which monks and nuns might achieve enlightenment - an opportunity that, according to the doctrine of reincarnation, would eventually be available to all.[1] Laypeople's religious devotions were mostly self-directed and manifested either in the domestic context or as pilgrimage.[2] As such, the *sangha* did not host anything akin to the services of a church or a mosque. Nevertheless, the *sangha* did perform religious services on behalf of its lay followers (and all sentient beings), sometimes in their presence. Monks interacted with the lay fairly regularly, since they were expected to visit the houses of the lay to

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[1]Desideri (2010) 362-3.
[2]Ibid., 322.

beg for food and thereby offer the lay an opportunity to gain good *karma*. In Buddhist theory, the monks were dependent on this begging for sustenance, as a result of their vows of poverty. But in practice, most of the monks' needs were supplied by government subsidies and their monasteries' vast estates: while monks individually were poor, the *sangha* institutionally was extremely wealthy and its leaders powerful.[3]

The *sangha* was not strongly inclined to enforce doctrinal or institutional consistency,[4] being composed of four independent schools (Nyingma, Sakya, Kugyu and Gelug) which came into existence at different stages and which included a multitude of sub-schools which were diverse in practice and doctrine. All Tibetan monasteries belonged to one of these schools and the heads of the monasteries formed a lineage (often the same individual reincarnated repeatedly), tying the monastery back to its founder, who himself would have bifurcated from another lineage. Each of the schools except the Nyingma had an overall head at the school's largest monastery. The monks spent hours every day studying, contemplating and debating doctrinal questions, and the different schools had different positions, but no portion of the *sangha* appears to ever have attempted to enforce dogmatic positions or create an orthodoxy in the way that Catholicism, for example, often has. There were frequently arguments between schools, within schools, and within monasteries, sometimes violent, but generally these disputes were material, legal, or personal rather than doctrinal. This tolerance of heterodoxy extended to complete tolerance of Bön (the pre-Buddhist religion of Tibet) and, at times, of Catholic missionaries. In its institutional structure and role, however, with complex internal hierarchies and significant temporal power, the *sangha* is similar to Western experiences of organised religion.

My use of the term "state" in the Tibetan context is potentially problematic for three reasons. Firstly, the state as a secular government with a defined territory in which it wields a "monopoly of the legitimate use of force"[5] is a basic Western assumption. Given how decentralised Tibet was for much of its history, it is not clear that Tibet always was a state under this definition.[6] In particular, there was a practically independent statelet around the city of Shigatse.[7] If the central government's monopoly on the legitimate use of force was sometimes aspirational

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[3]Grunfeld (1987) 8ff.

[4]A general Buddhist tendency: Thondup (1957) 1.

[5]Weber (1994) 310.

[6]Samuel (1982) 215.

[7]Bell (1924) 84 – ruled over by the Panchen Lama (the reincarnated tutor of the Dalai Lama) the central government maintained control over the city of Shigatse itself, though, supporting the idea that this statelet ultimately existed at the consent of the Lhasa government.

rather than actual, that is also true of many modern day states. The second issue with the use of the term "state" is that the Tibetan government was so deeply intertwined with religion that to attempt to delineate part of it as secular might seem artificial. But there nevertheless was a governing apparatus which collected taxes, kept order, and maintained an army. The *sangha* were a major stakeholder in this apparatus, but so were the Tibetan nobles and (in a more limited sense) the Tibetan populace - the state was a separate entity and Tibetans recognised it as such.[8] The Thirteenth Dalai Lama, for instance, had separate personal offices for religious business and state business.[9] The third potential issue with referring to Tibet as a state is its historical position *vis à vis* China, but even taking the strongest Chinese position would not mean that Tibet was not a state, but only that it was a vassal state with limited foreign policy power. The tributary position of Korea in relation to China from 1636 to 1894 offers a parallel - Korea lacked political independence, but maintained a state apparatus with its own court, officials, bureaucracy, and local government. It likewise seems valid to speak of a Tibetan state, in the limited sense of a government which attempted to exercise a monopoly on the legitimate use of force within its own (fluctuating) territory.

The relationship between *sangha* and state was subject to the push and pull of conflicting forces and personalities. Unfortunately, the nature of the historical record makes this difficult to discern, since traditional Tibetan accounts are rarely concerned with these political relationships, instead devoting their attention almost wholly to the history of the *sangha*, its proliferation through Tibet, various doctrinal and practical developments and especially the occurrence of miracles.[10] On those few occasions when they do mention the Tibetan state structure, they do so cursorily, assuming that the reader has a complete understanding of it. Only for the period between the Thirteenth Dalai Lama's coming of age in 1895 and the Fourteenth Dalai Lama's exile in 1959 is it really possible to talk in detail about the relationship between *sangha* and state, because it was in this period when British explorers and government agents began to be able to take an interest in Tibet[11] and because several members of the Tibetan exile community in Dharamsala after 1959, who had been members of the Tibetan government or *sangha*, produced autobiographies as part of an effort to increase awareness of Tibet.[12] Both types of source, British and Tibetan, attempt to provide full

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[8]Thondup (1957) 91; Bell (1987) 191.

[9]Bell (1924) 135.

[10]Martin (1991) 337.

[11]e.g. Charles Bell, the British political officer at Sikkim for much of the early twentieth century, who was exceptionally sympathetic to Tibet and a close personal friend of the Thirteenth Dalai Lama: Bell (1924) & Bell (1985).

[12]Most of these are written by high-ranking monastics and chiefly interested in the internal affairs of the *sangha* and the effects of the Chinese invasion. The most useful for talking about Tibetan

explanations of Tibetan institutions and systems for an audience unfamiliar with Tibet. Thus, most of the evidence considered by this paper derives from the period 1895-1959, after which Tibetan society was significantly altered as a result of the general implementation of Communism and the Cultural Revolution in particular.

The close ties between *sangha* nd state in this period have their roots deep in Tibetan history. The *sangha* was originally established in Tibet by powerful kings, who kept it beholden to the centre by the gift of estates and used it to help maintain their control over the aristocracy.[13] The monarchy collapsed in the middle of the ninth century, and the aristocracy and *sangha* were left to develop on their own.[14] There was a period of flux, in which monastic rulers and secular rulers competed for supremacy, which came to an end with the establishment of the Fifth Dalai Lama of the new Gelug School as supreme ruler in 1621.[15] This Dalai Lama was understood to be a reincarnation of the Bodhisattva (Buddhist Saint) Avalokiteśvara, which gave him enormous authority. On the other hand, since each new incarnation of the Lama was born only after the death of his predecessor, there was a twenty-year interregnum before the new incarnation reached the age of majority and begin to exercise that power. During the Nineteenth Century, four Dalai Lamas in a row died young,[16] meaning that Tibet was under a regency for most of the period between 1804 and 1895, with control in the hands of the Regent and the National Assembly, composed of all the important monasteries and nobles. A system evolved, encouraged by the Chinese governors, which balanced the power of *sangha* and state.[17] When the Thirteenth Dalai Lama did reach adulthood in 1895, this was the system that he took charge of. It continued in operation throughout his rule and into that of his successor the Fourteenth Dalai Lama, coming to an end in 1959. It is the manifestation of the relationship between *sangha* and state during this period, which I will concentrate on for the rest of this article.

The relationship that had developed between *sangha* and government was to a large degree one of fusion. The Tibetan state was composed of the National Assembly of important estate holders, a council of executive officials, and

government are the biographies of Tsipon Shuguba, a nobleman and Finance Minister for the Fourteenth Dalai Lama, and of the Fourteenth Dalai Lama's commander in chief, Dasang Damdul: Tsarong Carnahan & Kunga (1995) & Tsarong (2000).

[13] Norbu (1995) xvii; Thondup (1957) 34; Darggay (1991) 126.

[14] Bell (1987) 144.

[15] Ibid., 29.

[16] Ibid., 54. At which point a new infant Lama had to be sought out. Bell elsewhere suggests that they were poisoned by their regents and/or the Chinese governor: (1924) 45.

[17] The governors were more interested in using the prestige of the Dalai Lama to help control their Mongol subjects than in investing resources in directly governing Tibet: Bell (1924) 37, 40, 52.

provincial governors,[18] all operating under a modified version of the code of laws laid down by the King Srongtsen Gampo in the seventh century (i.e. at around the time that Buddhism first entered Tibet).[19] However, the *sangha* was deeply involved in this system at every level. The other significant members of the Assembly, the noble families, were tightly bound to specific monasteries, which they would endow with gifts and support politically in return for important lamas reincarnating within their family.[20] The *sangha* thus exercised a great deal of control over the state apparatus.

    *Sangha* and state were further bound by collegiality of laymen and monk officials.[21] For example, of the four members of the Council, it was required that three be laymen and one a monk.[22] These officials were expected to work in concert and were not allowed to contradict each other in public.[23] In general, the monk-officials seem to have a greater share in government than the 3:1 ratio suggests; layman officials were usually nobles and generally remained on their estates, sending proxies to fulfil their duties in their place.[24] The principle of collegiality ran through the entire system; official inquiries, for example, had to be formed of a monk and a lay official, who were required to submit a single joint-report.[25] The system reflects an effort to check the depredatory tendencies of the nobles and their proxies - since monastic officials could not personally hold property or estates, they were considered less biased and more reliable.[26] However, the system also reflects limitations on the *sangha*'s ability to participate in government: there were various actions, such as taking lives by ordering executions and travelling far from monasteries to hold governorships, which the state needed to be done, but which contradicted the monastic code and therefore required lay officials.[27] The *sangha* was thus limited from complete control over government by its own rules. It was also limited by its disdainful attitude towards secular and political matters - dismissed as "not serving any great purpose" by the Tibetan monk-historian Guru Bkrashis (who wrote between 1807 and 1813).[28] So, the *sangha* limited its own involvement in the state and required the state to remain an active and dynamic system.

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[18]Bell (1987) 163.
[19]Thondup (1957) 98.
[20]Carnahan & Kunga (1995) 16-17.
[21]Ibid., 76.
[22]Bell (1987) 163.
[23]Ibid., 180.
[24]Ibid., 175.
[25]Bell (1924) 136.
[26]Grunfeld (1987) 9.
[27]Darggay (1991) 127; Bell (1924) 57.
[28]Martin (1991) 343.

Above everything was the Dalai Lama, who was the ruler of both the *sangha* and state. As the reincarnation of the Bodhisattva Avalokiteśvara, the Dalai Lama was basically a living god and thus had enormous moral authority. Veneration of the Dalai Lama was a major thread of Tibetan national identity – Avalokiteśvara was also identified with Chenrezig, Tibet's patron deity.[29] Most Tibetans would perform a pilgrimage to the Dalai Lama's city, Lhasa, at some point in their lives to see the Dalai Lama and receive his blessing at one of the major festivals.[30] Tibetans considered him omniscient, conducting their domestic rituals as if he was personally present and most people possessed pellets of his faeces, which they considered to have apotropaic and medicinal powers.[31] This extreme veneration for the Dalai Lama served to legitimise the government which he presided over in the eyes of the people.[32] Similar, but less intense devotion was extended to the lamas of local monasteries throughout the land, whose relationship with the lay was modelled on that of the Dalai Lama.[33] In a vast resource-poor country of harsh terrain, binding the state through moral and spiritual authority was far more effective and efficient than military or economic means would have been. The Thirteenth and Fourteenth Dalai Lamas, who reached the age of majority, were also able to use their authority to actively prevent division, e.g. by arbitrating disputes over land and other issues, which had the potential to be highly divisive from an impartial and indisputable position of supremacy.[34] This unified centre allowed the state to curb the powers of the landlords over their tenants, moderating, perhaps inadvertently, the hardships of the peasants who supported state and *sangha*.[35]

The *sangha* received vast amounts of funding from the state in the form of endowments and tax exemptions. In 1917, for example, the endowments amounted to a sixth of the central government's total revenue and the tax exemptions exceeded that revenue.[36] This enormous expenditure has provoked claims from pro-Chinese scholars that the *sangha* had infiltrated the state,

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[29] Carnahan & Kunga (1995) 20; Bell (1987) 16.

[30] Tsarong (2000) 12.

[31] Desideri (2010) 322: "They swallow these pills with great devotion and keep them most respectfully in reliquaries they carry. When they are ill or in similar circumstances, they take these pills with great faith, considering them as a powerful remedy for their ills and a sure preventative against all misfortunes."

[32] When Lhazhang Khan killed the Sixth Dalai Lama in 1716 he almost instantly lost popular support for himself and for any form of Mongol rule in Tibet: Desideri (2010)., 160ff.

[33] Ibid., 434.

[34] Bell (1987) 181.

[35] Miller (1982) 804.

[36] Bell (1987) 188.

parasitically extracting resources from its peasantry in partnership with the nobility.[37] In large part this opinion reflects Chinese Marxist perspectives, which in general see organised religion as a force inimical to state and populace and in particular have found the *sangha* and traditional aristocracy to be hubs of resistance to Chinese governance in Tibet.[38] Indeed, life was harsh for the Tibetan peasantry, since Tibet is a difficult country to eke food out of.[39] Both state and *sangha* made heavy exactions of them, which made it even harder. Every family was required to pay taxes to Lhasa and to provide corvée labour to the provincial government.[40] Many peasants were enserfed to the monasteries and therefore owed the same obligations to the local monastery as well. So there is some fuel for the view that the *sangha* exploited the peasantry and provided the ideological legitimisation, which enabled the state to do likewise.

This opinion is short-sighted. The revenue gained by the *sangha* did not simply pool there, but was used by the *sangha* to perform a multitude of functions, which benefited the people from whom state revenue was extracted. Individual monasteries were often responsible for the maintenance of "ever-normal granaries" in case of famine.[41] The *sangha* was deeply involved in the lives of every individual in Tibet. When a person was born it was a representative of the *sangha* who came to name the newborn.[42] The *sangha* was responsible for the provision of education and entertainment in the form of ritual and theatre.[43] When a person became sick, they summoned monks to their house to perform long rituals for the expulsion of evil spirits and the sick person requested advice on how to proceed from a chökyong - an individual possessed by semi-divine spirits, usually a member of the *sangha*.[44] More generally, people sought the advice of a chökyong and the blessings of monks and lamas before embarking on any important course of action.[45] When a person died the monks organised the disposal of the dead,[46] carrying the body into the wilderness, where they ripped the body apart so that it could feed the birds and earn merit for the deceased.[47]

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[37] Huang (1993) 8; Wang & Nyima (2001) 225.

[38] Powers (2004) 13. Since 2009, the anniversary of the fall of the Dalai Lama's regime has been a regional holiday: "Serfs' Emancipation Day," China.org.cn http://tinyurl.com/nxtnevq, accessed 2/4/2014.

[39] Desideri (2010) 282-3.

[40] Bell (1924) 73; Desideri (2010) 263.

[41] Miller (1982) 804. Bell (1924) 42 has a picture of one of these, the Palha granary, though this specific example was maintained by a noble family.

[42] Tsarong (2000) 56.

[43] Bell (1987) 205; Tsarong (2000) 12 & 54.

[44] Bell (1987) 205; Desideri (2010) 280 & 290.

[45] Bell (1924) 133; Carnahan & Kunga (1995) 40; Tsarong (2000) 16; Desideri (2010) 281.

[46] Carnahan & Kunga (1995) 61.

[47] Desideri (2010) 290-92.

Then they would conduct prayers and read from the Tibetan Book of the Dead for the following week, in the hope of guiding the deceased to enlightenment or at least a favourable rebirth.[48] In effect, the sangha was the Tibetan equivalent of the welfare state, caring for the people of Tibet from cradle to grave – and beyond. Ordinary Tibetans would have interacted with it far more regularly and got more out of it than from the secular government, whose only functions were the extraction of tax, the enforcement of law, and the organisation of defence.

It is true that several of the services offered by the *sangha* assume the efficacy of Buddhist ritual and therefore might not be seen as worthwhile to an audience which does not share that belief. Yet both members of the *sangha* and laypeople seem to have shared the assumption that Buddhist ritual worked - most of these services required the people to call in the monks.[49] Tibetans showed no interest in adopting other ideological systems, though Christian missionaries and Muslim merchants made them available.[50] The native Bön religion did not even attempt to operate as an alternative, integrating itself into the *sangha* instead.[51] All this suggests that the populace was not interested in another ideological system and that the services, which the sangha offered, were ones that the populace desired.

The fusion of *sangha* and state was also responsible for the few possibilities for upward social mobility which Tibetan society allowed. Poor families would send at least one child, usually the second-born, to become a monk and this child would receive at least a basic education and could end up rising to a position of great influence as a monk-official.[52] More importantly from the Tibetans' perspective, the child would have the leisure to pursue upward mobility in the spiritual sense by paving the way for their reincarnation as a divine being or a Buddhist saint, which is the form of mobility that the laypeople themselves most valued.[53] Of course rich noble families had ways of ensuring that their children reached the top of the monastic hierarchy, since they could pay for university

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[48]Carnahan & Kunga (1995) 40; Desideri (2010) 359. The Book of the Dead is translated in Coleman & Jinpa (2005).

[49]Bell (1924) 133.

[50]Desideri (2010) reports that the Tibetans were keen to pay reverence to Christ and the cross, but in the same way that they reverenced their Bodhisattvas and he found them absolutely unwilling to abandon Buddhist conceptions of the universe or to accept the idea of an uncreated creator God. This is incorporation rather than conversion.

[51]The chökyong oracles, for example, were understood to be possessed by *lha* (nature spirits) and were originally Bön rather than Buddhist. In fact, almost all chökyong were monks: Desideri (2010) 430.

[52]Desideri (2010) 326.

[53]This was the stated goal of most of their prayers, circumambulations, and pilgrimages: Desideri (2010) 326.

education in the intricacies of Buddhist philosophy and the truly rich could even pay the lama to promise to be reborn as a member of their family. Nevertheless, the *sangha* provided a channel for the talented (and lucky) members of the lower classes to reach positions of power. When reincarnated lamas were found among the peasantry, their families would accompany them to their new home. In the case of the more powerful lamas, these family members could end up in positions of significant authority, as in the case of the Thirteenth Dalai Lama's brothers.[54] Such siblings were made members of the nobility, which was otherwise a closed caste.[55] The sangha could not form itself into a hereditary, closed elite, as the lay aristocrats did, because its highest members were chosen by reincarnation and because most schools were celibate.[56] This channel gave the lower classes, on whom the Tibetan state ultimately depended, some access to the state.

In some senses the *sangha*'s powers exceeded those of the state. The Dalai Lama's moral authority was enormous, stretching south across the Himalayas and north to the Eurasian steppes. South-eastern Tibet, Bhutan, Sikkim, Ladakh, and Mongolia all fell under separate secular rulers and well outside the Tibetan state, but all bent to the Dalai Lama as their religious ruler.[57] The Dalai Lama also had a special, almost equal, relationship with the Chinese emperor as his spiritual advisor.[58] When *sangha* and state conflicted, this influence could prove dangerous to the state, allowing the *sangha* to call foreign armies, particularly those of the Mongols, to its aid.[59] By fusing with the *sangha*, rather than conflicting with it, however, the state harnessed this foreign influence and guaranteed itself protection from invasion by most of its neighbours. In turn, the *sangha*'s ability to operate and to continue to have moral authority depended on the financial support of the state. The *sangha*'s influence with supernatural forces followed a similar paradigm - the sangha built enormous amounts of merit through, for example, massive programmes of bird feeding, in large part with state funds and this merit thus accreted to the state and the individual taxpayers, as well. Much of the *sangha*'s energy was spent on prayers and rituals for the prosperity of all the beings of Tibet, which the *sangha* and Tibetans took very seriously – in his enthusiasm to support the British in World War I, the Thirteenth Dalai Lama was willing to divert some of these rituals to the British cause, but not all of them

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[54]Bell (1924) 144.

[55]Grunfeld (1987) 8.

[56]Thondup (1957) 61.

[57]Bell (1924) 13. In the early 1900s, the Tibetan people were under the (mistaken) impression that this influence extended even to the Russian Tsar, 64.

[58]Bell (1987) 146. The exact status of the Dalai Lama in regards to the Qing Emperor and the relationship's implications for Tibet's sovereignty are the subject of great debate, e.g. Wang & Nyima (2001) 41-46.

[59]Martin (1991) 340; Desideri (2010) 242-60.

because he, his ministers and his parliament genuinely believed that it was these rituals which were preserving the Tibetan state from destruction.[60]

In the period of the Thirteenth and Fourteenth Dalai Lamas, the Tibetan *sangha* and state were very closely intertwined – while the skeleton of the Tibetan state was secular, but much of the muscle of it was provided by the *sangha*. The *sangha* took revenue and power from the state, but lent it internal and external moral authority and provided important welfare services and some social mobility to the populace. Devotion to the Dalai Lama helped to bind the state together and his personal intervention mitigated the excesses of the state. It was the partnership between *sangha* and state, which enabled Tibet to exist as a single autonomous unit.

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# Social Criticism in Russian Crime Fiction of the 1860s

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This paper examines the works of a range of authors of Russian crime fiction of the 1860s, a period of great social change in Russia, which saw the emancipation of the serfs and a total overhaul of the judicial system. I will explore how authors view these changes and how they incorporate various elements of social criticism into their work.

During the years 1860-1864, Russian society went through a number of dramatic upheavals, which had an undeniable impact on the popular literature of the time. The 1861 emancipation of the serfs (also known as the peasant reforms) caused a dramatic change in the social landscape of the country, as over one-third of the population was granted legal freedom,[1] whilst the legal system itself was altered with the introduction of the *sudebnii sledovatel* (examining magistrate) as an independent, impartial investigator into crime, as well as the "great reforms" of 1864, which introduced an independent judiciary, open trials by jury, and the concept of legal egalitarianism to Russia, amongst other measures. Such large societal changes led to a change of focus in popular literature of the time, as authors sought to evaluate the new conditions of life and assess precisely how everyday life had been affected.

Although it cannot be denied that these reforms caused a great upheaval in society, it is a little more difficult to examine the effect that these dramatic changes had on the crime fiction of the era. It has been argued that "the literary detective

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[1]S. A. Zenkovsky, *The Emancipation of the Serfs in Retrospect*, Russian Review, 20:4 (1961), pp 280-293, p 280.

plays a vital political role in society,"[2] as his work necessarily reflects the situation and morality of the society of his time. This paper seeks to examine the truth behind this statement, by examining the social criticisms evident in the works of three crime fiction authors of the time: Sokolovskii, Timofeev, and Stepanov. In order to do this, we shall focus on three broad types of social criticism which are prevalent throughout these works: criticism of the peasant reforms, criticism of the pre-1864 judicial system, and criticism of society itself as a contributing factor towards crime.

Firstly, then, we shall examine how these authors use their works to criticise the 1861 peasant reforms, in which serfs who had formerly been the property of their landowners were given freedom. Many criticised the reforms for providing no aid or assistance to the former serfs, who often fell into extreme poverty. This is dealt with in detail by a number of authors, not least Sokolovskii in his 1866 story *Skvernie Minuti* (Terrible Minutes). Sokolovskii provides his primary social criticism through his depiction of the criminal Dragunov, a former serf who, since emancipation, has turned to theft. The author succeeds in evoking our sympathies for the criminal through the use of several rhetoric devices, firstly by his vivid description of the criminals living conditions. He tells us:

> ... on the dirty matting on the earthen floor of the hut, with a wooden block instead of a headboard, lay a young woman in the last stages of childbirth. Near her crawled a naked child of around one year old...[3]

Such vivid language presents Dragunov to the reader not as a criminal, but as a poor man whose horrific circumstances have driven him to criminality. Negative words such as dirty, wooden block, and naked help to emphasise the full extent of the situation, whereas the mention of Dragunov's wife and children evoke human sympathies in the reader. It is in this way that the peasant reforms are critiqued: the reader sees that whilst Dragunov is free, his living conditions have not improved, and in fact the horrific poverty he is living in has forced him to take extreme measures. Sokolovskii uses his stark depictions of the reality of life post-emancipation to demonstrate to the reader that emancipation has not improved the living conditions of former serfs; if anything, it has made them worse. This is reinforced by the sudden use of analepsis on page 8, when the reader is told Dragunov's history from its beginning. We are told that his story is "not long", suggesting that his life story was far from unusual or specific to him - in fact, the use of these words implies that many other former serfs share a similar story. As his story takes so little time to relate, it is implied that the reader would be familiar

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[2] Louise McReynolds, *Who cares who killed Ivan Ivanovitch?*, Russian History, 36 (2009), pp 391-406, p 391.

[3] Sokolovskii, Skvernie Minuti, p7.

with other similar cases and situations. In this way the reader is shown that not only Dragunov, but many thousands of serfs across the country have not benefited from emancipation.

Neither is this sentiment unique to Sokolovskii: in Timofeev's *Ubiistvo I Samoubiistvo* (Murder and Suicide), we are given the story of Marianna Bodresova, a serf who has led a difficult life. The reader is specifically told of her change in circumstances, as we are told:

> The year 1861, unforgettable in the history of Russia, began. Serf-dom fell, serfs were granted their freedom...[4]

In spite of this change, though, we do not see any improvement in Marianna's living conditions: she remains an outcast from society as the father of her children refuses to marry her and eventually she becomes so disillusioned that she commits murder and attempts suicide. Through Marianna's story, it becomes obvious to us that emancipation has not had a positive effect on society: her life was not improved, but steadily became worse as she was forced into a society that did not wish to accept her. In this way, we can see how the authors provide a social criticism of emancipation: through the use of case studies of former serfs and vivid depictions of their living conditions, we come to empathise with them and understand the difficulties of their lives post-emancipation.

In this regard, crime fiction provides us with another unique lens through which to study Russian society of the time: as literacy rates during the late Tsarist era were so low (with an average of 22.3% literacy in 1897),[5] a large amount of literature of the time was focussed on the lives of wealthy and aristocratic characters, as it was the wealthiest sections of society who constituted the readership of literature. However, as popular fiction, crime fiction was generally focussed more on the less privileged sections of society, thus providing the reader with philosophical and social commentary based on a wider section of society than is often seen in Russian literature of the era.

Another form of social criticism which forms a running theme throughout various works of the era is that of commentary on the new judicial system. This system was created by Alexander II's judicial reforms of 1864, which saw the introduction of trial by jury and the establishment of local courts with an emphasis on a new figure, the examining magistrate, who was tasked with investigating crime in place of local policemen. Throughout the stories, we often see local

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[4]Timofeev, *Ubiistvo I Camoubiistvo*, p63.
[5]V. I. Lenin, *Pages from a Diary*, http://www.marxists.org/archive/lenin/works/1923/jan/02.htm, accessed 26/2/2014.

policemen presented as unorganised, unprofessional and generally clueless in comparison to the new examining magistrates. A perfect example of this is provided by the protagonist of Stepanov's 1869 short story *Podnevolnii Brak* (Forced Marriage), who feels compelled to re-open a criminal case after meeting a prisoner whom he believes to be innocent. The very fact that an innocent man has been imprisoned, of course, shows us the incompetence of the local police force, but Stepanov also uses an omniscient narrator to give the reader details of this first investigation, in order to allow us to hear first-hand the mistakes which were made. And so, we hear the local policeman urge the owner of the land on which the crime has been committed to suggest a suspect for the investigation, claiming that "Everything will depend on you."[6] The use of the word "you" is especially important here, at it suggests that the outcome of the investigation is down to what the landowner says, as opposed to justice or the truth of the situation. Later on, we see this policeman attempt to intimidate his illiterate suspect by forcing him to sign a declaration which he cannot read, using the power of the written word against him,[7] reinforcing to us that this is a man who cares very little about the truth or the wellbeing of his suspects, instead preferring to find a suspect as soon as possible, even at the expense of justice. This incompetent figure contrasts with our protagonist, who speaks at length to his suspects, listens patiently to his witnesses, and generally carries out a more organised and thorough investigation, which leads to the uncovering of the truth.

The figure of the incompetent local policeman, who can be read as a vestige of the pre-reform judiciary system, is not unique to Stepanov. In his work, Timofeev goes even further and has his narrator criticise the local policeman figure directly, calling him a man "with no soul and no heart"[8] and wondering:

> Can there really be such people as him, who go no further in their work than fulfilling a few meaningless formalities?[9]

Here we are presented with a number of criticisms of the local policeman figure, who symbolises the pre-reform system: he is heartless, he does not care about his suspects, and the use of the word "formalities" also suggests to us that he is needlessly bureaucratic. Again, this is presented to us in contrast with the narrator: who, as an examining magistrate, can be seen to be a representative of the new system. In comparing the two, we can see vast differences: whilst the local policeman is heartless, the examining magistrate is humane, taking pity on criminals; whilst the local policeman is bureaucratic and concerned only with

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[6]Stepanov, *Podnevolnii Brak*, p59.
[7]Ibid., p66.
[8]Timofeev, *Ubiistvo I Camoubiistvo*, p 44.
[9]Ibid., p40-1.

formalities, the examining magistrate is pragmatic, allowing Marianna to leave even though it is a breach of protocol, because he has used his judgement to decide what would be most appropriate in the given situation.

In this way, then, authors use their characters in order to provide a criticism of the pre-reform judiciary system, and the vestiges of it which were left in the contemporary system. While the "great reforms" were passed in 1864, it was not until years later that they came to be observed all over Russia, and thus this use of the local policeman as an incompetent figure can be seen to be a critique of the speed at which these laws were implemented, as society was left with the vestiges of an old, corrupt system. This criticism of the old system is counteracted by praise of the new and reformed system, as is shown by the contrast between the two figures. Local policemen are presented as incompetent, bureaucratic, and heartless, in comparison to a humane, intelligent and competent detective figure.

However, not all crime fiction authors were laudatory of the new system. For example, the most well known work of Russian crime fiction, Dostoyevsky's *Prestuplenie i Nakazanie* (Crime and Punishment), introduces the character of Porfiry Petrovich, an examining magistrate and thus representative of the new system. At first glance, Porfiry seems to have much in common with the examining magistrates of other narratives, going out of his way to speak with his suspects in depth and eschewing bureaucracy. In his words:

> an examining magistrate cannot be hampered by regulations at every step. The business of an examining magistrate is, as it were, a kind of art, or something of that sort.[10]

However, in spite of possessing these qualities, Porfiry is not portrayed sympathetically  instead, he is seen as a manipulator, trying to force his increasingly mentally unstable suspect into a confession via various tricks and mind games. As such, Dostoyevsky uses the character to suggest that the new system is, in fact, no better than the old.

This use of characters is not the only way in which authors pass their judgements on the new system. It can be argued that some authors, most notably Timofeev and Sokolovskii in *Nabolevshie* (Sore Spots), also use their writing style itself to provide social commentary. Both of these short stories are comprised largely of dialogue, allowing not just the viewpoint of the narrator (who is, in both cases, the examining magistrate) to be heard, but also the stories of their suspects

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[10]Dostoyevsky, *Crime and Punishment*, trans. David Magarshack, Penguin Classics, Middlesex, 1966, p352.

and victims. This style of writing reflects of the judicial reforms, under which the Russian legal process went from a closed system, with the defendant not knowing who their accuser was and so being effectively helpless, to a more open system, under which trials took place in an open court and the accused was legally able to defend themselves. This is reflected in the works, as we see suspects giving their side of the story and defending themselves, which in turn leads us to reconsider precisely who we believe to be guilty and for what reasons. In Timofeev, although Marianna has committed the crime of murder, it is only through her story that we can fully understand and even sympathise with her motives. Thus, Timofeev uses dialogue in order to show that context is important to crime, and that we should not be quick to judge. Through the use of a jury system and open trials, the new judicial system for the first time allowed the accused to give their story and have each case judged on its own merits by a jury of peers in a way which simply could not have occurred under the previous system. We can take this as an argument in favour of the reforms, then, as it is only through them that we can understand the full story of a crime.

The final form of social criticism we shall briefly examine is that of criticism not of specific reforms, but of society itself. This is a theme which is touched on in a number of works, such as Sokolovskii's explicit claim that it is not the individual, but society to blame for Dragunov's criminality, saying "Who is guilty? ... Society, too."[11] This is taken up in Timofeev's portrayal of Marianna, as the narrator travels to her village and meets a local population who knew what was happening to her, but did little to stop it. The implication here is that by their passivity, they themselves were complicit in the crime. The purpose of such criticism is to enable the reader to see crime in its full context, taking each crime as a product of the society under which it was created. To use the example of Timofeev once again, it is Marianna who is accused of criminality, although in actual fact she is one of the least criminal figures of the narrative: her abusive parents, half-brother, and the villagers who were complicit by their silence share the blame amongst themselves, and yet it is she who is arrested. In this way, then, authors make the point that crime is not the product of the individual, but rather society, and thus to prevent crime we must look at the nature of society itself.

The question of crime's relationship to society is a recurring theme amongst a number of texts, including Dostoyevsky's *Crime and Punishment*. Here, the discussion of the theme is verging on the philosophical, with the murderer's friend Razumikhin and Porfiry Petrovich discussing the true nature of crime. Whilst Razumikhin complains that in the view of Socialists:

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[11]Sokolovskii, *Skvernie Minuti*, p12.

> Nothing is admitted! ... They reduce everything to one common
> cause – environment... Human nature isn't taken into account at all.
> Human nature is banished. Human nature isn't supposed to exist.[12]

Porfiry argues that "you're talking a lot of nonsense: environment means a lot
in crime."[13] The purpose of this debate is to force the reader to engage with the
question of why crime occurs and who is to blame. If society does play a role,
then the onus is placed on the reader to examine how they lead their own life so
as not to enable acts of criminality.

Thus it can be argued that more than simply providing a passive critique on
social reforms of the time, the authors of crime fiction go beyond this in order
to directly and actively address the reader. By criticising society itself, of which
the reader forms a part, these authors are forcing the reader to examine their own
actions and relationships with the world around them, and how they personally
could improve society and reduce suffering by taking action. It is for this reason
that authors such as Timofeev portray a host of passive bystanders as contributing
to criminality, in order to confront the reader with the idea that even passivity and
lack of action can be harmful to society.

In these ways, various authors use crime fiction to provide a critique of
the society in which they live: throughout the period 1860-1864, society was
concerned with the peasant and judicial reforms, and so, naturally, it is these
issues which authors have explored most in their works. Through the use of case
studies, we have seen how authors of crime fiction have argued that emancipation
in fact did very little to improve the living conditions of former serfs, and explored
their criticisms of the effects of the pre-reform judiciary system and its vestiges
on society. Furthermore, we have looked at three authors' criticisms of society
itself, each of whom have suggested that crime is not merely the product of the
individual, but of society as a whole. It is these issues with which the three authors
presented are most concerned within their works, and in these ways that they are
able to express these through the medium of crime fiction in order to provide not
only entertainment, but also social criticism to their readership.

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[12]Dostoyevsky, *Crime and Punishment*, p272-3.
[13]Ibid.

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# Citizenship, Myths, and... (Naked) Women

Citizenship, Myths, and... (Naked) Women

Evgenia Ivanova*

*DPhil in Political Theory*

This paper looks at how abstract ideas important for citizenship, such as justice, freedom, equality, and patriotism, are represented in order to capture the imagination of political actors. Focussing on produced fantasies and images the paper seeks to understand how the political imaginary is sexed and what role it plays in inspiring individuals to take certain political roles and actions. More specifically, it examines the function of female nudity and sexiness in the representation of many abstract political ideas. It is suggested that the feminine and sexualised character of many symbols has a significant role in motivating the political agency of male citizens by making abstract political ideas symbolically more engaging.

"Citizenship is illusive", states Nira Yuval-Davis: it has been shaped and re-shaped in multiple ways in various societies, and constructed dissimilarly in the same societies over the time, moreover diverse models of citizenship have been suggested by different political projects in the same place at the same time.[1] She elaborates that citizenship is an organising principle of the relationship between the state, collectives and individuals, a tool for political exclusion or inclusion, mobilisation or depolitisation that is used by the right and left, Republicans and Democrats, conservatives and liberals, nationalists, internationalists, and feminists.[2] It is not only illusive but allusive: firstly, because it is easier to say what citizenship is *about* than what it *is*, and secondly because it performs as a political ideal.

Pointing out this illusive/allusive component of citizenship, Michael Ignatieff writes: "Citizenship is a myth" - a myth about the citizen leaving "his" private interests behind and through participation in the public domain realising the

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human good.[3] Another part of the myth is that those private interests are coupled with passions and not exactly left behind but "satisfied cheerfully in private sociability".[4] In other words, they are not abandoned but shifted to a different realm. Here Ignatieff sees a split between the ideal of citizenship and the reality that is manifested in a confrontation between a civil actor - that is "man the citizen" - and the economic man. The myth turns into a political fantasy (properly adjusted citizens are able to put "public good ahead of private interests")[5] where legendary, mythic, and illusive come together. This political imaginary includes ideals of equal and full membership, of the possession of equal rights and exercise of equal duties, of active participation when it is time to govern and loyalty when it is time is to obey. It is a fantasy, whose actors are autonomous, rational, abstract, independent (unencumbered), free, disembodied individuals. All citizens ought to act as required because (and therefore) citizenship is universal and neutral.

If myths contribute to the ideals the fantasy is based on, legends provide examples from what is meant to be the real world. Legends seem to be much more real than myths as they are about people, not gods and supernatural powers. Legends refer to real places and imaginable times and this plausibility creates a niche for a fantasy to be especially vivid. Since events described in legends may, or may not, have taken place, these narratives become a refuge for what is desired, but barely possible, or even for what is not allowed by the ideals of the myth.

I recall one legend that has excited the imagination of people in Great Britain for centuries now and is well-commemorated by works of art and annual events organised by local governments. It is the story about Lady Godiva. As the legend goes, sometime in the eleventh century Lady Godiva was unhappy about her husband  a powerful and important Anglo-Saxon Earl at that time  imposing crippling taxes on the citizens of Coventry, the area he governed. She kept asking him to relieve this burden; tired of her pleading (and possibly drunk according to some versions of the story) he agreed to do as she wished if she would, in return, ride on horseback naked through the town of Coventry. Compassionate, brave and, certainly, clever Lady Godiva did as her husband requested but her nude ride took place through the empty and quiet streets of the town for she commanded the townspeople to stay indoors and firmly shut their doors and windows.

It is known that Lady Godiva was a historic figure but whether she rode covered only by her hair in order to help laypeople or not has never been proven.

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[3]Ignatieff, Michael. The Myth of Citizenship// Queen's Law Journal, 1987. P. 400.
[4]Ibid.
[5]Ibid., 402.

Why has this story captured the (political) imagination of so many generations for such a long time? Why among all the stories about nude people over the last nine hundred years has Lady Godiva stayed with us? I think it is partly because the narrative allows fantasies about justice in the relationship between the people of power and the powerless, in a way that is both very erotic and pure at the same time. Despite the story going far back to a time when "citizenship" did not yet (or already) existed, it suggests a type of relationship between an individual and power and, effectively, a version of citizenship. The beauty of the legend, often translated into the beauty of Lady Godiva herself, is that it suggests almost a perfect fusion of real and ideal, just and unjust, possible and impossible, political and non-political, embodied and disembodied, erotic and pure. It is astonishing how the narrative seems to be able to bring apparent contradictions together in the most unproblematic way: not only does everything find its own place in the story, but nothing challenges the existing order of things. It is an ideal candidate to survive and thrive in the era of citizenship. Everything that is needed for the concept of citizenship is here: those who exercise power and those over whom the power is exercised; private interests and the need to overcome them for the common good; an action taken place in the public space; justice as a result of an actor's efforts. At the same time the governed display respect and obedience: not only do they not participate in solving the disagreement over the tax but their support is expressed through voluntarily withdrawal from the public space. Thus the dispute over a political matter which affects everybody is solved between two empowered agents.

Now, what to make of the most powerful image of the legend a nude woman at the core of political action? Does it ascribe political agency to women? Does it not contradict citizenship's ideal of the disembodied actor? In my opinion it does not. First of all, the body here is not a private matter any longer it is simply a means of delivery of what is agreed as a part of the (political) deal. Secondly, despite the nude body being revealed in public it is not seen publically. The female nakedness remains private for the space has been previously de-publicised through the people's physical vacation of the common places and their moral commitment to be locked at home. Lady Godiva's nudity coupled with her audacity makes her desirable as a goddess; protected by her nobility and privacy; like a goddess, she remains unreachable. In terms of Lacanian psychoanalysis she is object *a* - the object that causes desire and constitutes the fantasy. "It is disjoined from the subject, it is not the object that desire aims at, but rather it organizes the imaginary scenario of the fantasy which orders desire".[6] Object *a*,

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[6]Lacan, Jacques. Seminar 10, Anxiety, 1962-63. Cited in Psychoanalysis dictionary. http://www.answers.com/topic/object-a

called by Lacan "fragments of the body",[7] designates a part of the body given up in symbolic sacrifice. In other words Lady Godiva's manifestation of political will is not as much about women's agency, (at the end of the day she is not the one who makes the political decision anyway), as it is about male political fantasy. Her nude body has a symbolic function, but what exactly does the body do? And is it women specific?
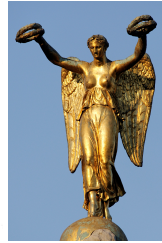
Although images of male nudity are not rare when it comes to portraying male (Classic) heroes or depiction of physical strength, I cannot recall any legend where the demonstration of the male naked body (as opposed to the representation of it in art) is the constitutive part of this legend. The public political space across countries, however, shows no lack of images of Nation, Freedom, Justice, Revolution, Victory, Nation/ Country personified as women.
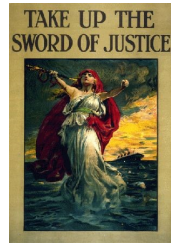
1. French Revolution, France    2. Justice    3. Victory    4. Liberty, USA

5. Motherland calls, Russian Federation    6. Motherland, Ukraine    7. "Popular Irregulars", French Invasion of Russia 1812    8. Great Britain, 1915

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[7] Lacan, Jacques. La troisième, intervention de J. Lacan le 31 octobre 1974. Lettres de l'École freudienne 16, 1975. P. 189. Cited in Psychoanalysis dictionary. http://www.answers.com/topic/object-a
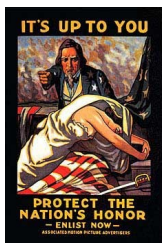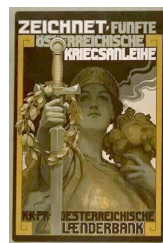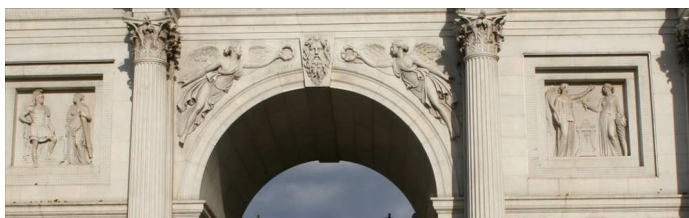
9. USA, WWI
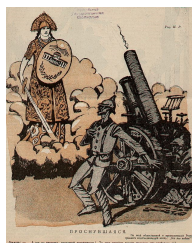
10. "Woken", Russian Empire, 1915

11. For Homeland the Mother , USSR, 1943 [8]

12. Austro-Hungarian Empire, 1914-1918

13. A fragment of Marble Arch, Great Britain, 1827-1833

14. Italy, WWI

15.France, 1916

16. A fragment of Kaiser Franz Monument in Vienna, Austria

17. Ethiopia, 2013[9]

One of the things that unites these abstract ideas incarnated as women sometimes bare breasted, often sexually attractive, decorated with national symbols or other politically significant symbols - is, perhaps, their purpose. Sharon Krause, pondering the gendered character of the American Lady Liberty and the French Liberty-Leading-the-People as symbols, comes to conclusion that their female sex-ness (and in the French case sexiness) has a significant role for motivating and supporting the political agency of (male) citizens.[10] According to Krause, abstract ideas, attachment and partial desires mixed together create a

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[10]Krause, Sharon. Lady Liberty's allure: Political agency, citizenship and The Second Sex// Philosophy Social Criticism, 2000. P. 2.

solid base for agency to rest upon.[11]  Making those abstract ideas more alluring and symbolically engaging by bringing a female (nude or partially nude) image into the picture in a heteronormative society tells us something important about how citizenship is sexed on the symbolic level and who aspire to be engaged with politics.  It is no surprise then that if we look at other inhabitants of the political imaginary and citizenship mythology - (historic) political players, past and present founders and leaders, those who made their way into popular history and mainstream knowledge - we notice that they are represented predominantly by men.

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# Has the 'War on Terror' Undermined the International Human Rights Law Regime? An Optimist's Answer

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This essay considers the question whether the war against terror has undermined the international human rights law regime' defined as the framework in place to ensure that substantive human rights, such as the right to life and the right to a fair trial, are respected, fulfilled and protected. I argue that the war against terror has not undermined the human rights regime. Rather, what the war against terror has revealed is a fundamental weakness in the human rights regime; one that lies in the regime's lack of an effective means to prevent states - more so the powerful ones - from committing human rights violations when fighting terrorism.

The first part of the essay defines the key terms. The second part re-articulates the question in light of the definitions of the key words adopted. The next part discusses the legal basis for the war against terror, with the fourth part considering the impact - both positive and negative - that the war against terror has had on the human rights regime. The final part concludes that the war against terror has not undermined the human rights regime but has merely revealed pre-existing weaknesses of the system.

## 1. Defining the Key Terms: 'War', 'Terror', 'War against Terror' and 'Human Rights Law Regime'

In order properly to map the parameters within which I will consider whether the war against terror has undermined the human rights regime, an initial definition of the terms 'war', 'terror', 'war against terror' and 'human rights regime' is indispensable.

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## 1.1. 'War' vs 'Armed Conflict' – mere semantics or something more?

To many people, there is really no difference between the terms 'war' and 'armed conflict'. Both terms are apt to conjure up a medley of images: bombs, guns, blood and death. The term 'war' could also be used metaphorically to describe concepts that are less dramatic such as the tension between the west and the Soviet block of states between 1945 and 1990 hence the term 'cold war'.

From a legal perspective, how a situation is labeled matters. The term 'war' can be used flexibly, while the term 'armed conflict' has a precise legal meaning that carries with it rights and obligations for parties to the armed conflict and those not participating. The term 'armed conflict' can only refer to a situation where there is employment of armed force between states or the existence of protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.[1] For instance, while the violent protests, such as the one that we have recently witnessed in Ukraine are unlikely to amount to an armed conflict,[2] a more intense situation like the ongoing Syrian situation – where chemical weapons have even been used – may reach the threshold of an armed conflict.[3]

The significance of this taxonomical exercise is that depending on whether a situation is classified as an 'armed conflict' or not, affects the laws that are applicable. The labeling of a situation as an 'armed conflict' means that in addition to international human rights law, an additional specialized branch of law, called international humanitarian law (IHL) – whose aim is to limit the effects of armed conflict – becomes applicable.[4] It carries with it rights and obligations for parties to the armed conflict and those affected by it.[5] By juxtaposing the terms 'war' and 'armed conflict', it becomes apparent that the latter is leaner and more precise in meaning and application.

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[1] *Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1-A, 2 October 1995, para. 70.

[2] See for example Iain Traynor, 'Ukraine's bloodiest day: dozens dead as Kiev protesters regain territory from police' (The Guardian, 21 February 2014) <http://www.theguardian.com/world/2014/feb/20/ukraine-dead-protesters-police> accessed 10 April 2014.

[3] See Security Council Resolution 2118 (2013).

[4] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, p. 178, paras. 105106; *Nuclear Weapons case*, p. 240, para. 25.

[5] The Geneva Conventions of 1949 and their Additional Protocols prohibit the targeting of civilians in war. A civilian who takes part in hostilities risks losing this protection by becoming a legitimate target.

## 1.2. 'Terror' as the Customary International Law Crime of Terrorism

Like 'war', the terms 'terror' or 'terrorism' are terms with widely differing and subjective interpretations. In distinguishing 'war' from 'terrorism', one author argues that 'war is what states do, terrorism is the recourse of those too weak to oppose states openly'; and that the essential distinction between them is that war is ultimately coercive while terrorism is persuasive.[6] Terrorism is almost always never adopted by any individual or group; rather, it is a term that is applied to such groups or individuals by others – notably the governments of the states that they attack.[7]

The brand of terrorism that we face in modern times, since the end of the 20th century, has been attributed to 'Islamic religious extremism',[8] which may be distinguished from the terrorism of nationalist movements such as the Irish Republican Army[9] and the Basque separatist ETA (Euzkadi to Askatasuna).[10] Hoffman argues that the core characteristics of this form of terrorism are: (i) a transcendental function rather than a political one; (ii) execution in direct response to some theological demand or imperative; (iii) the terrorists do not attempt to appeal to any other constituency than themselves.[11] Bearing in mind that the biggest facilitator of terrorism is human alarmism – a 'regrettably banal phenomenon that has been registered in the White House as well as middle-class suburbs and peasant villages across the world' – it has for instance been argued that the best public response to terrorism is fearlessness.[12]

Though there is no uniform definition of 'terrorism',[13] the Appeals Chamber of the Special Tribunal for Lebanon has held that a legal customary international law definition of terrorism has emerged.[14] Its constituent elements are: (i) perpetration or threat of a criminal act; (ii) the intent to spread fear among the

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[6]Charles Townshend, *Terrorism: A Very Short Introduction* (OUP 2011) 7.

[7]Ibid. 3

[8]Ibid. 97

[9]For more on this see, M. Taylor and E. Quayle, *Terrorist Lives* (Brassey's 1994).

[10]For more, see R Clark, Patterns of ETA Violence: 1968-1980', in P Merkel (ed) *Political Violence and Terror* (University of California Press, 1986).

[11]Charles Townshend, *Terrorism: A Very Short Introduction* (OUP 2011) 99, quoting Bruce Hoffman, *Inside Terrorism* (Victor Gollancz, 1998)

[12]Ibid. 12, 119.

[13]See STL, *Prosecutor v Ayyash et al.*, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide Perpetration, Cumulative Charging, 16 February 2011, para. 88 which sets out various international instruments which define terrorist acts.

[14]STL, *Prosecutor v Ayyash et al.*, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide Perpetration, Cumulative Charging, 16 February 2011, para. 85; *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC I, [2002] S.C.R. 3, at paras 96 and 98; *Bouyahia Maher Ben Abdelaziz et al.*, Cass. crim., sez. I, 17 January 2007, n. 1072, at para. 2.1.

population, or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; and (iii) the act involves a transnational element.[15]

Despite the definition adopted by the Special Tribunal for Lebanon being a legal definition of terrorism, and one that can also be challenged legally, it is nevertheless concise enough to capture the essence of what we understand terrorism to be in modern day everyday parlance. For instance, the September 2001 attacks on the World Trade Center, the March 2004 Madrid train bombing and the July 2005 London bombings, all had the above three elements. They resulted in the perpetration of criminal acts such as homicide and destruction of property. These acts were intended to spread fear among the population. They involved *Al Qaeda* or *Al Qaeda*-linked groups, demonstrating the existence of a transnational element. Most importantly, what distinguishes terrorism from other crimes is the intent of a terrorist act to spread fear among the population and/or directly or indirectly coerce an authority to take some action. Due to the conciseness and flexibility of the definition of terrorism adopted by the Special Tribunal for Lebanon, this essay restricts the definition of the term 'terror' to the crime of 'terrorism' under customary international law.

## 1.3. A broad definition of 'War against Terror'

As will be discussed below, a variety of strategies have been employed to stop the crime of terrorism. Such measures have extended beyond military action[16] and might, for example, include administrative detention[17] and criminalizing the financing of terrorist acts.[18] In light of the distinction between 'war' and 'armed conflict' discussed above, this essay takes adopts a broad understanding of the term 'war' in 'war against terror' and consequently, takes the term 'war against terror' to mean the totality of measures taken or strategies adopted by states to stop the crime of terrorism regardless of whether it is during the existence of an armed conflict or a state of peace.[19]

Given that terrorism is a complex affair, one wonders whether the 'war against terror' can ever be successful - resulting in the total elimination, or significant reduction of acts of terrorism, and even if this were possible, what

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[15]STL, *Prosecutor v Ayyash et al.*, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide Perpetration, Cumulative Charging, 16 February 2011, para. 85.

[16]Fitzpatrick p. 244; S/RES/1368 (2001) preamble para 3 quoted in footnote 12; A/RES/60/288.

[17]Fitzpatrick, p. 224.

[18]S/RES/1373 (2001).

[19]See for instance A/RES/60/288.

the cost would be?

### 1.4. 'Human Rights Regime' as the Enforcement Mechanisms for Substantive Human Rights

The Oxford Advanced Learner's Dictionary defines the term 'regime' as "a method or system of organizing or managing something".[20] As the term 'regime' refers to a system, I *do not* take the term 'human rights regime' to include substantive human rights – such as the right to life or the right to a fair trial. Rather, I take it to mean the framework in place to ensure that substantive human rights, such as the right to life and the right to a fair trial, are respected, fulfilled and protected.[21] Internationally, this regime would include international human rights treaties – such as the International Covenant on Civil and Political Rights – and bodies set up by such human rights treaties (Treaty Bodies) to monitor their enforcement by states. One example of a treaty body is the Human Rights Committee that is established by the International Covenant on Civil and Political Rights to review reports submitted by countries on the measures that they have implemented to give effect to the rights provided for in the covenant.[22]

## 2. Re-articulating the question

With the key terms defined, I re-articulate the question as follows: Have the totality of the measures taken by countries to stop the customary international law crime of terrorism resulted in the weakening of the framework in place to ensure that human rights are respected, fulfilled and protected?

## 3. The Obligation to Protect as the Legal Basis for the War against Terrorism

Before I answer the question, I make two important points. First, the crime of terrorism violates fundamental human rights such as the right to live free from fear, the right to life, liberty and security.[23] In fact, it has been noted that "there is probably not a single human right that is exempt from the impact of terrorism".[24] Second, it is states, rather than individuals, that have a direct legal obligation under international human rights law to *respect*, *fulfill* and *protect* human rights.[25]

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[20] <http://oald8.oxfordlearnersdictionaries.com/dictionary/regime>.

[21] <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>.

[22] See International Covenant on Civil and Political Rights, article 40.

[23] A/RES/54/164.

[24] E/CN.4/Sub.2/2001/31, para 102.

[25] <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>.

The obligation to 'respect' means that states must refrain from interfering with or curtailing the enjoyment of human rights; the obligation to 'protect' requires states to protect individuals and groups against human rights abuses and the obligation to 'fulfill' means that states must take positive action to facilitate the enjoyment of basic human rights.[26] In the context of this discussion, it is the obligations to 'respect' and 'protect' that have a much more direct nexus to the war against terror, compared to the obligation to 'fulfill', which is much broader and more abstract. Given that the crime of terrorism results in the violation of fundamental human rights,[27] the obligation to *respect* human rights imposes a direct legal duty on states – rather than individuals – to refrain from committing the crime of terrorism.[28]

The obligation to protect on the other hand goes beyond state restraint and imposes a positive legal duty on states to protect individuals and groups against human rights abuses occasioned by the crime of terrorism.[29] This responsibility extends to taking all necessary steps to prevent, investigate and punish the crime of terrorism as well as to provide access to redress for those whose rights have been violated by acts of terrorism.[30] States' obligation to protect individuals and groups against human rights abuses occasioned by the crime of terrorism has been buttressed by legally binding anti-terrorism instruments at the international[31] and regional[32] levels.

Counter-terrorism measures arising from the obligation to protect must nevertheless be in compliance with human rights.[33] For instance, the obligation to protect would require a state to investigate and prosecute the perpetrators of a terrorist act. This may inevitably entail the questioning of individuals that may provide useful information in the investigations, or deporting foreign elements that are responsible for such acts. However, in investigating a terrorist act, a state should not violate fundamental human rights, such as the right not to be

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[26] Ibid.

[27] E/CN.4/Sub.2/2001/31, para 102.

[28] Ibid. 106

[29] <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>; ICCPR art 2; GC 31, para 8; GC 15, para 33; See A/HRC/4/35/Add. 1 on the obligation to protect in the context of violations by corporate bodies.

[30] See A/HRC/4/35/Add. 1.

[31] See for example International Convention for the Suppression of Terrorist Bombings, 1997; International Convention for the Suppression of the Financing of Terrorism; International Convention for the Suppression of Acts of Nuclear Terrorism; S/RES/1373(2001).

[32] Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA).

[33] Hofman p. 949.

subjected to arbitrary arrest or detention,[34] by arresting individuals without any objective reasons to believe that they were involved in the perpetration of the terrorist act in question. It should not violate the right of an individual to be free from racial discrimination by implementing policies such as 'random searches' that only target members of particular racial group.[35]

### 4. Anti-Terror Strategies: Positive and Negative Impact on Human Rights

The strategies adopted to combat terrorism have had both a positive and negative impact on human rights. Here, I use the term 'human rights' as a catch all phrase for both 'substantive human rights' and the framework in place to ensure that substantive human rights are respected, fulfilled and protected (the human rights regime).

The strategies that have had a positive impact on human rights would for instance include the increased ratification of treaties criminalising acts of terrorism and those aimed at outlawing the funding of terrorist activities;[36] the establishment of the Counter-Terrorism Committee;[37] the adoption of a global counter-terrorism strategy which notably advocates for a cooperative approach;[38] the establishment of hybrid international criminal tribunals with jurisdiction over the crime of terrorism;[39] the emergence of jurisprudence finding that a customary international law definition of the crime of terrorism exists;[40] and the anticipated trial of alleged terrorists in accordance with the highest standards of international criminal justice.[41]

The impact of these strategies is 'positive' in the sense that it leads to a strengthening of the human rights regime. For instance, it could be argued that the establishment of an international court with jurisdiction over the crime of

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[34] International Covenant on Civil and Political Rights, article 9.

[35] Ibid. article 26.

[36] See e.g. International Convention for the Suppression of Terrorist Bombings, 1997 (164 parties); International Convention for the Suppression of the Financing of Terrorism (173 parties).

[37] S/RES/1373 (2001) para 6.

[38] A/RES/60/288, in particular part II.

[39] SCSL Statute, art. 3(d); STL Statute, art 2(a).

[40] STL, *Prosecutor v Ayyash et al.*, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide Perpetration, Cumulative Charging, 16 February 2011, para. 83-113.

[41] S/RES/1757 (2007), preamble para 4; STL Statute art 28. Defence Counsel in the case of *Ayyash et al.* have nevertheless unsuccessfully argued that a trial *in absentia* at the STL violates the fundamental fair trial rights of the accused. See for instance STL, *Prosecutor v Ayyash et al.*, Decision on Reconsideration of the Trial in Absentia Decision, 11 July 2012; <http://www.stl-tsl.org/en/media/press-releases/01-11-2012-appeals-chamber-dismisses-in-absentia-appeals>.

terrorism could *ideally* lead to deterrence of the crime of terrorism; an individual or group considering committing a terrorist act would refrain from doing so when faced with the possibility of facing criminal sanctions. Even though one may wonder whether the prospect of criminal prosecution at an international tribunal may deter a suicide bomber from carrying out his mission, it may nevertheless be argued that though the prospect of facing criminal sanctions at an international tribunal is likely to be unsuccessful in deterring a suicide bomber from committing the crime of terrorism, it may have such an effect on those who plan and oversee such operations.

There are also strategies that states adopt to combat terrorism that have a negative impact on human rights. These are the strategies that violate substantive human rights and would include the detention of persons suspected of terrorist activities in inhumane conditions;[42] interrogation techniques, such as waterboarding that constitute torture and ill-treatment;[43] the targeting of minority groups which violates the principle of non-discrimination;[44] rendition without rights which would violate the principle of non-refoulement;[45] and targeted killings which would violate the right to life, due process and, during an armed conflict, the customary international humanitarian law rule prohibiting the attack of persons recognized as being *hors de combat*.[46]

It is noteworthy that the anti-terrorism measures that result in violations of substantive human rights go against the global counter-terrorism strategy. The global counter-terrorism strategy was adopted by the United Nations General Assembly on 8 September 2006.[47] All United Nations Member States resolved to take practical steps individually and collectively to prevent and combat terrorism, for example by extraditing and prosecuting those involved in perpetrating or organising terrorist acts.[48] The global counter-terrorism strategy requires states to ensure that any measures taken to combat terrorism comply with their

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[42] See Hoffman p 941-943.

[43] Hoffman 943; Human Rights Watch: *Getting Away with Torture: The Bush Administration and Mistreatment of Detainees*, p. 54-59.

[44] Hoffman, p. 946-947.

[45] Hoffman, p. 947-949; Human Rights Watch, *Delivered Into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya*, p. 141. The principle of non-refoulement in refugee law prohibits returning refugees to the country that they escaped from where there is a risk that they would be subjected to persecution.

[46] On the US drone programme, see *ACLU v CIA*, pp. 6-9; Also <http://www.guardian.co.uk/world/2012/jun/21/drone-strikes-international-law-un>; Rule 47 CIL Rules.

[47] UNGA, Resolution 60/288: The United Nations Global Counter-Terrorism Strategy (20 September 2006, A/RES/60/288).

[48] Ibid. at p. 5.

obligations under international law, in particular human rights law, refugee law and international humanitarian law.[49] The global counter terrorism strategy is a positive aspect of the war against terror as it embodies a commitment by United Nations Member States to fight terrorism, though whether the states will actually do what they state they will do in the strategy is a different matter altogether.

The available literature also suggests that the counter-terrorism measures infringing on substantive human rights have to a large extent been adopted by the United States at the domestic level and with virtually no international oversight.[50] This does not mean that other states are not guilty of this conduct. For instance, the recent rise of terrorist acts in the Horn of Africa, particularly Kenya, has also led to the Kenyan Police perpetrating human rights violations such as rape, torture and the arbitrary arrest of refugees, asylum seekers and Kenyans of Somali descent.[51] While the global counter-terrorism strategy expressly states that counter-terrorism strategies should comply with international human rights law and refugee law, the course of action adopted by Kenya and the United States demonstrably violates substantive human rights. The result is what can be termed an 'awkward paradox': the human rights of individuals perceived as being involved in the commission of terrorist acts are being violated in order to protect human rights of the general public – notably the right to life – that would be violated by the commission of a terrorist act.

From the above, the war against terror has had a positive impact on the human rights regime but a negative impact on substantive human rights, particularly the fundamental rights of those suspected of being involved in the commission of terrorist acts.

## 5. Verdict: The War against Terror has not Undermined the Human Rights Regime

Going back to the essay question, would it be accurate to claim that the totality of measures taken by states to stop the customary international law crime of terrorism has resulted in the weakening of the framework in place to ensure that human rights are respected, fulfilled and protected? I hesitate to answer this question in the affirmative.

First, as demonstrated above, some anti-terrorism measures have had a

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[49]Ibid. at p. 9.
[50]Hoffman, p. 945.
[51]See Human Rights Watch, *You are all Terrorists: Kenyan Police Abuse of Refugees in Nairobi* (Human Rights Watch, 29 May 2013).

positive impact on both the human rights regime and substantive human rights. For example, the establishment of the Special Court for Sierra Leone and the Special Tribunal for Lebanon, with jurisdiction over the crime of terrorism, not only enhances the fair trial rights of the accused persons, but also provides an accountability mechanism that may also have a deterrent force for those contemplating being involved in the organization of terrorist acts. The global counter-terrorism strategy also strengthens the human rights regime by expressly requiring states to comply with human rights law in the fight against terrorism.[52]

Second, at the international level, the consensus remains that the war on terror must be waged within the confines of the human rights regime.[53] It is noteworthy that anti-terrorism strategies that violate substantive human rights, such as waterboarding, that constitute torture and ill-treatment,[54] have been sanctioned domestically by governments. These counter-terrorism strategies have not been sanctioned by inter-governmental bodies such as the Human Rights Council or even the United Nations Security Council.

Third, human rights violations in the war against terror appear, *to a great extent*,[55] to have been perpetrated as a result of the actions of one nation – the United States.[56]

Fourth and bearing in mind the point above, it is unsettling to claim that the actions of one state, or a few states, can undermine an entire international legal system. Even assuming such a claim were valid, it would reveal that it is the human rights regime that is weak. It is weak because it lacks effective means to prevent states – particularly the powerful ones – from committing human rights violations when fighting terrorism. For instance, if a country – particularly a powerful one – tortures people in its fight against terrorism, and the human rights regime is unable to deter or punish that state in relation to the torture, I submit that this exposes a preexisting weakness of the human rights regime; and that this weakness exists independently from a state's violations of substantive human rights law.

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[52]UNGA, Resolution 60/288: The United Nations Global Counter-Terrorism Strategy' (20 September 2006, A/RES/60/288) p. 9.

[53]Ibid. Also Hoffman p. 949.

[54]Hoffman 943; Human Rights Watch: *Getting Away with Torture: The Bush Administration and Mistreatment of Detainees*, p. 54-59.

[55]The United States is not the only state that has violated human rights in the war against terror. The recent terrorist attacks in Kenya have resulted in human rights violations by Kenyan police in the war against terror.

[56]See Fitzpatrick p. 260-261 on US unilateralism and exceptionalism.

The global counter-terrorism strategy requires states not to violate human rights in the war against terror, but if they do, it does not provide for a mechanism to address those violations. Kenya is, for instance, violating human rights in its fight against terrorism by adopting a policy of deporting refugees and asylum seekers of Somali origin, which in the process of enforcement involves police rape, torture and the arbitrary arrest of individuals of Somali origin, which is contrary to the global counter-terrorism strategy. The global counter-terrorism strategy does not however provide a mechanism for addressing a state's violation of human rights in the war against terror, meaning that such violations would have to be addressed by the already existing human rights mechanisms. The most notable ones are the Universal Periodic Review (UPR) and treaty bodies.

The UPR is a mechanism in which all United Nations Member States submit reports on the measures they have taken to improve human rights situations in their countries. It is state-driven and the reports of states are scrutinised and commented upon by other states.[57] The UPR's non-confrontational approach is, however, unable to cope with a state's flagrant refusal to implement recommendations of its outcome report. Treaty bodies are established by human rights treaties with the purpose of monitoring the implementation of human rights provided for in treaties and are made up of human rights experts who examine reports submitted by states on the implementation human rights and provide its concerns and recommendations concerning a particular state's report.[58] Treaty Body recommendations are not binding on states; and powerful countries that violate human rights in the war on terror can exercise their veto power to block the actions of the only organ that can exercise coercive force internationally – the United Nations Security Council.[59] The problem lies in the system.

In conclusion, the true test of the strength of a legal system is in how effectively it addresses the breaches of the rights that it aspires to protect – especially when such breaches are by powerful countries. Although human rights violations have been committed in the war against terror, these violations to do not weaken the human rights regime. Rather, they expose the pre-existing weaknesses of the human rights regime in addressing violations of substantive human rights.

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[57]For more information, see <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>accessed 29 April 2014.

[58]For more information, see <http://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx>accessed 29 April 2014.

[59]Charter of the United Nations, article 27.

## LIST OF ACRONYMS AND ABBREVIATIONS

CIL – Customary international law
ESC – Economic and Social Council
GC – Geneva Convention
HRC – Human Rights Council
HRW – Human Rights Watch
ICJ – International Court of Justice
ICTY – International Criminal Tribunal for the former Yugoslavia
IHRL – International Human Rights Law
SCSL – Special Court for Sierra Leone
STL – Special Tribunal for Lebanon
TB – Treaty body
UNGA – United Nations General Assembly
UNSC – United Nations Security Council
UPR – Universal Periodic Review

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