

Kagisano

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**Constituting
Higher Education**

Constituting Higher Education

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Foreword

Among the four key functions of the CHE which define its mission and direct its activities is, “to initiate critical discourse on contemporary higher education issues.” The *Kagisano* series was initiated in 2001 as one of a range of CHE publications. It was conceptualised as a Higher Education Discussion Series, with the purpose of stimulating discussion and debate around important issues related to the development of higher education. This issue, “Constituting Higher Education”, continues in this vein, assembling as it does the views of a number of contributors on the important theme of understanding universities in relation to the provisions, rights and protections of national constitutions, with specific reference to two quite different countries with similar constitutional framings i.e. Norway and South Africa.¹

The contributions grew from an international conference held in South Africa in 2014, *Universities and Constitutions: What does research-based knowledge and higher education mean for constitutional democracies?*, which was jointly funded by the University of Bergen, the Johannesburg Institute of Advanced Study (JIAS) and the Postgraduate Centre for Research and Innovation at the University of Johannesburg. The papers from the conference that appear in this journal were developed further at subsequent workshops at JIAS, UCT and the Global

¹ The views contained in *Kagisano* are those of the authors/contributors alone and do not necessarily reflect those of the CHE.

Institute at the University of Bergen, and these are supplemented by a number of related contributions.

Coming as it does at a time when higher education in South Africa is arguably facing its most obdurate challenges yet, with the current fees crisis leading to deep questions about the purpose and aims of higher education and its uncertain future path, this publication is likely to stir controversy and provoke debate. The canvas of this publication is broad, with its brush-strokes touching on academic freedom; student protest; the new constitutionalism of multi-lateral organisations; liberty and violence; the changing role of knowledge and the place of higher education in a changing world.

While there are many ways of unpacking and understanding current higher education debates, this collection represents a range of analyses predicated on a shared valuing of constitutionality in different contexts. Yet there are many alternative ways to approach an understanding of the faultlines exposed in a world in which neo-liberal shibboleths have been shattered by Brexit, Trump, the rise of populism, and the fluidity of 'truth'. The CHE wishes that this collection will lead to further 'sense-making' of the fast-paced and turbulent current context of higher education, either in further development of, or in reaction to, the views expressed in these different articles. Contributions from readers are invited on any aspect of *Kagisano*: these may lead to a range of possible events to air debate and sharpen critique such as colloquia or further issues of this journal.

Please send responses to the CHE at research@che.ac.za.

A handwritten signature in black ink, appearing to read 'Narend Baijnath', with a stylized flourish at the end.

Professor Narend Baijnath

CEO

Editorial: ‘Constituting Higher Education’

John Higgins

This issue of *Kagisano* draws on and extends some of the central themes and guiding threads of a conference held at the University of Johannesburg in 2014. The conference, *Universities and Constitutions: What does research-based knowledge and higher education mean for constitutional democracies?* celebrated the respective anniversaries of the constitutions of two very different countries – Norway and South Africa, and focused on the implications for higher education of various constitutional provisions.

Held prior to the mass student protests of the past two years, many of the pressure points identified in those discussions have now become major points of fracture in the South African higher education system.

Justice Edwin Cameron’s opening speech at the conference introduced some key concerns. His reminder that, in 2011, the Constitutional Court ruled that while the right to basic education must be regarded as “immediately realisable”, that to higher education was only “progressively available and accessible”, has now become perhaps the key pressure point in current discussions around higher education funding, while his

observation that the Constitution opened up “a new way of mediating power between institutions and those subject to them” has become a crucial point of entry for understanding the dynamics of student protest, an issue further developed here in articles by Jaco Barnard-Naudé and Adam Habib.

In ‘Ivory Towers, Slot Machines or Pathfinders?’, a version of his presentation at the conference, Ihron Rensburg, Vice-Chancellor of the University of Johannesburg, offers a useful survey of international trends and pressures on the role of the university, set against the crucial financial background of “real falling university incomes”. For Rensburg, the question is whether the university can find responses to the new challenges that “preserve its traditions, integrity and viability”. For this to happen, he argues, “the state must create the conditions for the university’s esteem to be nurtured against the background of its decline”, while, at the same time, leadership within universities must help “employees [shift] from disengagement to engagement”.

Two scholars from Norway offer their distinct perspectives on these similar trends in, and pressures on, the constitutional understanding of higher education.

Henriette Sinding Aasen notes “the social value attributed to scientific work and knowledge in modern knowledge-based societies”, but also shows how a number of countries “known for their liberal and democratic policies may violate norms of academic freedom”. She presents her argument as one rooted in a national context in which “basic education was from early

on conceived as a duty rather than a right”, and how this valorisation of education “contributed to a high level of social integration”. Overall, she emphasises how “the rights of education and academic freedom have been implemented in a historical and social context of gradual democratisation and social change”.

In his essay, ‘Breaking the bond between knowledge and democracy’, Tor Halvorsen extends and deepens some of Aasen’s concerns, examining the ways in which a ‘new constitutionalism’ – driven by neoliberal ideologies – undermines the public good functions of higher education. Ironically enough, the new vocabulary of innovation, once established as a ground for directing research, “may create in real life cartels and monopolies of knowledge production whose ability to renew themselves vanishes, at the same time as alternative academic communities starve to death”.

From a different though related theoretical stance, legal academic Jaco Barnard-Naudé examines student protest through the lens offered by Jacques Rancière. In ‘The precarious politics of pre-supposed equality’, Barnard-Naudé argues that protest needs to be set against a ‘police logic’ which “is aimed at the maintenance, sustenance and vehement protection of an established order’s distribution of inclusion and exclusion, privilege and dispossession, entitlement and oppression”. At the same time, he recalls Hannah Arendt’s warning that, “The practice of violence, like all action, changes the world, but the most probable change is to a more violent world”.

Many of the threads of question and argument around higher education, academic freedom and student protest are taken up in the wide-ranging dialogue which concludes this issue.

The dialogue was conducted between John Higgins and Adam Habib in his office at the University of the Witwatersrand in December 2015 at the end of a troubled year on South African campuses. Here Habib insists that, “if higher education is to be the instrument for addressing inequality, then poor people must be able to get into the system”; rails against what he sees as the abuse of academic freedom and freedom of speech when these are used to back up “the right to engage in protest, and to protect what you see as your allies in the protest”, but are not then “regarded as legitimate for people who you thought were not progressive, or were the people in authority”; and warns against the “politics of humiliation” often deployed by students in the protests, and the “growing complacency about calls for violence”.

Habib’s conclusion – that, “At the moment I’m not even asking for answers, just saying that we really need to think through the questions, and to say that we need to go through a process of deliberation” – may serve as a theme for this issue as a whole, concerned as it is with the process of ‘constituting higher education’, and the viewpoints, arguments and perspectives (both local and global) offered in this issue of *Kagisano* are intended as contributions to this now necessary process.

Universities and Constitutions: What does research-based knowledge and higher education mean for constitutional democracies?

Edwin Cameron

Constitutional Court of SA²

As many of you may know, one of the great privileges of sitting on the Constitutional Court is that every day I am surrounded by hundreds of extraordinary works of art that visually represent our constitutional values. Tucked away in the library is a black and white print entitled “The Right to Education.” In it, a commanding woman reads from an open book as she either teaches or leads a group in a protest. Her fist is raised in the air, and she looks not at the viewer but at her pupils, leading them in her call for educational justice.

This piece, created by Vuyile Voyiya in 1996, embodies the power and the promise of the right to education and academic

² I record my appreciation to my US law clerk, Catherine Baylin, for her assistance in drafting this talk.

freedom. It is a hopeful image, one that suggests a way forward without implying that it will be easy or without struggle.

This image was in my mind as I thought about this conference – the meaning of research-based knowledge and higher education for constitutional democracies – and particularly what the constitutional rights to education and academic freedom have meant for *this* democracy in the past two decades.

Some of the most devastating aspects of apartheid played out in our schools and universities. Segregated schools deprived the majority of South Africans of educational advancement for generations. The inequity was written into law and enforced by the official organs of state. At university level, enrolment was overwhelmingly white and the shadow of government interference loomed large over the makeup of the student body.

This particular history, though not unique to South Africa, informed our constitutional process and values. The Constitution committed South Africans to transformation: to an educational system that would promote dignity for all, to substantive forms of equality, and indeed to a new way of mediating power between institutions and those subject to them.

The Constitution is without doubt a radical document. It requires us to transform the country's political and social

institutions, including schools and universities, in a democratic, participatory, and egalitarian direction.

Specifically, Section 29 of the Bill of Rights protects the right to both basic and higher education, as well as the right to receive education in the official language of one's choice, taking into account the need to redress the results of past racially discriminatory laws and practices.

Section 16 guarantees everyone the right to freedom of expression, *including academic freedom* and freedom of scientific research.

It is notable that the Interim Constitution did not contain a general reference to “academic freedom” – rather, it extended only to freedom of scientific research. Protection of “academic freedom” writ large was added to the final Constitution and extends to all schools and colleges (Milo, et al., 2008).

It is worth pausing, after twenty years, to consider what these rights actually mean in our democracy. The right to education has been developed through litigation, especially in the last few years. Regarding the right to a basic education, in 2011 the Constitutional Court unanimously held that:

“Unlike some of the other socio-economic rights this right is immediately realisable. There is no internal limitation requiring that the right be ‘progressively realised’ within ‘available resources’ subject to ‘reasonable legislative measures’. The right to a basic education in section 29(1)(a) may be limited only in terms of a law of general application which is

‘reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom’. This right is therefore distinct from the right to ‘further education’ provided for in section 29(1)(b). The state is, in terms of that right, obliged, through reasonable measures, to make further education ‘progressively available and accessible’” ([2011] ZACC 13, 2011).

Though the immediate nature of the right to basic education may seem obvious from the text of the Constitution, this was an important development. It compels those in charge of managing schools to put the needs of their learners first (Skelton, 2013).

And yet, how much do fine words mean in reality? Educational disparities remain one of the greatest injustices in our society. Despite spending massive resources on our education system, we continue to deprive learners of the sort of truly enriching educational opportunities, with compassionate and well-trained teachers, that we need in order for schools to be a site of transformation rather than stagnation. Notwithstanding the fine language in the Bill of Rights guaranteeing the right to education, the state of many of our schools is truly appalling.

A combination of managerial ineptitude, government lapses, and resistance to desperately-needed reforms, often led by teachers’ unions, means that our democracy is shamefully letting its children down. We can take no comfort whatever in

what public schooling offers most of our children after twenty years.

And it is obvious that without adequate secondary schooling, our tertiary institutions, and the academic freedoms they must exploit and nourish, suffer directly.

On academic freedom, there have as yet been no fine words from the courts. The right has not been developed and defined in the same way as the right to basic education. This is in keeping with international trends, where academic freedom is often invoked in human rights discourse but rarely fully defined. In fact, many countries around the world, even those with strong constitutional values, protect academic freedom only indirectly through provisions on free speech or freedom of expression.

Yet in our Bill of Rights, it is an enumerated constitutional right, which scholars have endeavoured to define broadly as “*who* may teach, *what* may be taught, *how* it shall be taught, and *who* may be admitted to study” (Alston & Malherbe, 2009) (Gauntlett, 2013).

Others expand upon this basic definition to explicitly include the right to do research, as well as rights for students themselves (Alston & Malherbe, 2009, p. 104). Some scholars point to the “connection, or rather, interaction, between the individual and institutional elements of academic freedom” (Alston & Malherbe, 2009, p. 105).

The precise substance of the right to academic freedom is yet to be determined, but its explicit inclusion in the Constitution guards against repeating our baneful history – where state interference in the independence and autonomy of educational institutions, academics, and students burdened freedom of thought and expression and collective action (Milo, et al., 2008, p. 62).

It is precisely this history that makes debates about governmental infringement on the institutional aspect of academic freedom so poignant. The controversy about the Higher Education and Training Laws Amendment Act of 2012, and the increased powers it conferred on the Minister, illustrated that this debate has not gone away. It did not end with the creation of a government that no longer implements racially discriminatory policies. It continues as universities assert their autonomy from the state.

Some even go so far as to contend that the current government has continued the fundamentals of apartheid policy of interference in higher education, paying only lip service to ideas of institutional autonomy (Higgins, 2013, pp. 60-61).

As important as academic freedom and the right to education are, they do not change the fact that in 1994 the democratic government inherited an educational system that was deeply unequal, and the effects of this inequality linger today. Schools face problems of limited resources, violence, corruption,

mismanagement and corporate resistance to innovation through teacher unions.

And so my mind returns to Vuyile Voyiya's engraved image of the woman with her fist raised, leading a group in study or in celebration or – perhaps in both. I said that it was a hopeful image, one that I hope continues to capture the spirit of conferences like this one, to keep these issues in the forefront of our discourse. We must do honour, and justice, to Vuyile Voyiya and all in our country whose struggle she so vividly represents.

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Ivory Towers, Slot Machines or Pathfinders? Universities and the Case for Executive Leadership.³

Dr Ihron Rensburg

Notwithstanding the blinding pace at which the university is shifting in curriculum, programmes and practices from an emphasis on the liberal arts to vocationalism and the professions, it is now, as Bloom argues, almost axiomatic to state that universities, through the knowledge that they produce and disseminate, and the highly skilled graduates that they teach, are essential institutions for strengthening nations morally, intellectually, scientifically, culturally and economically (Bloom, 2005). For it is in these manners that universities can and are expected to advance the boundaries, and deepen the quality of freedom, democracy, equality, human dignity, human solidarity and social justice. Thus, in order for modern nation states to remain ahead within an ever-deepening global economic, social, political, cultural, scientific, moral and intellectual community, and to avoid becoming sinking nation

³ This address has benefited from readings and comments that I am grateful for by Professor Roy Marcus, Chairperson of the Council of the University of Johannesburg, Professor Aubrey Redlinghuis, Deputy Vice-Chancellor of the University of Johannesburg and Mr Frank Meintjies, Special Assistant to the Vice-Chancellor, University of Johannesburg.

states, nations must create the conditions for universities to flourish. For, as Martin puts it, “Any country that allows a significant proportion of its population to fall behind in the race for education is committing itself to a smaller middle class, less social mobility, and a highly skewed income distribution” (Martin, 2005). Current evidence suggests that these two ideals – flourishing nation states and universities – and the social commitment between generations with respect to higher education is in great tension, and requires careful rather than cursory study, analysis and action (Martin, 2005).

Never before have universities been faced with such dramatic change and challenges that are transforming universities as we speak. Notice only some of these (Vest, 2005). First, massification of access and widened participation are stretching limited national and institutional resources with sharply rising higher education costs placing enormous burdens on the public, families and students, who now are increasingly first-generation university entrants, have greater financial need, and have weaker academic preparation,⁴ yet are much more diverse, more informed, more open-minded, more adaptable, more vocal, more streetwise, more utilitarian and ends-means driven, and less interested in the liberal arts (Martin, 2005). Secondly, marketisation of qualifications and knowledge including ‘non-curricular’ programmes, and the

⁴ Martin also makes the point, arising from his research, that the falling quality of entering students is not enough to explain the apparent decline in productivity. His conclusion is sobering, “...higher education has been relatively ineffective at controlling costs and that in the national interest things need to change”.

resultant consumerism, i.e. the reification of the qualification as an end in itself rather than a means to an end, are turning universities into qualification factories (Readings, 1995). Thirdly, competition against each other and international knowledge institutions is reaching explosive proportions, as qualifications and knowledge is offered across national borders,⁵ and as mission drift – the drive to become like those that have more status – takes root (Burkhalter, 1996) (Martin, 2005).⁶ Fourthly, competition is becoming fiercer for top academics and for the best students, essential for maintaining or achieving recognition and status, and market position and share, thus driving up salary and bursary costs, and tuition fees. Fifthly, demands are increasing for, “a change of attitude and a real commitment to reform on the part of higher education,” (Martin, 2005) that focuses on costs, efficiency, quality, research output, community engagement and “more appropriately qualified” graduates. Sixthly, active state steering and at times direct state interference is now becoming the norm rather than the exception as the state pursues, many a time, its shorter-term economic goals. Seventhly, rising nationalism and regionalism, especially when combined with resurgent identities constructed around and within civilization, ethnicity, religion, gender, race, disability and sexual orientation, question the very fundamental assumptions of the

⁵ For example, in 1993, corporate America budgeted US\$48 billion on training programmes, in part a response to their dissatisfaction with the products received from colleges and universities.

⁶ Remarkably, the evolution of the university, over the last twenty years, has seen a decline in diversity, and the convergence on common institutional forms, systems, processes, programmes and research niches.

university. Eighthly, demands have increased for innovation and entrepreneurialism, and thus for the enterprisation of the university, all aimed at generating third-stream income from non-traditional sources such as joint university-industry research centres and enterprises, non-curricular programme offerings, and professional consultancies, as academics and universities seek to supplement real falling wages and incomes. Ninthly, rapidly expanding and available information and communication technologies are transforming teaching and learning, and teaching and learning methods, within and across national borders. And, tenthly, demands from many stakeholders for full scrutiny and public accountability is becoming more pressing (Dearlove, 2002).

All of these are being transacted against a background of real falling university incomes resulting in real falling academic wages, real declines in moneys available for research and innovation, declining basic research output, falls in the depth and diversity of scholarship and knowledge production, significantly larger classes, and falling graduation and throughput rates. The question therefore that arises is whether the university can find a response that preserves its traditions, integrity and viability, and deepen and widen differentiation and scholarship, while recognizing the legitimacy of, and critically engaging, with these many new challenges. Also, can universities, as Dearlove holds, move beyond innovation that is piecemeal and incremental, to change that is substantive and systemic across the whole institution (Dearlove, 2002, p. 263).

In this increasingly complex and multi-layered environment universities are responding to the societies within which they operate in such complex manners, ranging from the dangerous and transient pursuit of opportunity and enterprisation, across to non-engagement. For some, the adherents of the Ivory Tower, the purity of knowledge production and teaching must be sustained at all costs. For these, the neutral university should stand aloof and sustain its course. They'd rather withdraw into the Ivory Tower, their actions amounting to "an endorsement of the status quo" (Luria & Luria, 1970) of a poverty of philosophy, justice, mind, body, spirit and environment. For in the withdrawal of the intellectual from society, scholarship and knowledge, pursued as ends, become simultaneously alienated, unmediated and unfettered means in the partisan hands of states, industry and other societal role players, thus diminishing the advancement of the great ideals of humanity. In this withdrawal to the Ivory Tower, thus is separated result from knowledge, text from context, learning from action, and head from heart.

For others, there is no conflict with the original purpose of the university and the Slot Machine. For these the university is nothing other than a qualifications, consultancies and applied research factory where the relentless pursuit of entrepreneurship and enterprisation, and marketing and brand building, become reified and alienated from the founding mission of the university. In both of these extremes – the Ivory Tower and the Slot Machine – there appears to be common purpose. For both means, academic freedom and absolute

purity, on the one hand, and entrepreneurialism, on the other, become ends. And, a passive rather than critical and active predisposition is preferred. Thus, the fundamental purpose of the Socratic university – of advancing the highest ideals of humanity in and through critical dialogue with society – is cast aside. Against this background then, an alternative metaphor – the Pathfinder – is explored. In this regard, a pathfinder is defined as one that discovers a new course or way, especially through or into unexplored regions; one who goes ahead and discovers or shows others a path or way. A pathfinder is also synonymous with being a pioneer, a groundbreaker, a trailblazer, a trendsetter, a leader, a torchbearer and a pacemaker. The pathfinder is also synonymous with the Lodestar, defined as a guiding star, a guide, a standard, a model and a pattern; it is a star that is used to guide the course of a ship. Thus, both of these metaphors bear strong resonance with the founding mission of the university, elaborated later.

Responses by the university throughout the 19th and 20th centuries demonstrate that it can adapt at the gross level. Global and national level shifts such as the expansion of democracy at nation-state level to include women and other majorities and minorities, the adoption of human rights charters, the entry and assertion of women's, civil rights, students', workers', anti-war, anti-nuclear and other social movements into civil society, the end to slavery, and the world-wide decolonisation of disenfranchised and oppressed people, have all precipitated positive university level adaptations, albeit poorly theorised and incomplete, to the diversity, depth and

scope of scholarship, knowledge production and participation, thus advancing in substantial and significant manners the high ideals of humanity. At finer levels, curricula and teaching methods have adapted continuously to a host of societal-level changes, including those driven by information and communications technologies, industry and the professions. These adaptations affirm that the notion of the Ivory Tower is humbug despite the protestations of Minogue, one such adherent, at these advances in the mission of the university, as he holds, “So long as universities remained in the control of their own destinies, they admitted primarily those intelligent enough to participate in the business of understanding, but politicians now found reason to think that women, ethnic minorities and the poor ought to be able to undertake degrees in proportion to their numbers. As the new morality of ‘political correctness’ took hold, governments began to remove from universities their autonomy in being able to select those candidates whom they judged suitable” (Minogue, 1973) (Higgins, 2013). While part of this is true – as seen in the correct public call for widened and deepened participation and scholarship – the assertion that states determine academic access is complete nonsense. Thus then, our understanding of academic freedom has itself evolved, not remained static, for as Menand reminds us, “We don’t need universities in order to preserve a static knowledge from the forces of change. We need them to insure that knowledge will not remain static in the service of some vested interest” (Menand, 1996). A perspective that is affirmed by Gregorian, “Universities are not only repositories of past human endeavour, they are

instruments of civilisation. They provide tools for learning, understanding and progress. They are the wellspring of action, a source of self-renewal, intellectual growth and hope... they are a medium of progress, autonomy, empowerment, independence and self-determination" (Bundy, 2006).

In order to sustain this line of argument, a discussion on the critical matter of academic freedom is necessary. Academic freedom can usefully be constructed according to Davie (Higgins, 2013, p. 106), as the freedom to determine without external interference who shall teach, what is taught, how it is taught and whom is taught, and, according to Moodie, it comprises scholarly freedom (the freedom for individual academics in their teaching and research), "academic rule" (referring to the decision-making powers of academics as professional groups), and "institutional autonomy" (the university's freedom from external interference) (Hall, 2006) (Waghid, 2006) (Divala, 2006) (Higgins, 2013, p. 60). Now, Moodie offers a useful delineation of academic freedom that also opens up new discomforts and difficulties, for the creation of the construct 'institutional autonomy' ipso facto, and correctly, creates its counter-balancing construction, 'public accountability'. Thus questions arise: who defines public accountability, and to whom is such public accountability owed?

An incorrect view of the university as simply an organ of state and thus a simple extension of its view of what should be the university's policy goals and priorities, would be comfortable with such public accountability being owed directly to the state,

whether as the executive or administration, a view favoured by Moodie. Moodie would also favour state intervention in universities when the state is “good”. However, for him such intervention becomes a bad thing when an undemocratic government does the same. What then separates a good from a bad government? Being democratically elected? And, given the role of the university, acting on behalf of society, as that of the critical reflective and dialogical interlocutor, will state policies and priorities look kindly upon the university? Does the evidence of the decline of the university across Africa (and elsewhere), in part the consequence of the actions of such elected governments, not contradict the very proposition that good governments, because of their ‘inherent and assumed’ good intentions, may intervene and bad ones not?⁷ I make this observation fully cognisant that university governing councils, administrations and academics, like states, also have much to account for in terms of this decline of Africa’s (and other) great universities, and for the consequent falls in the character, range and quantity of the continent’s outputs of scholarship, and research and innovation. I also do so fully aware that education is not entitled to unlimited financial support with no questions asked. As Martin reminds us, “The social contract is not an

⁷ For recent reviews of Africa’s university system see:

- Teferra, D & Altbach, P, G., “African higher education: Challenges for the 21st century,” *Higher Education* 47:21-50, 2004.
- Benneh, G., Awumbila, M & Effah, P. (Eds), *African Universities, the Private Sector and Civil Society*. Ghana Universities Press, Accra, 2004.
- Zeleza, P., & Olukoshi, A (Eds), *African Universities in the 21st Century Vol II Knowledge and Society*, Council for the Development of Social Science Research in Africa, Dakar, Senegal. 2004.

open-ended commitment to provide subsidies no matter what the outcome might be. Thus the privilege bestowed by academic freedom contains an obligation to be responsible stewards of the nation's higher education institutions resources." (Martin, 2005, p. 6) I also do so fully cognisant of Wernick's argument, that, "...the university has a contradictory relationship with its surrounding society ... On the one side, the autonomy, in terms of its axial values of truth, wisdom, science, and so on. On the other side, those who [according to Marx], 'control the means of material production control the means of mental production'; and the dominant ideas are the ideas of those who dominate." (Wernick, 2006)

Now, Menand argues that since freedoms are socially constructed and socially maintained, their, "borders are constantly patrolled, and on both sides." Those inside the space are continually articulating rationales for maintaining, or even expanding, their space of activity; those whose activities or interests place them on the outside are continually questioning those rationales, or proposing rationales of their own for restricting or redefining the freedom in question" (Menand, 1996, p. 3). However, academic freedom is not simply a kind of bonus or a philosophical luxury enjoyed by workers within the system, it is the key legitimating concept of the entire enterprise since virtually every practice of academic life that we take for granted derives from it (Menand, 1996, p. 4). Thus, academic freedom, like all other freedoms, is a social construction, inherently problematic, that is created and maintained by civil society in order to create a public good, and

elaborate measures are in place to assert academic freedom. For, as Menand again argues, universities have essentially a compact with the rest of society since, “society agrees that research [and teaching] which doesn’t have to answer to some standard of political correctness, economic utility, or religious orthodoxy is a desirable good, and agrees to allow professors to decide among themselves the work it is important for them to undertake (sic)” (Menand, 1996, p. 8). This then raises fundamental questions about the calls for, and the institutional practice of, academic freedom in colonial and apartheid societies.⁸ One conclusion one can come to is that much of this was hypocritical; and that the university, with isolated exceptions, far from practicing academic freedom, simply answered to some standard of political correctness, had “little difficulty bedding down” (Asmal, 2002) with colonial and apartheid regimes, and paid lip service to the universal traditions, integrity, viability and values of the university, thus prompting, deepening and extending the long-run legitimacy crisis of the university in the post-colonies. Moreover, the university in the Modern Ages, according to Wernick, has experienced, as a result of a “ruptural and top-down” modernisation process, discontinuity with the ancient world’s knowledge institutions in Africa, India, Sri Lanka, China, Japan and Southeast Asia, is now simply an extension of European intellectual tradition, and has become defined as a core

⁸ For a provocative and interesting account see Mamdani, M., *“Higher Education, the State and the Marketplace,”* Council of Commonwealth Ministers of Education Conference, Cape Town, December, 2006.

element of Western cultural identity (Wernick, 2006).⁹ And so, strikingly, universities and academics set one standard i.e. political correctness, in colonial and apartheid societies, and another i.e. full academic freedom, in post-colonial and democratic societies. In doing so, ancient regime academic practices (with isolated exceptions) such as narrow and thin scholarship,¹⁰ and traditional and exclusive elite cultures and practices, are protected without critical theorisation of the modern university as the expression of Western identity. Thus, stasis is supported in favour of some vested interest, and the university becomes an obdurate opponent of the necessary post-colonial and democratic paradigm shift, setting itself up against the new society, aligning itself implicitly or explicitly with what Gramsci calls the “morbid remains of the old society”, and prompting the university’s long-run decline as it makes false and futile appeals to the universal traditions, integrity, viability and values of the university.¹¹

What then is the original purpose of the university as an organ of society, created by society for its own and wider public

⁹ See answers.com and type “university” for useful references on the old knowledge institutions of Africa, India and China that predate the modern university.

¹⁰ A term invented from Rory Ryan’s ‘thin conversations’ referring to superficial and flimsy discourses. Ryan is the Executive Dean of the Faculty of Humanities at the University of Johannesburg, South Africa.

¹¹ Witness how the ‘academic freedom veil’ is currently used to protect ‘scholarship, values, customs and traditions’ across several European nations, thus reducing notions of scholarship and knowledge production from the universal to a quintessentially European and/or European nation-state discourse as no effort is spared to prevent the latest invasion of the Islamic ‘barbarians’. For an excellent account that penetratingly investigates multi-culturalism, fundamentalism, terrorism and globalisation, see Sen (2006).

good? For, the true mission of the university is that of critical and reflexive dialogue with the society within which it operates. This is a mission that offers society a responsive, engaged and transforming knowledge institution. It offers society, correctly so, intellectual, moral and ethical stewardship that seeks to advance the high ideals of humanity.¹² It is able to do so because of academics' – individually mostly, but also collectively – passion for the search for truth, their enthusiasm for knowledge, and, their expertise in the application of dialectic: the assembly of arguments and authorities tending to contradictory and discomfiting conclusions (Minogue, 1973). Thus, they produce knowledge, not mere opinion. Significantly, the prestige of universities in the Middle Ages was enormous, and rested upon the admiration of education (Minogue, 1973, p. 26). Which raises uncomfortable questions about the utilitarian Modern Ages where all that is required of the university is the rapid graduation of highly skilled persons and where universities are judged against their contribution to the economy. Is there time and space to admire education, the love of dialectics, enthusiasm for knowledge, and the 'craftship' of the great academic? Which raises even further discomfiting

¹² It is precisely in this space – that of a critical, constructive and non-partisan public scholarship – whether because of the pursuit of the Ivory Tower or the Slot Machine model that the university is failing society. For the price of withdrawal into the ivory tower is the dereliction of duty, of subjecting the very knowledge production process to the market and partisan politics. Similarly, the reification of the market and partisan politics above that of the original purpose of the university – serving (the full reaches of) society – means that a critical and reflexive public scholarship in the interests of the high ideals of humanity gives way to enterprisation and entrepreneurialism as ends in themselves.

and alarming questions that go back to 1381 in the case of Europe, and even in the case of the ancient universities: universities have often been seen as either a threat to some or other preoccupation in society at large – requiring political, religious or economic manipulation and regulation – or as a resource too valuable to be left alone (Minogue, 1973, p. 51). If this is so because through scholarship and knowledge production they bring light and truth to the dark and discomfiting sides of humanity, pressing us on to reach beyond where we have come from, then these are worthy institutions created by society precisely for this purpose: the search for truth! However, this search for truth requires leadership, adequate time, space and resources on the one hand, and academic ‘craftship’ on the other: the love of education, the enthusiasm for knowledge, the skill of dialectic, and the skill of executive stewardship by consent, all in the endless pursuit of truth. Universities are thus much more complex creations of humanity than imagined in the utilitarian Modern Ages. A more nuanced but decisive shift in thinking about the university and its mission is required during this time among all actors in society. For if we were to, correctly, understand the university as the custodian of all, not some, of humanity’s intellectual, moral and scientific enterprise, then utilitarianism, political correctness and religious orthodoxy must give way for its fundamental renewal.

Thus, in their ideal state, universities are the Pathfinders of societies and nations. The requirement, though, for this mission to be accomplished is free and rigorous intellectual inquiry, a

commitment to truth, and institutional autonomy. S.E. and Z. Luria aptly argue this point that, “It is an interaction that requires, on the part of the university, a complex mixture of commitments: commitment, on the one hand, to being a creative force in the historical process, deeply and passionately involved in the affairs of society, and on the other hand, to providing society with the intellectual stewardship that can come only from rigorous, dispassionate analysis of reality” (Luria and Luria, 1970, p. 78). This view differs fundamentally from that of the academic purists, the adherents of the Ivory Tower for whom knowledge must be pursued as an end, as Minogue bitterly asserts, “Whereas the Middle Ages had valued universities because of their distance from the world and its endeavours, now modern men began to object that universities were in need of reform for exactly the opposite reason: because they did not contribute to what was seen as a cooperative endeavour from which no individual or institution might be allowed exemption: contributing to national wealth and power” (Minogue, 1973, p. 26). The point here is that distance and exemption from humanity’s search for freedom, democracy, equality, social justice, human dignity and human solidarity is one thing: the search for truth through rigorous, dispassionate analysis of reality another! For, as Said puts it, “There is no such thing as the private intellectual, since the moment you set down words and publish them you have entered the public world. Nor is there only a public intellectual, someone who exists just as a figurehead or spokesperson or symbol of a cause, movement or position. There is always the personal inflection and the private sensibility, and those give

meaning to what is being said or written” (Asmal, 2002). And, as Gordimer reminds us, in her observations that are so applicable to the university, “There is no ivory tower that can keep reality from beating at the writer’s walls, and an artist’s highest calling is to bear witness to the evils of conflict and justice” (Asmal, 2002).

Providing intellectual stewardship while preserving the university’s traditions of integrity, viability, and deepened and widened differentiation and scholarship will have us searching for alternative means of achieving the necessary public accountability of the university. Such a search would lead us to examining self-regulating instruments such as mandatory planning, goal-setting and reporting by governing councils and executives to stakeholders through published annual reports, published charters, codes of conduct and performance against these for governing councils and university leaders, and annual accounting to a democratically-elected parliament. What then is the role of the state acting in the interests of society in respect of the university? First, the state must create the conditions for the university’s esteem to be nurtured against the background of its decline. Such conditions range from mobilising the resources essential for the university to perform on behalf of society its vital knowledge production and dissemination roles, to the mobilisation of social resources to grow the university’s influence, esteem and role in society. Secondly, the state is challenged to develop a more complex understanding of the university, as neither Ivory Tower nor Slot Machine, but as a critical interlocutor, essential for searching,

finding and dialoguing better moral, ethical and intellectual pathways towards achieving the great ideals of humanity. Thirdly, the state must create the regulatory framework that entrenches the academic freedom and institutional autonomy of the university, and create legitimate instruments for universities engaging in critical and reflective scholarship, and accounting to society.

For as Russell, in the wake of imposition of the Thatcher government's 1988 English university reforms observes, "Accountability must not be extended to the point where it interferes with the proper discharge of the service for which the money was granted" (Russell, 1993) (Higgins, 2013, p. 65). In other words, resourcing universities adequately cannot ipso facto mean that these become direct organs of the state such as state owned enterprises operating in the transport, electricity or other utility sectors. For the university does not operate for direct commercial gain, nor in the interests of a political ideology or party. Its function is the pursuit of truth in the interests of society, thus searching and finding new paths – with some knowledge production loops taking much longer than others – that advance the highest ideals of humanity. And to advance these ideals requires a healthy, yet mutually critical, reflective and constructive relationship between state and university.

In this regard, let me briefly comment on South Africa's own post-apartheid higher education reforms. In the larger shift from the apartheid to a democratic and inclusive society, it was incumbent upon the democratically-elected state to introduce

fundamental corrections to the country's higher education system, addressing participation, access, success, quality, research output, and the race and gender profiles of the university community. Addressing these matters at the individual institutional level would clearly have been inadequate, and thus consolidation through mergers of ethnically and racially balkanized universities and technikons was an essential next step.¹³ Having introduced these necessary corrections, and in the process having set itself up against the academic purists for whom this was unwelcome state interference, a much more nuanced relationship with the university is now required; leaving the state to regulate the basic matters I discussed earlier.¹⁴ Furthermore, the state and the higher education leadership – in a new social compact – should now set about rebuilding the university's capacity to respond coherently, substantively and effectively to these post-apartheid reforms, and in this manner rebuild the esteem of the university so battered under apartheid and in the early years of the democratic society. For, just as Higgins encourages,

¹³ It is important to note that the very process of consolidation of these 36 institutions into 23 (and now 26) was an incomplete process, with a number of the ethnically and racially-balkanized institutions remaining, and those that are historically disadvantaged remaining so, with considerably inadequate capacity and resources to fulfil their important missions to society. The real danger of this incomplete project is that it leads South Africa down a path of unfulfilled promise: that of a great nation in the making that opened up new ways of thinking about humanity, nation and human rights, becoming an also-ran failing across the moral, intellectual, ethical, economic and social domains.

¹⁴ I make these observations aware that gross and negligent failure of university governance will require state intervention in the interests of society. A much more robust and transparent framework should be discussed and developed to assure universities that such intervention is legitimate rather than punitive.

what is required from the state, civil society and the university is a complex and nuanced account of the university: one that is critical, historical and theoretical (Higgins, 2013). For such an account would enable a better understanding of its historic response, its current capability and duty, and the place and roles of institutional autonomy and academic freedom, for the university to return to its original source and meaning.

A discussion and analysis of the responses of the university to the many challenges noted earlier, and the proffering of an alternative of strategic and executive leadership, would be incomplete without a closer study of the university itself, focusing on the nature of its internal organization and capacity to respond. Let us do this by first examining the organisation of academic work. Universities are knowledge institutions that, according to Dearlove, “provide an organisational context for generating new knowledge through research whilst disseminating that knowledge through teaching” (Dearlove, 2002). This is an important starting point, for the source of teaching excellence is reputable research. This point is particularly relevant in the South African context where arguments have been made in favour of the creation of separately chartered research and teaching universities, with, inevitably, the historically disadvantaged universities reduced to teaching factories. For those who argue such, the next rational step should be the recreation of such teaching factories as colleges, for then these are no longer universities. The alternative, so necessary and appropriate for South Africa and Africa’s reinsertion in the global knowledge production and

innovation complex, is the creation of these as genuine and legacy universities.

Now, research or knowledge production is about the rigorous and endless pursuit of truth. It is about a total dedication to breaking the frontiers, or the established boundaries of knowledge and received truths. Good researchers, and the innovative and creative imagination required of them, cannot be commanded from on high by management: for research is primarily an individual craft although it is now also practiced within teams. Thus research requires motivation. Yet, academics, as Dearlove reminds us, "... recognize no boss, choosing to see themselves as individual entrepreneurs, albeit on a steady salary. Like rich peasants, they till their own patch but display little desire for corrective action and little interest in the larger university, to which they are limply attached, as they grumble about the demands it makes on 'their' time and the problem of parking" (Dearlove, 2002, p. 267). Teaching on the other hand is more routinised and organised, yet it is not easily controlled by those outside of that process. All told, academics as "professional, knowledge craft workers" lay claim to their individual autonomy making them, "as hard to herd as cats" (Dearlove, 2002, p. 267).

Individual academics have throughout the ages worked as colleagues in a collegial and consensus-building manner within departments that constitute the individual units of faculties and of the university. Achieving alignment between the university response to the manifold challenges it faces in the Modern Ages, that sees it thriving within its original mission, and the

individual academics, departments and faculties, clearly requires a strategy that mobilises academics, administrators and managers into “collective entrepreneurial action” (Dearlove, 2002, p. 267). Responsive universities must create a core executive leadership group that includes central executive management (representing managerial authority), executive deans that head up faculties (representing collegial authority), and executive directors that head up core operating and academic support units (representing the critical middle management administrators). But how are universities, especially academics, mobilised behind such a strengthened executive leadership steering core? Perhaps the answers to these questions lie in the model of nation states that have survived hundreds of years and that provide our sense of identity and preserves social functionality (Scott, 2001, p. 34)? Or they may lie in the great religions of the world, viz, Hinduism, Christianity, Buddhism, Confucianism, Islam, Judaism and Taoism that offer a strong framework of moral governance, where individual priorities are satisfied through group objectives, where a unifying and unique shared language weaves a fabric of stories that keeps the flame of heritage alive, where an intense exchange of ideas and dialogue occurs within a context of positive ambition for betterment, and where an acute sense of membership of the community offers a status no-one would willingly forego (Scott, 2001, pp. 49-50).

As we search for this blueprint, our search must begin with the proposition that universities, like other enterprises, are social units with the same human lifeblood as any other type of

social construct. Katzenbach argues that in standing up to these dynamic times while pursuing excellence, five paths chosen by leaders, sometimes in combination, offer enterprises a way to improved and sustained worker (add professional and academic) fulfilment and enterprise performance (Katzenbach, 2000). These are first, communicating a compelling mission, values and pride; secondly, implementing accountability and consequence management; thirdly, developing an entrepreneurial spirit; fourthly, mobilising individual initiative and achievement; and, fifthly, recognition and celebration of staff.

The key lessons from this research – also applicable to the university – are that truly compelling legacies generate pride in enterprise accomplishments and pride in individual and group accomplishments, and generate and align energies, thus achieving deep emotional commitment to the enterprise (Rensburg, 2004). Such legacies do not only generate energy, but also generate courage and dedication. Their sources of energy are magnetic leaders and impossible dreams, dynamic market places, and remarkable histories and legacies of accomplishment. Such enterprises perpetuate legends and have many heroes and martyrs! In such enterprises, personal self-image is built by showing people their true value, by creating and sharing bigger pictures and by generating collective energy. Here the focus on performance is sustained through purposeful recruitment, through articulating what matters most (for company performance in terms of what and how things are done), by providing performance transparency

(what is measured, how is it measured and what is current performance), and by making recognition and rewards meaningful. In these enterprises, widespread opportunity and options are created, leadership is distributed broadly by pushing leadership development opportunities deep down into the enterprise, and the work itself is enhanced by creating personal ownership and pride. And, in these enterprises, disciplined behaviour – as opposed to demand and control – is enforced through shared values that are reflected typically in the disciplines of cost, customer service, recruiting and training, and of a common language of terms, phrases and acronyms. This is no doubt familiar territory for the university where executive and academic leaders are expected to lead academics through consent and consensus building, rather than by fiat, which requires, for purposes of my argument, the introduction of the concept of ‘authentic leadership’, drawn from the literature on leadership and organisations.

Now, this work also holds that peak performance – so essential for enterprise, and in this instance, university differentiation – is about aligning the hearts and minds of employees (Harung, 1999). It is about enterprises being better than the norm, being better than what is expected, being better than the competition, and being better than similar workforces in other places. These enterprises are able to achieve and sustain peak performance through the enthusiasm, energy and emotional commitment of employees to perform. They tend to be highly desired places to work where leaders pursue with equal vigour the achievement of enterprise

performance requirements and individual employee fulfilment needs.¹⁵ Thus, old-style good people management – viz., treat staff fairly, put in place incentives for them to perform and opportunities to grow, recruit best talent, put in place consequence management and establish individual accountability – appears inadequate to establish and sustain peak performance and differentiation at the beginning of the 21st Century. What must be added is worker fulfilment that will energise people for performance, unleash their full potential and elevate the game significantly! This level of motivation and people mobilisation are the outcome of authentic leaders' abilities to, firstly, rally positive organisational behaviours and, secondly, to mobilise employees and peers with these behaviours.

The starting point for this mobilisation of employees and enterprises is the presence and durability of authentic leadership. Authentic leadership begins with the leader, and comprises of six traits, viz., self-awareness, self-regulation, positive psychological capabilities, growth and development

¹⁵ The critical lesson here is that while leaders can drive performance through intimidation, insecurity, and 'good old consequence management', they cannot expect the extra energy that comes from positive emotional commitment unless employees really believe that the 'gives and gets' in their work balance out. Katzenbach also reminds us, "Certainly, you obtain performance in the short term by approaches that simply replace those people who do not meet certain standards. Unless the supply of able workers is limitless, however, this 'hire 'em and fire 'em' philosophy eventually drives the best people into environments where their well-being and job fulfilment receives more attention. Conversely, if empowerment and fulfilment approaches dominate, the performance of the organisation will eventually suffer, which is also a non-sustainable situation" (Katzenbach, 2000, p. 212).

(both personal and those of others), and effective and consistent communication (Gardner & Schermerhorn, 2004) (Rensburg, 2004) (Folscher, 2004).¹⁶

Furthermore, it is authentic leadership that can mobilise organisational behaviours that are positive, thus unleashing the organisation's true potential. Four such behaviours are noted as essential for achieving peak performance. First, confidence or self-efficacy is one's belief or personal judgment about how well one can execute a specific task within a particular context; it is the intrinsic self-generated motivation to work hard; and, it leads one to pursue more challenging goals, generates sustained effort, perseverance, positive thought patterns and more resistance to stress. Second, hope is one's sense of goal-

¹⁶ Self-awareness is knowledge about one's own emotions, values and beliefs, and an accurate assessment of one's strengths and weaknesses. Self-regulation is the ability to control, monitor and apply knowledge of one's beliefs, values, motives and positive psychological capital to set challenging but attainable standards for personal conduct. Positive psychological capabilities includes states of confidence, hope, optimism and resilience that help one to clearly frame moral dilemmas, transparently respond to them, enabling one to become an ethical role model. Growth and development is the ability to continually promote and even restore the positive states in oneself and others; to strive to fully understand oneself and better prepare oneself for future challenges; to help others do the same by modelling and supporting the professional and moral development of peers; and, to help employees better understand themselves and the organisation through transparent decisions and processes, thus fostering a positive and productive organisational culture. Effective and consistent communication is the ability to create a truly compelling organisational saga or narrative that links individuals and creates an organisational memory; encouraging employee identification with the organisation; encouraging detailed and ongoing feedback to employees about their performance; and, encouraging supervisors and managers to listen to and hear employees, treating them with respect and helping them solve problems.

directed determination combined with the ability to produce plans for reaching one's goals; it increases one's certainty about one's goals and being challenged by these; it increases the likelihood to value goal progress and attainment; it makes one more adaptable to change, more adept at forming new and cooperative relationships; and, increases emotional stability in stressful and evaluative situations.¹⁷ Third, optimism is one's ability to attribute success to internal, stable and global causes, and conversely, failure to external, unstable and global sources; and, it generates pride, happiness, satisfaction, enthusiasm, and higher levels of motivation, perseverance and achievement. And, fourth, resilience is one's ability to accomplish positive adaptation despite significant adversity, to withstand and bounce back from sudden and dramatic changes, and to adapt and prevail.¹⁸

However, achieving sustained and high levels of enterprise relies heavily on the performance of the individual. No matter how good its systems, the key to an organisation's success lies in its peoples' attitudes, skills and levels of support. It is authentic leadership that successfully mobilises positive

¹⁷ Sagan has it that, "You can't convince a believer of anything; for their belief is not based on evidence, it's based on a deep-seated need to believe," quoted in Razeghi (2006).

¹⁸ Consistent with this view, Hamel argues that resilience is about an organisation's capacity for continual reinvention in the face of trends that can impair an organisation's earning power. And, that resilience is about being able to change before the case for change becomes obvious. Thus incumbency and momentum are no longer the guarantees of success that they once were for private enterprises, neither for state owned enterprises nor universities that face competition and the end to their market domination.

organisational behaviours and individual performance by enhancing employees' and peers' abilities, providing them with support and enabling them to increase their efforts. Enhancing employees' and peers' abilities is the skill to optimise individual capacities to perform through job-relevant knowledge, aptitudes and skills. Enhancing support, on the other hand, is about establishing full opportunity for individuals to perform by best applying their capabilities in a job. Enhanced effort is the creating of conditions that stimulate individual willingness to work hard, even extraordinarily hard, to perform at one's very best. It is about the capacity for moving employees from disengagement to engagement, and finally to a state of passion for work (Burton, 2001) (Denison, et al., 2003) (Frank, et al., 2004) (Freeman, 2004) (Gubman, 2004) (Harris, 2004) (Hemp, 2004) (Kemp, 2002) (Kundu, 2004) (McCann, 2004).

I have spent considerable time and effort elaborating current thinking on leadership, strategy and peak performance because it is this kind of organisational leadership – not intellectual leadership – that is in such short supply in the university (Dearlove, 2002, p. 270), and that is required more so today than in the Middle Ages, and that must be nurtured, as universities rise up, or fall, in the face of the many complex challenges of the Modern Ages. Thus, then, is the challenge of university leaders: to establish and mobilise executive leadership groups that cross over and unite executive, academic, academic support and operating divisions behind a common vision, mission and pride that provides a vigorous and substantive response to the university's contemporary

challenges and opportunities, thus increasing productivity and innovation, while deepening and widening differentiation and scholarship.¹⁹ But having asserted the university and mobilised internal institutional passion and capability is not enough. It is also the responsibility of university leaders, together with governing councils, executive leadership groups, senates, student governing bodies, labour and student movements, to critically engage society and the state around this reinsertion of the traditions, integrity, viability, and the new response of the university.

I conclude by restating that, despite its deficiencies, and its predominantly Western imprint, the university in the Modern Ages is neither utilitarian Slot Machine solely serving the economy through the highly skilled graduates that it helps produce, or its own reinvention as the enterprise. Nor is it the enchanting Ivory Tower to which arch-addicts of an ends-only academic freedom retreat from time to time, there to pontificate the intrusions of the barbarians. The university is the organisational context where the complex and detailed, yet contradictory, process of knowledge production and dissemination occurs. For, correctly, the university is the custodian of, and the public speaker on, humanity's intellectual, moral and scientific enterprise. Thus, in their ideal state, universities are the Pathfinders of societies and nations.

¹⁹ The point here is that, puzzlingly, scholarship and knowledge production, and in turn, curriculum and programme development, remain unwilling or nonplussed about the necessity to widen and deepen these to include African and Eastern scholarship and knowledge production as authentic sources of scholarship and knowledge production.

The requirement, though, for this mission to be accomplished, is free and rigorous intellectual inquiry: inquiry that is critical, historical and theoretical, and, genuine commitment to truth, institutional autonomy and public accountability. These insights enable us to have another look at, and perhaps have a better understanding of the contemporary university as it is embedded within, rather than isolated from society, as it faces up to challenges and contestation, and as it struggles to renew itself, steadying itself to, once more, probe and move society and humanity beyond their current borders. To raise their game and to offer an effective response, universities require, more than ever, courageous, confident, hopeful, optimistic, resilient, capable and authentic leaders that move entire institutions – academic, manager and administrator – into becoming dynamic, lively, spirited and responsive Pathfinders.

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Academic freedom and education in a human rights perspective – experiences from Norway

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1. Introduction

Academic freedom and equal access to education are fundamental human rights protected by international law. However, the understanding and implementation of these rights, and the relationship between them, are not universal but depend on social and political factors, including views on the social role of universities and institutions of higher education. This article starts with a brief presentation of the core aspects of academic freedom and education as human rights, including basic values and objectives. What is the core content of each right, which purposes do they serve, and how do they relate to each other? A case study exploring the implementation of these rights in Norway illustrates the basic ideas of academic freedom and education, as well as the relationship between them, in a particular social context. Norway is a social democratic welfare state with long traditions of free education in public schools and universities. The overall

goal of the article is to contribute to the discussion of especially the social role of higher education in a democratic social state based on respect for human rights.

2. Academic freedom and education as human rights

2.1 Conceptual framework

Human rights are broadly classified as belonging to two main groups of individual rights: civil and political rights on one hand, and economic, social and cultural rights on the other. Civil rights concern individual freedom rights, such as freedom of religion, thought and expression and the right to privacy. These are classic human rights protected in liberal democracies based on the concept of individual autonomy, integrity and freedom. Social rights are often characterized as entitlement rights, such as the right to education, housing and healthcare. According to Marshall's theory of social citizenship (Marshall, 1950a; 1950b), social rights are intended to serve individual autonomy as well as the social integration of citizens (Aasen, et al., 2014, p. 7). Of importance is that both civil and social rights serve important individual as well as social goals, and that the distinctions between them are not sharp. Both sets of rights are acknowledged to be equally important for individual as well as for social well-being, and are highly connected and interdependent (Population Council, 1993). All human rights,

whether civil or social, have ‘negative’ as well as ‘positive’ aspects regarding content and state obligations. In the following, I will briefly present the rights of academic freedom and education, their respective objectives, and discuss the relationship between them.

2.2 The right to academic freedom

2.2.1 Academic freedom as a civil right

As a civil human right, academic freedom is part of the rights to freedom of thought and expression, protected in several human rights instruments, e.g. in the *International Covenant of Civil and Political Rights* (ICCPR) (United Nations, 1976)²⁰ Articles 19 and 20. It follows from Article 19(1) that “[e]veryone shall have the right to hold opinions without interference”. Article 19(2) states:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Clearly, these provisions guarantee the right of academics to hold and communicate ideas of any kind and without interference. The objective is to ensure free exchange of ideas in a free society, and thereby support democratic values.

²⁰ Adopted by the UN General Assembly on 16.12.1966 (in force from 23.3.1976). Norway ratified this convention in 1972, South Africa in 1998.

Academic freedom as a right to be free from interventions in scientific and academic work is a ‘negative’ civil right belonging to staff and students in higher education in particular. The right includes the right to express, disseminate and publish ideas and research findings without being punished or hindered, e.g. by university or state authorities. The state obligations include the obligations to respect, protect and fulfil the rights guaranteed in the Convention,²¹ i.e. the state must not only abstain from interventions but also protect individuals from third party interventions, e.g. from universities, companies, politicians or others who try to stop distribution of ideas or information that is protected by Article 19(2). The state undertakes to “adopt such laws or other measures as may be necessary to give effect to the right”, cf. Article 2(2) of the ICCPR. In many countries, academics are not given the freedom to teach and to publish according to standards of academic integrity. In Europe, Turkey is today well-known for the lack of academic freedom, but also countries known for their liberal and democratic policies may violate norms of academic freedom.²² The exercise of the right to freedom of expression carries with it duties and responsibilities, cf. Article 19(3) of the ICCPR. Therefore the right may be subject to certain restrictions, as provided by law

²¹ Cf. the provisions in Article 2 of the ICCPR.

²² Canada had strong censorship of academics, prohibiting researchers to communicate with the press without authorisation from the information department of the particular institution (which often would contact the authorities for clarifications). The institution had a right to control and edit the communication between the researcher and the press. This ban was only lifted in 2015 with the new government (Amundsen, “Akademisk frihet er ingen selvfølge” [Academic freedom cannot be taken for granted], www.forskning.no/kronikk/2016/04/akademisk-frihet-ingen-selvfolge).

and deemed necessary for either respect of the rights or reputations of others, the protection of national security or of public order (ordre public), or of public health or morals. Article 20 puts forward that war propaganda and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence “shall be prohibited by law”. Thus, freedom of expression and academic freedom is restricted by fundamental social values and respect for the dignity and rights of others. This is an illustration of a general observation: human rights have limitations, which must be determined in light of both social needs and the rights of others.

2.2.2 Academic freedom as part of social rights

The free exchange of ideas, opinions and research findings in democratic societies is not only a value for individual autonomy and liberty, but is also necessary to ensure social development and progress. Publication of research results and a public academic discourse is necessary in all social fields and issues in order to ensure enlightened debates and decisions. This is important for society, not only for the individual. The *International Covenant on Economic, Social and Cultural Rights* (ICECSR),²³ Article 15(3), requires States parties “to respect the freedom indispensable for scientific research and creative

²³ Adopted by the UN General Assembly on 16.12.1966 (in force from 03.01.1976). The convention was ratified by Norway in 1972 and by South Africa as late as in 2015. South Africa’s ratification was accompanied by the following declaration: Declaration under article 13 (2) (a) “The Government of the Republic of South Africa will give progressive effect to the right to education, as provided for in Article 13 (2) (a) and Article 14, within the framework of its National Education Policy and available resources.”

activity”. By protecting the individual freedom of researchers (and artists), the provision at the same time forms an essential part of the social right of other persons – and society at large – “to enjoy the benefits of scientific progress and its applications”, cf. Article 15(1b) (United Nations, 1976). Academic freedom is viewed as a precondition for the production of true knowledge in a free society.

Similarly, academic freedom is also an essential aspect of the right of others to education of an adequate standard, including the right to be taught by staff enjoying academic freedom and integrity. Violations of academic freedom, e.g. by prohibiting particular subjects or points of view (United Nations, 1976),²⁴ or by prohibiting particular individuals or groups from giving or attending lectures or seminars, or denying staff or students the right to participate in any kind of exchange of ideas, may imply a systemic limitation of the academic standard and thereby also of the educational quality.

Academic freedom is ‘negative’ in that it protects the individual from unjustified interventions in academic work and communications. Academic freedom is not a right of the individual university employee to pursue any idea or interest irrespective of the costs involved or completely detached from the needs of the institution, students or society. Thus, in the university and institutions of higher education, academic freedom and the right to an adequate education are clearly

²⁴ I here refer to expressions not among those mentioned in ICCPR, Article 19(3) and 20 (see section 2.2.1).

related. This means that the teaching, and to a certain extent also research activities, must be directed to fulfil the objectives of the particular institution.

As a social right of others to enjoy benefits of scientific progress and an adequate standard of education, academic work and teaching depends on certain ‘positive’ material conditions, e.g. adequate funding, human resources and facilities. This aspect of the right to benefit from scientific progress and cultural life is recognised in Article 15(2) of the ICESCR:

“The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.”

This provision requires of states to take necessary measures in order to *preserve* existing scientific knowledge, for the development of *new* knowledge, and for the *distribution* of scientific knowledge in society. These dimensions of scientific work, with academic freedom as an inherent condition, illustrate the social value attributed to scientific work and knowledge in modern knowledge-based societies.

2.3 The right to education

2.3.1 Accessibility

Access to education is considered one of the most important social and cultural rights of individuals in order to develop

individual personality, autonomy, judgment, critical thinking and personal responsibility (Ssenyonjo, 2009, p. 357). In particular, higher education is associated with political and social awareness, including the capacity to claim your own rights. Access to education for all groups in society is considered to contribute to equality, integration and social progress (Ssenyonjo, 2009, p. 357).

The right to education includes both a ‘negative’ right not to be denied access to educational institutions, and also a “positive” entitlement to adequate educational services, e.g. in terms of accessible and affordable education of a proper standard.

Article 13 of the ICESCR (Committee on Economic, 1999) is the most comprehensive provision in international law on the right of everyone to education. Article 13(2) obligates States Parties

- to provide free and compulsory primary education to all children,
- make secondary education “generally available and accessible to all by every appropriate means”,
- make higher education “equally accessible to all, on the basis of capacity, by every appropriate means”.

Secondary and higher education should be made accessible to all “by the progressive introduction of free education”, cf. Article 13(2b and c).

The requirement of making education, including higher education, equally accessible to all does not mean that universities have to be run by the state. The requirement can be fulfilled by means of financial support, adequate public funding, student loans, etc., so that higher education becomes accessible not only to a wealthy minority but to all qualified individuals irrespective of socio-economic status. The progressive introduction of free education is mentioned as the preferred way of making education affordable to all and thereby accessible. Private or public universities with a highly selected student group, e.g. from particular social strata or racial groups, with high student fees and limited public funding, is likely to violate the right to education as outlined above.

2.3.2 Content

As mentioned above, the right to education comprises quality primary, secondary and higher education. The quality of the education must be determined in light of the objectives outlined in the ICESCR, Article 13(1), stating that education shall

- “be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms”, and
- “shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”.

Education has individual as well as social objectives. At the individual level, education shall stimulate and assist the person in realising his or her potential, in academic, artistic, sport, humanistic or other dimensions of personal development. Furthermore, education shall enable the individual to participate ‘effectively’ in society, e.g. in terms of employment, work and participation in political, organisational and other activities. Education is often a precondition for meaningful exercise of civil and political rights, e.g. the right to freedom of expression and the right to participate in political elections (Ssenyonjo, 2009, p. 357). Both critical thinking and tolerance of different perspectives are important values from a democratic and human rights perspective. Importantly, education shall teach the individual respect for human rights, not only his or her own rights, but also respect for the rights of others.

According to the *Convention on the Rights of the Child* (CRC),²⁵ Article 29(1d), education shall be directed to “[t]he preparation of the child²⁶ for responsible life in a free society”, which is another way of expressing not only the individual but also the social aspects of education. Article 29(1) specifies in more detail the content of human rights values, including gender equality, respect for parents and cultural identity and for national values and other civilizations (1c and d).

²⁵ Adopted by the UN 20 November 1989 entry into force 2 September 1990, in accordance with article 49 (ratified by Norway in 1991 and South Africa in 1995).

²⁶ Generally understood as persons below the age of 18 (Article 1).

Education at all levels must satisfy both academic standards and human rights standards. Curricula or practices based on e.g. sexist or racist ideas violate human rights norms, even if they are approved by responsible academic staff. The right to education is supposed to equip individuals with knowledge, skills and humanistic values, to promote competence, autonomy and responsibility. Such qualities are assumed to benefit the individual as well as society.

2.4 The relationship between rights and freedoms

The rights of academic freedom and education are interrelated: The right to adequate education depends on quality research and teaching dependent on academic freedom. Academic progress and freedom also depends on the right to education, both at the individual and social level: If a person does not have access to (basic or higher) education, the person is also deprived of academic freedom, in the sense that academic freedom becomes meaningless. If large groups of the population do not have access to higher education, this will affect the production of knowledge in society, i.e. by missing important insights, perspectives and experiences. This 'negative' impact on the knowledge production may reinforce existing social inequalities and also be a barrier for social integration and peaceful co-existence.

In the following, we will explore the role of education and academic freedom in Norway, a social democratic welfare state with long traditions of free education in public schools and universities. The intention is to illustrate the basic ideas as well

as the relationship and interplay between the rights of education and academic freedom.

3. Education and transformation – experiences from Norway

3.1 Historical and social context

The Norwegian state was established in 1814, on the basis of a new constitution granting independence from Denmark. The Norwegian Constitution is the oldest constitution in the world which is still in use, written in the time of the revolutions in America and Europe, highly inspired by the ideas of the Enlightenment; social contract, political equality, natural rights, etc. It was seen as one of the most radical constitutions of its time, especially because of its prohibitions of future aristocracy and privileges, its egalitarianism and for establishing sovereignty of the people (folkesuverenitet, cf. § 49)²⁷ as a basic principle (Holmøyvik, 2014)(Warner, et al., 2015). The 1814 Constitution was typical for its time in protecting classic civil and political rights, such as equality before the law, freedom from unjustified state interventions, the right to own property, freedom of expression, and the right of ‘autonomous’

²⁷ Rejecting also the two chambers model (cf. House of Lords and House of Commons), and with the inclusion of farmers in the parliament/national assembly (*Stortinget*).

men to vote and be elected to parliament.²⁸ Socio-economic rights were unknown at the time (Aasen, et al., 2014).²⁹ The 1814 Constitution has been instrumental for advancing rule of law, respect for human rights, a democratic political system and development, as well as egalitarian values in Norwegian society.

Although the concepts of democracy and equality were initially meaningful only for upper class men,³⁰ the 1814 Constitution introduced basic ideas and concepts necessary for social change. It instituted a classic liberal democracy, and it opened up for new social groups to have political influence (farmers, urban citizens with property). Gradually, new groups of men were included in the political citizenship, and women were entitled to vote in 1913. In 1919, everyone was entitled to vote irrespective of property and income. The step-by-step political inclusions secured a gradual democratic and social transformation (Myhre, 2012, pp. 11-13) (Holmøyvik 2014, pp. 47-48) (Warner, et al., 2015).

The welfare state was conceptualised in 1945 after the Second World War. The five years of suffering, after the hard

²⁸ (Holmøyvik, 2014) (pp. 37 and 39), with reference to J.G.A Pocock and Hunt, who describe personal independence as the classic renaissance and natural law criterion for political participation.

²⁹ In 2014, the Constitution was supplemented with a few provisions on socio-economic rights, including on education. The purpose was to preserve existing values and rights, and did not have a transformative approach (Aasen, 2014, pp. 23-25).

³⁰ Ca. 45 % of Norwegian men over 25 got the right to vote in 1814. All women and men who were not civil servants or did not own or rent property, were excluded from voting and from being elected to the Parliament (Holmøyvik, 2014, p. 39).

1930s, had made more people recognise that freedom was not only about individual liberty, but also about freedom from want (Goduti, 2013, p. 219).³¹ The social protection of workers and their families became an important goal of the dominant Labour Party. Following 1945, the parliament (*Stortinget*) actively used legislation as a political tool to reach social objectives particularly regarding social security, working conditions and healthcare. Health and social programmes were, however, rooted in welfare policies developed long before 1945 by local municipalities, civil organisations and socially engaged politicians, professionals and individuals (e.g. women from the higher social classes). Basic education had been established in the 16th century already (see below). Except for the break-up of the union with Sweden in 1905, and the German occupation of Norway 1940-45, domestic politics have been relatively peaceful and marked by gradual political and social transformation (Hatland & Kildal, 2008, p. 59).

3.2 Educating the people

3.2.1 Nation-building and modernisation

Obligatory school for everyone (*allmueskolen*), boys and girls, was introduced in Denmark-Norway in 1739, 200 years after the Reformation, with the main purpose of teaching protestant Christianity.³² The subjects were religion and reading. The main goal was to teach the children what they needed to know for

³¹ Cf. also president Kennedy's "Four Freedoms Speech", which included "freedom from want" (p.219).

³² Before 1739, only boys from the social elite had access to the so-called *Latin schools* in Christiania, Bergen and Trondheim <http://opam.no/skolehistorie>.

their Confirmation, which was the entrance to adulthood and a formal requirement for taking work outside the home and to get married. Reading was necessary in order to read the Bible, Luther's katekismus and Pontoppidan pietistic explanations. Around 1800, ca. three-quarters of the population was able to read (Myhre, 2012, p.244). Pontoppidan explanations to the teachings of Luther was the only text book for over 100 years, instilling obedience and respect for authorities (Myhre, 2012, p.244).

In 1816, as part of the nation-building process after 1814, the Parliament started to discuss reforms in the educational system. For civil servants and academics, particularly teachers, knowledge was seen as an important social infrastructure that should build and strengthen the nation (Myhre, 2012, p.273). While protestant Christianity continued to be a dominant aspect of the educational system, from around 1850 onwards the content of the school curriculum was gradually expanded into new areas: history, geography, science, languages (Greek and Latin) and culture. Educating children in a broad range of subjects was seen as an important part of the nation building process. In 1876, the leading national strategic thinker, professor Ole Jacob Broch, stated, "Ignorance is the most dangerous of all destructive forces in society" (Myhre, 2012, p.273). Economic growth and modernity were central themes of the time.

While rural children went to school between 9 and 12 weeks every year, children in the cities went to school between three

and four times longer, because children from rural areas needed to work on the farms. Despite obligatory school attendance from 1739, many poor children from the rural areas did not learn to read and write due to lack of proper clothing, lice, duties on the farm, and other reasons for staying away from school. In 1850, more than half of the school children in the rural areas did not learn to write, also due to the difficulties of learning gothic and Latin letters.³³ New public school legislation was introduced in 1889, establishing seven years of compulsory free education for all children (Myhre, 2012, p.276). From 1936, the legal duty to attend school was more strictly enforced in order to prevent parents from keeping children away from schools, either for religious, practical or other reasons (Human Rights Committee, 2011, p.223).

In sum, basic education was from early on conceptualized as a duty rather than a right, organized by the state and free of charge. By this, Norway was far ahead of international human rights over 200 years later. This approach is still the same today. Education is considered a fundamental right, and duty, a necessary tool in order for individuals to participate and function in a modern society, cf. ICESCR, Article 13(1). Ten years of basic education is obligatory and free for children and youth between 6 and 16 years, including refugee children and children with an undocumented status.³⁴ Youth between 16 and 19 years are entitled to three years of secondary education

³³ <http://opam.no/skolehistorie>

³⁴ Education Act of 17 July 1998 no. 61 Section 2-1.

providing access to either universities or other institutions of higher education or professional degrees.

3.2.2 Social integration and upbringing

The public school from 1889 onwards was organised so that the different levels of education built on each other, thereby giving limited space for private schools. The goal was a united national school system (*enhetsskolen*), which was supported by all social classes (Norway, 1998).³⁵ The social elite saw the benefits of social reconciliation by bringing children from all social groups together in the same schools. This policy ultimately contributed to a high level of social integration in Norway” (Myhre, 2012, pp. 271-272 and 276). There were disputes about the content of school curricula: the government and upper classes promoted general enlightenment, social upbringing and cultivation, while farmers and workers wanted the school to teach more practical skills, and not keep the children in school too long. But during the 1800s, many children of farmers entered the academic community, and influenced it” (Myhre, 2012, p.272).

The strong social position of the schools in the 1800s, and their authoritarian style, is particularly visible in the nationalist assimilation policies towards e.g. the indigenous Sami people in the north of Norway. Sami children were forced to attend Norwegian schools, where they were only allowed to talk and

³⁵ In 2011, ca. 2.6% of children in the primary school and 7 % of the children in secondary school attended private schools. Private schools must be approved by the authorities and follow public educational standards, https://snl.no/Skole_og_utdanning_i_Norge.

write Norwegian.³⁶ The goal was to eradicate the ‘backward’ Sami culture and turn Sami children into proper Christian and enlightened Norwegians (Minde, 2003a, 2003b) (Minde, 2005). With today’s eyes, this was a brutal violation of the rights of Sami children to maintain their identity and be strengthened in their own culture.

The old authoritarian style of education combined with pietistic Protestantism, and the school-based and oppressive assimilation of Sami children as part of Norwegian nationalism, was clearly against modern human rights standards emphasising respect for difference, non-racism and friendship among all ethnic and social groups. Today, respect for human rights constitutes an ideological and legal backbone of Norwegian society, and the rights of children are strongly emphasised. Special rules for Sami education are adopted in line with the constitutional duty of enabling the Sami people to secure and develop their language, culture and social life.³⁷

The primary and secondary schools have, until recently, been dominated by Christian teachings and rituals. However, criticism from international human rights bodies that Norwegian schools violated the right to freedom of religion of non-Christian children and their parents, finally resulted in amendments of the Constitution and the school legislation concerning the official status of Christianity. Current legislation stresses the objective of understanding national as well as

³⁶ This policy lasted until around 1960.

³⁷ Constitution Section 108.

international cultural values and traditions, including respect for human dignity and rights, equality, solidarity, as well as other religions and philosophies of life (Norway, 1998).³⁸ Furthermore, all Norwegian pupils shall, according to educational objectives, “develop knowledge, skills and attitudes in order to master their lives and to participate in work and social life” (Norway, 1998). The goal is to provide children and young persons with resources and skills in order to participate effectively in the Norwegian society (cf. ICESCR, Article 13(1), see section 2.3.2 above). All children and youth in Norwegian schools shall be introduced to a common source of knowledge, cultural perspectives and values.

3.2.3 Political participation

The establishment of common public schools for everyone contributed over time to a more democratic and equal society, in line with human rights ideals. The policy of educating the people was part of the national strategy of the 17th century to become a modern state, where skills in reading and writing opened up doors not only to the labour market,³⁹ but also to political participation. Local and national organisations were formed as responses to the many social challenges (e.g poverty, health and alcohol abuse), providing individuals with political and organisational experience and competence. Many enlightened women contributed to society as individuals, leaders or members of organisations, e.g. regarding women’s

³⁸ Education Act of 17 July 1998 no. 61 Section 1-1.

³⁹ Almost all Norwegians born after 1850 could read and write, and had basic skills in mathematics (Myhre, 2012, p. 244).

rights, maternal and child mortality, etc.⁴⁰ From ca. 1850, basic education and enlightenment allowed farmers, women from the upper classes and workers to take active part in political and organisational work at the municipality level, and also to make their voices heard nationally. Ultimately, together with expanded political rights, it opened up democratic development where most groups in the cities and on the countryside felt – more or less – included in the nation state (Myhre, 2012, pp. 244 and 272).

3.3 The social role of higher education

In Norway, the universities and institutions of higher education are, with few exceptions,⁴¹ owned by the state, in line with the long tradition of state interest in the education system. The oldest university in Norway, the University of Oslo, was established in 1811, with a strong focus on the classical disciplines of medicine, theology and law. This was for a long time the only institution of higher education in Norway. In 1859, Norway's agricultural university college (Norges Landbrukshøgskole) was established, and Norway's technical university college (NTH) in Trondheim came into being in 1910. In 1946, the University of Bergen was established (based on Bergen Museum of 1825) as the second university in Norway. The University of Tromsø was established in 1972 as the world's most northern university.

⁴⁰ Katti Anker Møller (1868-1945) is the most famous woman advocating for women's reproductive rights in Norway.

⁴¹ The leading institution of higher education in business economy, the Norwegian School of Economics (NHH), is private. It was established in 1936.

Until ca. 1850, only a very small group of the population had access to higher education. From the 1870s, more youths from the rural areas took higher education, and from the 1880s, a few upper class women.⁴² More importantly, a wide spectre of professional schools were established by the end of the 1800s, providing practical as well as theoretical education, in agriculture, housekeeping, teaching, nursing, crafting, art, trade, book-keeping, engineering, etc., in addition to the classic university subjects (Myhre, 2012, pp. 272, 278-279). The differentiated educational system was an important aspect of, and a precondition for, broader political participation as well as the expanding public sector (Myhre, 2012, p. 272). While the university in the early 1800s had mainly educated civil servants to fill high positions in the government and state administration, it gradually contributed more to society. Recognised scientists were hired by the growing industry and trade, and lawyers, historians and other experts entered legal, teaching and other professions. However, until 1905, the University of Oslo was mainly a school for civil servants rather than a contributor to economic, social and cultural development (Myhre, 2012, pp. 277-279).

A more inclusive ('folkelig') university with students from most social groups was realised only well into the 1900s. In 1947, the Norwegian State Educational Loan Fund (Statens Lånekassee for utdanning), was established in order to secure equal access to higher education. This institution has been

⁴² In 1884, women were for the first time allowed to take university exams (Myhre, 2012, pp. 273 and 277).

essential in order to make higher education accessible to all, in line with human rights standards.⁴³ Today, almost one-third of Norwegians have higher education, and 60% of the students are women (Statistics Norway, 2016). In general, immigrants have higher levels of education than Norwegians. However, two-thirds of immigrants without basic education are women (Steinkellner, 2012).

A range of different educational directions provided individuals with skills and knowledge and paved the way to a modern professionalized society. Highly qualified experts and professionals entered public institutions and industries as well as private businesses from the early 1900 onwards.⁴⁴ Knowledge has indeed become part of the national infrastructure as envisioned in the early years of the new Norwegian state. From the 1970s onwards, women entered the workforce in great numbers. Today it is generally assumed that it would be impossible to maintain a generous welfare state without women's participation in the labor market. The public policy of inclusion and equality throughout the educational system has, in combination with other social policies, supported equal opportunities for all Norwegians despite social background. Together, these policies, being characteristic of all the Nordic countries, have contributed to a relatively high level of social trust and harmony (Kildal & Kuhnle, 2005).

⁴³ See Section 2.3.1.

⁴⁴ The Norwegian oil industry, starting in the 1960s, would not have been possible without the geologists.

3.4 Academic freedom, responsibility and public discourse

In Norway, academic freedom is guaranteed in the Constitution Section 100 as part of the civil right to freedom of expression (see section 2.2.1). In the early 1800s, the freedom of expression was highly restricted; its main intention was to provide information and knowledge about the country and its people to the King (Ringvej, 2011, p. 119). There was a distinction between illegal revolt and legal protest, indicating that peaceful expressions of certain issues were allowed. But radical political rebels were seen as threats by the authorities, and imprisoned (Myhre, 2012, pp. 140-141, 148). Freedom of expression was gradually expanded, and more organisations were established, especially to promote the rights of workers, democratic reforms and expanded voting rights, fair taxation, military service for all men (including men from the upper class), etc. The room for political expression by workers, academics, artists and other groups became gradually wider, especially from the 1840s (Aasen et al., 2014, pp. 19-21). The introduction of local democracy in the municipalities in 1837 played an important role in the democratisation process in Norway, widening the space for political and other expressions (Aasen et al., 2014, pp. 19-21).

In contrast to the South African Constitution, academic freedom is not given special protection in Section 100 of the Constitution. It must be 'read into' the Constitution, in line with the tradition of legal interpretations of 'thin' constitutional

provisions (Warner, et al., 2015). In particular, one provision in Section 100 is important regarding academic freedom, stating that state authorities should secure open and enlightened public discourse.⁴⁵ The words ‘open’ and ‘enlightened’ imply that there should not be censorship, and that academic knowledge should be an important part of public discourse and dissemination, e.g. in the media and in national broadcasting.

Academic freedom is today an essential principle of public law regulating the activities of universities and higher education. The Act on universities and university colleges (University Act)⁴⁶ emphasises the objectives of facilitating universities and university colleges to offer higher education and to perform research at a high international level. Furthermore, the objective is to “distribute knowledge and understanding of principles of professional freedom and application of scientific and artistic methodology and results, in teaching of students, in other activities and in public administration, cultural life and in the business sector”.⁴⁷ Thus, the overall goals are to respect, protect and promote high academic standards as well as academic and professional freedom in all sectors of society. This is in line with the notions that knowledge constitutes basic infrastructure in a modern society, and that academic freedom is a precondition for such knowledge.

⁴⁵ «Det påligger statens myndigheter å legge forholdene til rette for en åpen og opplyst offentlig samtale.

⁴⁶ Act 1.4.2005 no. 15.

⁴⁷ Section 1-1, my translation.

The University Act has a provision entitled “professional freedom and responsibility” (Sections 1-5), outlining the responsibility of the *institutions* to promote and protect academic freedom, pointing to their responsibility for securing education, research and professional work at a high level. Academic freedom includes freedom from interference in teaching and research (institutional as well as individual autonomy), and independence with regard to hiring of staff, as long as the hiring is not discriminatory (Bernt, 2016, p. 40). Teaching staff have independent and professional responsibility for the curriculum and content of teaching within institutional, legal and ethical frameworks. Researchers have individual rights to choose research topics and methodology, within reasonable understandings of employment agreements. Researchers have both an individual right, and a *duty*, to share research results with the public.⁴⁸ Thus, employees at universities and institutions of higher education are supposed to be strong, visible and trustworthy voices in public and other discourses where academic knowledge is essential for sound debate and decision making. The distinction between academic knowledge and political opinions is central, although not always obvious. Strong political or ideological pressure has been resisted. For example, university staff and students resisted the Nazi occupants who tried to use academic authority to promote their policies during the war (1940-45) (Kjøllesdal, 2011). In the spring of 2016, biologists at the Institute of Marine Research (Bergen) protested against the minister of fishing’s use of

⁴⁸ Sections 1-5(6).

research to justify his policies. This was followed by an intense media debate on the relationship between politics and research.

4. Conclusions and challenges

Academic freedom and education are fundamental human rights which are also essential building blocks in modern societies. They are important tools for individual development and participation, and for social progress. The rights are highly interrelated and must be understood and implemented in light of each other. In Norway, the rights of education and academic freedom have been implemented in a historical and social context of gradual democratisation and social change, where the educational system have provided knowledge of high quality and relevance. Authoritarian and repressive politics of the past were gradually replaced by liberal attitudes and policies of social integration. The educational system has been a key in the transformative processes towards a modern democratic society with equal opportunities for all. By building a unified national system from basic to higher education, and by making the schools and institutions of higher education accessible to all, the egalitarian and democratic aspirations of the Constitution have been realised. The human rights framework provides necessary corrections also today, e.g. regarding respect for minorities. There are still many social challenges, related in particular to discrimination of persons

with disabilities, immigrants, refugees and other groups struggling to become part of Norwegian society and a competitive labor market. Academic freedom is also facing challenges. Norwegian academics are increasingly concerned about their academic freedom and feel that it is getting more restricted.⁴⁹ Research programs defined by the Norwegian Research Council and the EU pose problems related to academic freedom; in order to get resources, researchers must, to a large extent, adhere to these programmes. Another issue is the notion that Norwegian universities are also increasingly being captured by capitalist interests.⁵⁰ These are among the challenges that Norwegian institutions of higher education must address in the future.

⁴⁹ Karran, T. referred to at www.uniform.uio.no/nyheter/2015, published 17.11.2015.

⁵⁰ See Halvorsen in this volume.

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Breaking the bond between knowledge and democracy?

Tor Halvorsen

1. Introduction

The nexus of powers and interests now generally referred to as neoliberalism has always maintained a problematic relationship with democracy.⁵¹ For the economic 'laws' which it champions, figured as they are by association with the inevitable physical laws of nature such as gravity, may nonetheless be open to adjustment and alteration by the force of popular-democratic voices. Indeed, they only appear to behave with the regularity and predictability of physical laws under certain very particular and precise social and political conditions. As the influence of the people grew through the gradual expansion of decision-making, so did democracy come to appear as a threat towards the functioning of the economy, as democratic agency often challenged the so-called laws, and in so doing, undermined the core idea that the economy had a law-like life of its own.

⁵¹ For a good general account, see Harvey (2005).

According to neoliberal thinkers, if democratic voices are to be allowed any say on the economy, these voices should be restricted to the voices of the 'enlightened' and the 'educated'. In this restriction, the many would be represented, but in such a partial way as to work as a buffer against their natural irresponsibility.

However, as democratic representation expanded, and higher education systems moved from elite to mass participation, the buffer of knowledge against the influence of irresponsible ideas and behaviour became more permeable. Thus, not only the democratic institutions, but also the democratisation of the higher education system and the research conducted within it, gradually became a potential threat to the 'laws of the economy'. To discipline higher education and research to the market, and make it conform to a market-like environment, became an important priority.

While the nation state has played a crucial role in enabling the functioning of the market, today the state, and interstate agreements, only partly generate the regulations that make the market work according to its laws. As the main actors of capitalism are no longer bound by, or dependent on, one or more nation states, the regulation of capitalism needs to be constituted at the post-national level. This explains the emergence of what we might call a post-national constitution, one that works to effectively overrule or undermine national ones. This shift has in turn transformed how knowledge is conceived, worked to reduce the influence of democratic

participation, and transformed the entire role of the state in relation to higher education.

2. Knowledge and democracy

Neoliberalism was once, as argued by Hayek (1944), a reaction to the Nazi regime, and to so-called 'communist dictatorship', but also to the growth of the influence of the democratically governed state on economic policies (as in Nordic social democracy). This Nordic model of development can, however, also be seen as an attempt to make democracy grow, both through participation in decision-making and through the differentiated institutions of society. The Nordic reaction to fascism and other dictatorial forces was to strengthen democracy. Education in general, with higher education as an important part of this, was seen both as a precondition for democratisation, and from the early 1970s, as an institution to be organized democratically, as students and other employees gained a right of representation on governing boards. In Norway, during the first years of the new century, this development culminated in two important legal decisions: A new paragraph of the constitution, Section 100, called 'Freedom of expression' (added in 2003), and shortly after, the passing of the law, 'On academic and artistic freedom' on April 1, 2005.

The new Section 100 came in for particular praise in 2014, the bicentenary of the adoption of the first Norwegian constitution, which also happened to be the same year as the twentieth anniversary of South Africa's own ground-breaking constitution. While in 1814 democracy was still, for many, charged with negative connotations, in 2014 (and particularly in the South African context), democracy enjoys enthusiastic support. This positive value is manifest in and around related support for ideas of freedom of expression and academic freedom, both of which have had long and difficult passages through Norwegian constitutionalism (Ministry of Justice and Public Security, 2016).

The new Section 100 states plainly that there is 'freedom of expression' in Norway, and emphasises that this is tremendously important for all citizens.⁵² We can emphasize that this stress on freedom of expression has marked relevance and significant implications for higher education and the related ideas of scholarly research and enquiry. Freedom of expression is defined as the seeking of the truth, the promotion of democracy, and the freedom for individuals to form their own opinions. This, of course, (as also stated) means that there can be no censorship by the state of critiques of the state; no secrecy; and that there shall be free access to all state documents. But what is perhaps most significant for the higher education system in terms of societal expectations is the statement that,

⁵² For further discussion, see Aasen 2017 (this volume).

“It is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse” (Section 100, Norwegian constitution).

Through this imperative, the state is obligated by its own law to use the means it has at its disposal to enable and promote open and enlightened public discourse. It is the higher education system, and the research it supports and enables, which has a key place and role in this imperative, and hence there is some acknowledgement of the need for universities to be protected. This comes through in the following terms:

“Universities and university colleges may not be instructed regarding a) the academic content of their teaching and the content of research or artistic or scientific development work or b) individual appointments, And: Institutions subject to this act shall be entitled to design their own academic and value-related bases within the framework laid down in, or pursuant to, statutes” (Sections 1-5, Law on Academic Freedom) (Ministry of Education and Research, 2005).

In other words, academic freedom is recognised as a precondition for enlightened public discourse, a discourse to which the universities have a particular duty to contribute.

The Constitution and the Law on Academic Freedom focus on the relationship between knowledge and democracy as it is historically framed by the nation-state, by citizenship and the idea that the enlightened discussion and debate between people is the conduit for deciding their own destiny. Most

importantly, the implication of these statements and provisions – with their emphasis on deliberation and rule-making – is the idea that it is democracy that guides economic development, and not vice versa.

The laws creating Section 100 and protecting academic freedom are important. The irony is, that at the same time that the constitution was being extended, and academic freedom was codified as part of the public space to be protected and promoted by the state, the power over state policy formation was shifting from nation-state democracy to a new form of global rule-making, with what is now sometimes called a ‘global constitution’ overruling, or at least challenging, the systems of democracy within nation-states (Gill, 2002).

3. Constitutional democratic idealism vs. the neoliberal post-national constitutionalism

The Norwegian Constitution as well as the Law on Academic Freedom are real. They shape behaviour, they mediate values, and they create a basis for the normative guidance of organisations. The idea that knowledge, as mediated by universities, contributes to the growth of democracy is taken for granted. Respect for the idea of the triumph of the better argument as the basis for finding good solutions is widespread,

and may indeed be the basis for the idea that we are capable of using democratic institutions.

However, my sense is that this reality is currently under threat, or has already been suppressed by the ‘constitution of globalization’, or neoliberal post-national rule-making. The post-national constitutions shaped by neoliberal values overrule the national ones based on ideas about the possibility of creating a kind of ‘democratic capitalism’. The consequence is a continuous dismantling of democracy for the sake of competition. If democracy asks for deliberation and argument, neoliberalism asks for competition and positioning of strategic actors. If democracy seeks to find ways of governing the economy, neoliberalism asserts the necessity of strategic actors’ necessary adjustment to the economy [something students now do as ‘second nature’] (Furedi, 2017).

At the post-national level, for example the European Union (EU) and the Organisation for Economic Co-Operation and Development (OECD), we find that the rhetoric regarding the role of knowledge for democracy is very different from the constitutional documents referred to above. Democracy and the enlightened public do not figure prominently, despite occasionally being mentioned in ceremonial talks by rectors (Higgins, 2013). When the EU launched its programme for research and innovation called *Horizon 2020*, (2014-2020; €80 billion plus private sources), it was argued “this program promises more breakthroughs, discoveries and world-firsts by taking great ideas from the lab to the market” (European Commission, 2014). When the OECD turned 50 in 2012, it

celebrated its new identity as a global player, seeking to influence development in *any* part of the world with its new strategy. The key categories as a result are: knowledge economy, innovations, human capital, entrepreneurship, and of course, economic growth (Secretary General, 2012). Following its success with the PISA-standards (OECD, 2015), tests, and comparative blaming and shaming, the OECD is reorganising higher education and research units to use the same kinds of statistical/numerical comparisons according to their own standards and categories, and generally strengthening the role of the OECD for promoting the innovation economy/knowledge economy throughout the world.

The rhetoric of the European Union and the Organisation for Economic Co-Operation and Development links in a well-coordinated way with other multi-lateral organisations, thus creating a new type of post-national constitution which works in practice to overrule national ones. What is common to all these efforts is their attack on democracy, and the willingness to transform higher education and research into a tool for the economy in this process. As academics such as Brown are now pointing out, neoliberalism is working to dismantle democracy, and in that process it undermines the role of knowledge for the public. Higher education stands out as a great ‘casualty’ for the Euro-Atlantic world. In her chapter on “Educating Human Capital”, she shows how *homo politicus* – and the guiding or regulating ideal of enlightened citizenship – is being replaced by *homo oeconomicus*, or what the OECD cherishes most with

its knowledge strategy i.e. people as human capital (Brown, 2015, pp. 179 -200).

But before we discuss in detail how the knowledge-democracy link is undermined, let me give some characteristics of the new post-national constitution that makes this possible.

4. Towards a neoliberal constitution?

The driving force behind this new type of constitution, with its evident intent to supersede the constitutions of nation-states, are mainly multinational companies. These companies may be supported by states and regulated by interstate agreements, but what is most striking is how they are shaping this regulation as a post-national type of rule beyond the reach of most states (Mikler, 2013).

As has been widely recognised, the growth of global companies goes together with the growth of global inequality, both in terms of personal wealth, and even more in terms of the concentration of power (Mikler, 2013). With a basis in the rich and highly developed states (that still account for 80% of world output, 70% of international trade and that account for 90% of foreign direct investment), these companies travel the world free from old 'nation-state' regulations of competition, while still being supported by their own 'competition states' which they have, to a large extent, captured. They set the agenda for the multilateral system, but also for the perceived

knowledge needs and regulations of the global knowledge economy. And, as Mikler puts it, a major consequence of this is the “democratic deficit wrought by the demise of states whose sovereignty is universally attacked, leading to the undermining of citizenship and a splintering of collective communities into individuals, with these individuals increasingly [being] little more than consumers” (Mikler, 2013, p.8).

A legitimate state is now seen as one that exercises soft laws, rather than hard power, to complement (rather than regulate) the practice that companies enact on behalf of the global public. Their corporate (social and environmental) responsibilities become public law. The global companies embody the *rhetorical, symbolic, semantic and – as we have seen – also programmatic* shift from ‘government’ to the neoliberal category ‘*governance*’ through how they merge public and private powers, and create a new kind of ‘global public’ based on their private powers and hugely concentrated ownership.

In his important article, Gill sums up a decade of work on the emergence of the new constitutionalism. His aim is to present a critical counter-reflection on the neo-liberal ideologist’s own understanding of the all-important ‘rule of law’, and the new representation of justice and the social as somehow a non-public issue. In so doing, he notes how this new constitutionalism “limits democratic control over central elements of economic policy and regulation by locking in future governments to liberal frameworks of accumulation premised on freedom of enterprise” (Gill, 2002, p. 47), and argues that

these arguments and representations form the legal side of the new global political economy, and are “the political- juridical counterpart to ‘disciplinary neoliberalism’” (Gill, 2002, p.47). The new constitutionalism builds on, but also dismantles, the rule of law as historically defined by the property owners, and presents the basis for regulation of the now dominant form of post-national legal (ownership) rights.

More recently, Gill & Cutler have developed the argument in collaboration with others, in a collection called *New constitutionalism and World Order* (Gill & Cutler, 2014). A number of Anglo-American authors (with one exception) take up the key ideas, and seek to understand relations between the legal and the economic regulatory interaction within the neoliberal global political economy. In this book, the definition of the new constitutionalism makes reference to a “combination of various sets of processes” (Gill & Cutler, 2014, p.7). These processes include: the governance of the global market by way of multilateral organisation and by interactions of public and private powers; the neo-liberal reshaping of the political subject and the restructuring of the state (present, for example, in the expansion of market forces in social and political life); the ‘locking-in’ mechanism; and, in addition, the many new ‘informalities’ (for example, the soft laws and the self-regulatory dimensions of the economy as well as the flexible and double legal standards at global and local levels). All together, we see that the new constitutionalism also ‘constitutes’ visions on action, order and change that indicate the kind of paradigmatic shift to which the ‘new

constitutionalism’ refers. New rhetoric (as developed by a growing number of neoliberal think-tanks), new symbols of success and belonging (for example the new individuality), and a number of new programmes for political and social change spread by a global consultancy business (for example New Public Management), underpin this paradigmatic shift.⁵³

5. Economisation of society

It is neoliberalism’s economization of society that constitutes the centre of developments within this emerging legal and political order. This economization also comes through in how the new order transforms what is to be considered as ‘good knowledge’, and the ways in which this is built into models or conceptions of how change comes about through a representation of the necessary relations between knowledge and action.

⁵³ This new individuality is discussed below in relation to ‘human capital’, a term created by one of the drivers of neoliberalism, the Mont Pelerin society economist who was given the Swedish Bank’s so-called Nobel prize in economics (on Becker also see below). In *Paradoxes of Capitalist Modernization: A research programme*, Honneth and Hartmann (Honneth & Hartmann, 2006) makes this ‘individuality’ the kernel object of his analysis of the new global neoliberal capitalism. “The most important criterion for describing this new capitalism is no longer the ability to efficiently fulfil hierarchically determined parameters within a large enterprise; it is the readiness to show initiative and bring one’s own abilities and emotional resources to bear in the services of individualized projects. In this way the worker becomes an ‘entreployee’, or himself an entrepreneur; no longer induced to participate in capitalist practices by external compulsion or incentives, he is in a sense self-motivated” (Honneth, 2012, p. 175)

The debate about *new constitutionalism* is the political/legal reflection on the new kinds of global regulations of the global economy, made possible through law, and sustained by the consequent new role for the legal professions, and by different kinds of politically legitimated forms of network governance. The new constitutions that grow out of the global economy codify the neoliberal re-shuffling of relations between economy and society, including a new role for the state in securing constitutional democracy. The question is, it seems, in what way and to what degree states are transformed. Furthermore, what we usually talk about and take for granted as 'society' (that used to be constituted at nation-state level), is reconstituted at another, the global. New constitutionalism implies that this formation is not happening; we have a new 'globality' (as Albrow (1997) was the first to call it), due to the new relationship between politics, law, and the economy. As the debate about neoliberalism indicates, this new constitutionalism is marked by a particular kind of economization, helped to global hegemony by the economic profession (Fourcade, 2009).

Historically-oriented sociology shows how the economy and politics are differentiated, and also how, as a part of this, universities and the research they do are institutionalised in relation to the development of new relationships between politics, economy and civil society. With the new economization of society (with society *constituted* at a new level), all these institutions are in flux. Here there are particularly challenging consequences for the practice of

democracy, especially in fulfilling its historic roles within modernity of politicising the capitalist economy ‘from outside’, to act as a force of solidarity criticising the lack of redistribution, the exclusion of the weak, and so on. In his book *Capitalism. A short history*, Kocka argues that capitalism “can be influenced by political means and those of civil society *when and if* these are strong and decisive enough” (Kocka, 2016, p.169). Today, both as a precondition for, and as a consequence of, the new post-national constitutional ruling, this criticism is (too) weak; almost absent. Indeed, comments Kocka, such criticism “does not seem to be on the horizon, either in the prosperous societies of the global North or worldwide, at this time” (Kocka, 2016, p.169).

The growth of democracy has challenged the constitutional insulation of property and profit from what neoliberals historically have named ‘plebeian threats’.⁵⁴ As Kocka admits, after a life-long study of this relationship, “the affinity between capitalism and democracy is less pronounced than was long hoped and assumed” (Kocka, 2016, p.169). And while the

⁵⁴ The founder of the first neoliberal think-tank, the Mont Pèlerin Society in 1947 (where the actual term neo-liberal was invented) also saw the ignorance of demos as a threat. This was a constant topic in Hayek’s writing, for example in *The Road to Serfdom* (Hayek, 1944, [2007], p. 106), “A complex whole in which all the parts must be most carefully adjusted to one another cannot be achieved through a compromise between conflicting views. To draw up an economic plan in this fashion is even less possible than, for example, successfully to plan a military campaign by democratic procedure. As a strategy, it would become inevitable to the task to experts”. Meritocracy (made possible by science and science-based education (S&SE), trumps democracy due to the system character of the economy. (In the military it is, however, the ‘strategic’ character that justifies knowledge/expert/profession).

‘Recht –Stat’ has legitimised the limits that ownership creates for its popular-democratic influence, democracy is allowed within neoliberalism to the degree that it does not challenge the ownership that makes accumulation possible. As ownership now becomes global, the role of the new constitutionalism in protecting such ownership, and promoting its interest, emerges as the driving force of this new constitution as discussed above. The space for protest is, however, constantly diminishing. One important reason for this is that universities neither themselves take responsibility for the enlightened public debate, nor educate citizens, but instead focus on human capital development.

The new constitutionalism leads to a conflation of institutions, to a de-differentiation where the global economy absorbs institutions of enlightenment, such as the universities, within its value sphere. The consequences for democracy of this strengthening of the post-national has so far been referred to as a transformation of the state towards the competitive state, the priority of the ‘super citizen’, and the legal hegemony of international law. As Science and Science-based Education (S&SE) is moulded to this new constitutional reality, the consequences for democracy are even more severe than Kocka and others have feared.

In *Democracy against Capitalism*, Wood argues that as democracies have become more inclusive, due to political rights being less exclusive, these rights have also lost much of their power. In what can be seen as a challenging question to the new constitutionalism, she asks:

“What would it take to recover democracy from the formal separation of the ‘political’ and the ‘economic’, when political privileges has been replaced by economic coercion, exerted not just by capitalist property directly but also through the medium of the market?” (Wood, 1995, p. 237)

Her answer is that liberalism – even as an ideal, ‘let alone as a deeply flawed actuality’ – is not equipped to cope with the realities of the capitalist society, nor does it lead the way towards a more inclusive kind of democracy (Wood, 1995, p. 237).

While old constitutions were created in a historical period where freedom to use the market was at centre stage for the actors formulating the paragraphs, thus making the state and the borders of the nation the unifying space and tool for such advancements, the new constitutional period has produced numerous social movements asking the radical question: how to gain freedom from the market?⁵⁵

As Streeck has made his concern in his latest writings, the need to gain freedom from the market is asked when global capitalism has gained the strength to bypass democracies. In line with Gill *et al*, he analyses the enormous growth of the economic powers, supported by expert groups (that now are given priority in higher education) linking the state and the

⁵⁵ Compare the similar question posed in Scholte (2011, p. 342). Towards the end of a long and dense book it is clear that, “Democracy does not come cheap” when the global system of capitalist regulation is to be made accountable to the people whose livelihoods are changed.

global, outside and beyond the reach of democracies and their discourses. For him, it is capitalism *or* democracy (*Kapitalismus oder Demokratie*) (Streeck, 2013, p.135).⁵⁶ If the neoliberal project of Hayek and followers is realised, then democracy is not possible (Streeck, 2013, p.90).

There is doubt that ‘social democracy’ is possible, and the term ‘democratic capitalism’ is recognised as a contradiction in terms (Streeck, 2013, p. 135) (Wood, 1995, p. 213).⁵⁷ In 1992 already, in the now modern classic *Capitalist development and democracy*, Rueschemeyer *et al.* (1992), ask what happens when capitalism and democracy confront one another? They are thus opening the debate within ‘new constitutionalism’ about the growing power of global capitalism and how it suppressed democracy where this contradicted the growth of the new constitution. This happened in a direct and brutal way in Chile, through gradually shifting powers towards the executive, and decoupling the executive from democratic accountability. Furthermore, this occurred by increasingly valuing the kind of bureaucracy that interacts within the post-

⁵⁶ “Die Alternative zu einem Kapitalismus ohne Demokratie wäre ein Demokratie ohne Kapitalismus, zumindest ohne den Kapitalismus, den wir kennen”

⁵⁷ Cf. Wood, “In capitalist democracy, the separation between civic status and class position operates in both directions: socio-economic position does not determine the right to citizenship—and that is what is *democratic* in capitalist democracy—but since the power of the capitalist to appropriate the surplus labour of workers is not dependent on a privileged juridical or civic status, civic equality does not directly affect or significantly modify class inequality – and that is what limits democracy in capitalism. Class relations between capital and labour can survive even with juridical equality and universal suffrage. In that sense, political equality in capitalist democracy not only coexists with socio-economic inequality but leaves it fundamentally intact” (Wood, 1995, p. 213).

national context (as within the OECD), that is, the executive forces that are shaping what Hirsch in 1995 already had called ‘the competition state’ (referred to above) as the alternative to the locally-confined welfare state. As argued, this is the state that promotes global capitalism and its competitive conditions by use of public resources (nation-state) for private gains (globally).

In the analysis of Rueschemeyer et al. (1992, pp. 40-78), the relationship between capitalism and democracy is not, as commonly argued, determined by the growth of a democratic spirited middle class, making democracy a project of enlightenment. Rather, it is how the working classes, which are shaped by and shape varieties of capitalism, build alliances with other wage-dependent classes. It is these alliances that deepen and strengthen democracies, and it is the lack of such alliances that has led to dictatorial regimes, particularly in times of economic crisis. Studies of academics both during fascism in Europe, apartheid in South Africa and in relation to the coup in Chile, indicate that their role within such class alliances (and thus how they contextualise knowledge), can be crucial. (The role of the Chicago boys is most often used as an example).⁵⁸

⁵⁸ Rueschemeyer et al. take up Dahl’s argument that ‘expert knowledge’ is a bigger threat to democracy in the future than ‘economic positions’, and that expert knowledge assembled in state agencies and surrounding institutions of policy knowledge in particular represent this new challenge to democracy. Rueschemeyer et al. take a more conventional view, “that sees class inequality as more important for the fate of democracy” (Rueschemeyer *et al.*, 1992). We are convinced that the challenge of knowledge expertise is answered fundamentally in the same way as the political power of bureaucratic administration, that is, by democratic mobilisation to meet symbolic, coercive and economic powers.

The state in itself, as neoliberals argue, is not a danger to democracy (or the liberal economy): the danger lies rather in the lack of sufficient political democratic mobilisation for demands towards, and use of, the state to create what is popularly called an 'inclusive society' to be successful. The role of the university in educating the population is neglected, as is its role as a space for critical reflection on the nature of its own role in sustaining, or indeed promoting, democracy.

Democracy has given us welfare and gender equality. Further improvements would be within arenas like economic democratisation, greater equality between nations and, what is acute today, within nations. This has not happened; quite the contrary, indicating that the role of knowledge for democratic development also has diminished under the new post-national constitution.

But the 1990s and onwards, as Gill shows, is rather the period where *the global constitution* emerges as rule-setting for neoliberal capitalism, limiting democracy at the level where it had thus far been active i.e. within the nation state, and in promoting welfare and equality. It is also the period in which the executive, and its experts and bureaucracies, is delinked from democratic pressures, opening up for the legitimacy of 'expert knowledge' in the post-national field (Gill, 2002). The OECD is the foremost example of this. Gradually, the multilateral economic system gains control of the symbolic world of statistics and numbers. The OECD, and other multilateral organisations, supported by a growing number of neoliberal think-tanks, also moves the expertise further away

from the democracies by creating *the rhetorical, semantic, symbolic and programmatic* support of a neoliberal economy beyond, or outside, the aegis of democracies. The power of statistics is linked to economic rhetoric, to control of symbols of social success (progress), and to the semantics of political power, and thus emerges as a precondition for the formation of economic programmes. Statistics have become post-national, and thus part of the new language of the new constitution.

Multiple examples of this new post-national language are visible enough: the phrase, ‘*good governance*’ (which means economic governance) was first used by the World Bank in a report on *Sub-Saharan Africa, from crises to sustainable growth* (World Bank, 1989); the category of ‘human capital’ was developed by an economist who was a prominent member of the key think-tank in the development of neoliberalism, the Mont Pelerin Society;⁵⁹ the ideology of ‘innovation’, now on the agenda as the key word for economic development, had a number of sources⁶⁰ and soon became ‘program’ within the OECD when Keynesianism and planning were exchanged with the kind of economy the neoliberals had argued for – monetarism, demand-side economy, etc. The key phrase, ‘knowledge economy’ also takes its commanding place in this newly-developing vocabulary of key words.

⁵⁹ Becker (1964), perhaps more famous for insisting on what has never been proven, i.e. that the market is always the most efficient way of organising social relations, is one of the many neoliberal economists in the period receiving the Swedish bank prize in honour of Alfred Nobel.

⁶⁰ For example, the Science Policy Research Unit at Sussex University.

And against this flow?

The overwhelming hegemony of this kind of thinking and its actions led Streeck to argue that democracy can only regain influence if neoliberalism, now penetrating the global economy and the multilateral system, is pushed back (Streeck, 2013).⁶¹ Leading academics in Norway seem to be more optimistic about the renewing energy of democracy (at nation-state level), but also warn that we enter the new times without normative clarity as to what democracy should be in the face of challenges from forces such as globalisation, migration, and multiculturalism. Perhaps, as Olsen argues with reference to the ongoing negotiation on the USA-EU trade agreement, “the forces of social change are elsewhere” (Olsen, 2014, p.207).⁶²

Thus, the present worry about democratic constitutions as they are celebrated as constitutions of nation-states immediately opens the debate about the forces of the New Constitution, even in countries that claim to be less marked by neoliberalism, such as Norway.

Rueschemeyer *et al.* argue that it is from the contradictions within capitalism that we may understand how democratic

⁶¹ He describes the need to push back neoliberal economic organizations as they have dominated the last 40 years making ‘market justice’ primary to social justice, or, making fairness as justice (Rawls) more important than creating *the good society*. “Demokratisierung heute müsste heissen, Institutionen aufzubauen, mit denen Märkte wieder unter soziale Kontrolle gebracht werden können” (Streeck, 2013, p.236).

⁶² This should not come as a surprise to the author as he had several years ago referred to how the OECD has dictated public sector reforms in Norway in line with neoliberal ideology and the new global constitution (p.123).

actions emerge. “It was neither capitalists nor capitalism as such, but rather the contradictions of capitalism that advanced the cause of political equality” (Rueschemeyer *et al.*, 1992, p.302). But for Rueschemeyer *et al.* (1992), the so-called ‘methodological nationalism’ has limited the debate about democracy to the nation-state. Given the global forces, the dual challenge of both rescuing nation-state democracies, and making them capable of uniting against the powers of the new constitution, demands post-national kinds of democratic mobilisation. If we look towards the future, then, it is not by solving discursively how to deal with the lasting tensions within democracy in a new period, as for example Olsen argues, which gives hope for a future democratic constitutionalism as an alternative to the present over-ruling of the national ones (Olsen, 2014).

The contribution from Scholte on the future of democracy as a reforming power of the ‘New Constitution’, is an example of how such a debate must enter into many of the contradictions of capitalism of the neoliberal epoch as these now unfold globally (Scholte, 2011).⁶³

Scholte analyses how the reactions at different levels of social activity, primarily with reference to civil society, challenges the hidden secrets of neoliberal regulation as these are created and promoted by the multilateral system. How do democratic forces make the World Bank, the International Monetary Fund, and the OECD more accountable, and to what degree can the

⁶³ Scholte is of course not alone in this debate, but most consistent.

accountability to which these organisations open up be called democratic? It is here a question of going beyond the accountability made possible by member states' influence and (potential) responsibility for their own citizens, and looking for the new kinds of global interactions between civil society activists across borders working directly to challenge the regulators of the New Constitution. This is, of course, a fragmented 'centre', but the many-faceted actions show how human creativity across borders (now as a reaction to the lack of accountability of global capitalism), as an aggregate movement seeks to democratise the new constitution. For public sociology, these observations guide research interests, and, as discussed below, the idea of the critical university and the need for inter-linkage across borders can become a significant force in such a process of democratisation, working not only to build on nation-state democracies, but also reaching beyond this form.

6. The new constitutionalism and the university: science and science-based education.

During the neoliberal epoch (from 1980 onwards), we have seen a rapid global copying of seemingly similar institutions such as ministries of science, quality assurance agencies, research universities, and most recently, the fashion of 'centres

of excellence'. Science and Science-based Education (S&SE) has also over the course of the last decade become a kernel topic for the development-oriented multilateral organisations like the World Bank, as it has long been for the previously Western-oriented, but now self-proclaimed 'global player', the OECD. And the World Trade Organization is well aware of the value of intellectual products for the growth of global capitalism. S&SE is seen as part of a service economy expected to boost global trade of educational services in the future. And the OECD (and EU) rhetoric about 'S&SE for innovation' links institutions and content, and shapes organisational strategies.

Science and Science-based Education not only evolves out of a societal surplus, but is seen as a precondition for the development of such a surplus at whatever stage of development a country might be. The OECD's global standards for how to build S&SE institutions are being spread. Ideas of knowledge as 'context-free' truth-telling to be applied anywhere according to usefulness and demand, underpins the universal global gospel. Knowledge takes on the shape of 'things' (whether it be ideas or within technology), thus hiding the social relations that are embedded in knowledge through its form of creation, the issues it raises, the cultural context it is created within, and the type of institutions it is mediated through. This objectivity reinforces, on the one hand, the domination of the resourceful West, and on the other hand makes the less resourceful into copiers of what is 'objectively given' to make knowledge part of a competitive global economy.

There is, however, a parallel history to the story about how the university as an institution was captured by neoliberalism. S&SE, that after the Second World War evolved into a global movement, was first framed as a common *public* concern by UNESCO and the International Association of Universities (IAU) just after 1945 (Halvorsen and Vale, 2012). Since then, the growing number of international organisations, from professional forums to university networks of academics, indicates the enormous growth worldwide of the belief in the value of research and research-based knowledge for critical citizenship and an open accessible public space.

Knowing that universities may also be part of an ‘alternative globalisation’ due to linkages between academics whose interests are in cooperation around the alternative that Evans calls NINA (Neo-liberalism Is No Alternative) – as opposed to baroness Thatcher’s TINA (There is no alternative) – makes the cooperation between academics across the north-south divide particularly crucial (Evans, 2008, p.281). But when Evans asks, “Is an alternative globalisation possible?” we see that universities and the academic freedom they have is an important source for creating such an alternative. Universities in the South, for example, first of all owing to the consequences in this region of the global neoliberal regime, will be the prime movers of alternative ways of bringing forth and organising knowledge in a counter-hegemonic way (Evans, 2008, p. 287). We must go from innovation to imagination as the South African academic Vale argues (Vale, 2012); and argue in particular for the importance of the NAIL (Narrative, Analysis,

Interpretation, Literacies) disciplines of the humanities and social sciences at a moment when the exclusive focus of higher education funding and concentration is on the Science, Technology, Engineering and Mathematics disciplines (Higgins, 2013).

7. The future

There are, however, few indicators of such a development today. In their description and analysis of *Science in the modern world polity*, Drori et al. show how the number of national science policy organizations, of intergovernmental science organisations, national science ministries, and a variety of non-governmental and international science organisations multiplied from the 1950/60s to the 1990s (Drori et al., 2003, p.3).

Neoliberalism has led to a double shift in the understanding of the value of knowledge: first, the tenet that only the (private) *user* knows the value of knowledge, preferably expressed as a monetary price or payment (the sky may be blue but not for research); and second, that S&SE organisations should be driven by competition, preferably in a market or a market-like system of incentives/disincentives. Despite its ‘human to human’ mode of production (which even economists see is hard to rationalise as industries), such competition was necessary if the power was to be turned over to the users of

knowledge, the only actors who could truly value its usefulness and thus give direction to research, and meaning to the results of that research. The utilitarian ideology had finally created a consistent strategy for what had formerly been understood as, above all, national institutions.

This instrumentalism is now a truism in most of the multilateral organisations influencing the global regime of Science and Science-based Education, and also within the European Union. The European Union (EU) is to become an 'Innovation Union' by 2020 with the help of a reformed higher education and research sector. The 'Innovation Union' is part of the overall Europe 2020 strategy for "smart, sustainable and inclusive growth" (ACA Newsletter edition 114/October 2010). According to the document outlining the 'Innovation Union' (SEC (2010) 1161), a strategic approach to innovation is needed. All policy instruments, measures and funding must contribute to it (p.2). Closer cooperation with the OECD and alignment to its strategies is a must. The European Research Area, a reality in 2014, ideally makes the movement of knowledge unhindered, seeks to create world-class universities, and argues that the focus must be on excellence at all times. EU nation-state research coordination must overcome fragmentation, overlap of activities and duplications of results, and improve global recruitment of talents. The reforms of the universities and the research system, under the general slogan 'multilevel governance' will, and must, bring knowledge closer to production and the market to support innovation. Only governance that promotes competition and market-like

strategic adjustments by universities can secure the developments outlined above (Mény, 2008).

This transformation of the Research University of Europe, if it becomes dominant, represents a major and significant break with previously dominant public university traditions. Like the OECD, the European Union promotes a world politics of instrumentalist and narrow 'human capital' development, seemingly based on the neoliberal ideologies about the market as the most efficient organiser of modern institutions (Hayek, 1945)(Becker, 1964). But ideas about the primary role of the state (in this case the political centre in Brussels) as a facilitator of a knowledge economy of innovation, fits in addition with the neoliberal ideas about the role of the 'competitive state', understood as a state giving priority to resources needed to promote the competitive abilities of economic actors within its borders, primarily through policies of research and innovation, where the two are seen as one. In alliance with the OECD, this is spreading as a model for research universities all over the world. The EU transforms its research universities into agents for innovation to secure EU competition as a region among other regions, measured according to the success of its economy. This indicates a turning point regarding the 'research university' as a cultural institution for the growth of the nation-state that is a turn away from the university once exported to the old colonies of Africa. The 'new' research university can, as the OECD also argues, best develop as part of a global competitive environment, more or less detached from the

cultural context of the nation-state once so important for its creation.

The death of the 'old European university', the funeral of Humboldt so to speak, thus also potentially transforms the relationship to academics in the South from one of cooperation, to a relationship characterised by instrumental utility and networking for improved competition, contrary to what Evans hoped for. Will such a competitive development leave any room for cooperation based on academic networks constituted by common curiosity, or the need to build NINA?

The NINA alternative is, as indicated by Evans, an attempt to build on academic network where universities both in the North and the South (overcoming this divide), are nodes harbouring these networks based on common alternative understandings of development, only realisable in a transnational practice of academic freedom.

But, as we have seen, much stands in the way of such practices, and academic freedom is compromised by external governance. Academics become employers, and research become a means in the fight for material and symbolic capital to the university. The focus is on the development of marketable products of education, and the development of a critical citizenry is marginalised. But as economists can tell us, there is no real market in higher education; only the politically or power-created neoliberal type of governance of quasi-market, what seems like the forced behaviour of actors as 'market agents' where there is no price mechanism and no

competition, nor a proper market arena for exchange. The 'systems of quantification' emerge to secure this behaviour. But this is also leading to 'overproduction', since we get over-adjustment to standards for measuring the supply. Creativity, which depends on variation, is lost due to these (over) adjustments. All rectors now sing the same tune. Real diversity is lost. We see how the illusion of measuring, the adjusting to a narrow system of measurements, may in real life create cartels and monopolies of knowledge production whose ability to renew themselves vanishes, at the same time that alternative academic communities starve to death. Human creativity is suffering as academic competition based on creativity is lost.

It is therefore the paradox of our time that 'Innovation' as a goal is based on these neoliberal standards and their quantifications and measurements, and that the OECD policy for innovation in practice works to limit the space for innovation. In academia, as in the economy, oligopolies are particularly threatening to, and destructive of, actual innovation. At the centre of all this, we find the panoptic of quality management and the systems of accreditation (measuring primarily achievements like citations, number of publications, types of publication, etc.) which places science in the corset of normalisation. Altogether, the neoliberal university is a competitive unit characterised as: Audit University; Employment University; and a driver of academic capitalism. This leads to an escalating transfer of power over the academic field to the transnational 'level'.

8. A final note on change – a democratic alternative to OECD

The OECD's influence on the shaping of the new constitutionalism is growing and its engagement is overlapping with, and furthering the work of, both the World Bank and the World Trade Organisation.⁶⁴ Its 'global model for development', launched in 2012, which focuses on good governance, human capital and innovation, where higher education and research, as tools for both human capital development and innovation (and how they link), are supposed to create stability within the global economy. Good governance is, first of all, economic

⁶⁴ The General Secretary's Report to Ministers (of the members states) of 2012 is illustrative of the coordination with the WTO, and also foreshadows the ongoing trade agreement expansion outside the WTO between the EU and the USA, including the contested issue of higher education as a trade in services. "Being at the forefront of new global developments, OECD should intensify its work on trade in services and on measuring trade in value added terms. Services – from health care and education to telecommunications, transport and tourism – are the single largest sector in most economies today. They not only provide the bulk of employment and income, but in areas such as finance and telecommunications, they provide vital inputs for the production of other goods and services. Policy reforms promoting the development of services are critical for human development, job creation and inclusive growth. We should thus advance our work to identify a reform agenda for improving institutional frameworks, regulations and government policies to enhance the efficiency of markets, support SME development and reduce behind-the-borders barriers to trade. Efforts in this area could have a significant impact on the growth potential and labour markets of many countries. Trade liberalization continues to be an important source of growth and will continue to play a key role in a 'new trade narrative'. Strengthening the multilateral trading system will require our continued work on preventing protectionism, the role of state-owned enterprises in international trade, the further multilateralization of regional trade agreements and export restrictions of raw materials." (Secretary-General, 2012, p. 15)

governance based on stable rules within the international community as to how firms and investments move across borders. The 'human capital' approach reinforces the present individualization of education as a career move and an investment in personal capabilities, and the focus on innovation (the kernel value of capitalism) makes knowledge a tool for changes valued according to the 'efficiency' criteria of the neoliberal programmes and paradigm. As research, and research-based education are drawn in as producers of 'human capital', and as a precondition for successful innovation and good governance, research and research-based education emerges as the essence of the new constitutionalism, particularly how it is promoted by the OECD. While the new constitutionalism is driven by the huge corporations and the economic networks and multilateral systems within which they work, the expected role of Science and Science-based Education for its future accumulation also draws national S&SE into this constitutional framing. From the beginning of the 1990s, this was called 'internationalization', and was systematically valued more than the 'local'. The so-called international standards that created the basis for external governing through ratings, rankings and rewards, the soft method of 'coordination' and governance of the OECD (and later also the EU), draws Science and Science-based Education into the construction of the new constitution. There are significant consequences for the autonomy of the academic profession, and these are particularly dramatic in any consideration of the potential for academia to strengthen democracy.

As we have argued, the whole structure of external evaluation for what is good knowledge has been recalibrated and has today become more or less globally standardised. What is valued is the degree to which universities deliver human capital to a process of innovation defined by the immediate needs of the economy (not only the firms, but also the institutions that make such capitalism possible, i.e. through good governance). But this worshipping of human capital and the values of utility and efficiency undermine the creativity of human action. It thus leads to a social order incapable of promoting the 'good society'. What we are experiencing is a breaking of the necessary bond between knowledge and democracy. Getting this into proper focus is the first step in resisting it, and some reconsideration of the place of academic freedom in higher education is one way to begin this now necessary task.

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The precarious politics of presupposed equality in South African higher education

Jaco Barnard-Naudé

“What is required is the kind of *sympathetic critique* that amounts neither to endless praise singing, nor to unconditional alignment with political causes whose full consequences are yet to be known.” (Mbembe, 2016)

1. Introduction

It is still extraordinary that something so energetic, dynamic, vocal, noisy and yes, even so violent, as the 2015 and 2016 #FeesMustFall movement turned out to be, could have begun with, something as immobile, fixed and frozen as the grey-greenish statue of Cecil John Rhodes sitting as it did in what Vice-Chancellor Dr Max Price called its “pride of place”, “at the focal point” of UCT’s iconic Upper Campus (Price, 2015). In this contribution, I want to use these two images – the colourful, agitated, vociferous student protests on the one hand; the monolithic, monochromatic statue on the other – to argue that what I have called (following Rancière) a ‘politics of presupposed equality’ has unequivocally arisen in higher education over the last two years (Barnard-Naudé, 2015). The

#RhodesMustFall and #FeesMustFall campaigns represented, and continue to represent, the declaration of a wrong and the assertion of a dissensus against what Rancière would call a 'distribution of the sensible' and the 'police' order which protected and continues to protect that order (Rancière, 2004). The appropriate visual representation of that (old) distribution of the sensible and of the police order at its service is the image of the Rhodes statue. The politics of presupposed equality, on the other hand, is visually represented by the image, or many of the images, of the student protests.



Figure 1: Statue of Cecil John Rhodes.⁶⁵

⁶⁵ Source: SABC,
<http://www.sabc.co.za/news/a/10fc5f8047d4f1e98eaadeb3b2826b37/UCT-to-decide-on-Cecil-John-Rhodes-statue-removal-next-week>



Figure 2: #FeesMustFall.⁶⁶

In order better to appreciate the significance of the student protests for the politics in and of higher education, it will be necessary to explore Rancière's understanding of politics in more detail. I will argue, in addition, that however salutary this politics of presupposed equality undoubtedly is as a moment that signifies a new beginning in higher education, this politics remains precarious. I draw this precarity out of the close proximity of the politics of presupposed equality to either the threat, or the actual occurrence, of instrumental violence. I argue, in conclusion, that if the politics of presupposed equality is to triumph over the prevailing injustices in higher education in South Africa, it will be necessary to understand that violence constitutes a threat to the politics of presupposed equality and to devise creative ways of displacing both the conditions conducive to it and the temptation to yield to its lure.

⁶⁶ Source: A. Hendricks. http://www.dw.com/image/18792135_303.jpg, accessed 10.02.2017.

2. A spectacular politics of presupposed equality is born

From the moment that Maxwele dumped a human toilet on the Rhodes statue, the politics of the movement became inextricably linked to aesthetics – not only in the sense that the focus of the movement was on a statue, but also in the sense that Maxwele’s act itself was undeniably aesthetic. Some would even go so far as to say, later on, that the act was calculated at the creation of spectacle. One does not have to agree with the latter in order to appreciate that Maxwele’s act of protest was ‘aesthetic’ through and through. My use of ‘aesthetic’ is not meant to signify that Maxwele’s act was ‘beautiful’ in any conventional sense of the word. Rather, the act was ‘aesthetic’ because it engaged “the conditions of sensuous perception” (Clarkson, 2014, p. 2) in a vivid, captivating, provocative way. It is at this intersection of politics and aesthetics that Rancière’s thought becomes highly relevant.

Rancière has elaborated a “politics of democratic emancipation” in which aesthetics as the conditions of sensuous perception play a critical role (Rancière, 2004, p. 3). Before we come to the critical role of aesthetics in Rancière’s politics, it is necessary to say something about the way in which Rancière reads a convergence between the terms ‘democracy’ and ‘politics’. According to this convergence, “democracy is not a set of institutions or one kind of regime among others but a way for politics to be” (Rancière, 1999, p. 99). It is, “the kind of community that is defined by the existence of a specific *sphere*

of appearance of the people” (Rancière, 1999, p. 99). Rancière then goes on to say that ‘appearance’ is the “introduction of a visible into the field of experience” in such a way that ‘the regime of the visible’ is itself modified (Rancière, 1999).

From the above we can already see that for Rancière, the politics of democratic emancipation is constitutively phenomenal, that is to say, in essence aesthetic, and in the following senses. First, it presupposes a prior “aesthetic division between the visible and the invisible, the audible and the inaudible, the sayable and the unsayable” (Rancière, 2004, p. 3). Second, politics is aesthetic because, as an *emancipatory* activity, it consists in bringing on the stage new objects and subjects, in making visible that which was not visible, “audible as speaking beings those who were previously heard only as noisy animals” (Rancière, 2011, p. 4). Accordingly, the politics of democratic emancipation is aesthetic because it disrupts and transforms the given ‘aesthetic coordinates’ of the political community as those coordinates exist at a given point in time (Rancière, 2004, p. 3). Rancière’s name for the given aesthetic coordinates of a particular political community is a ‘distribution of the sensible’, and the disruption marking a transformative moment in its configuration occurs through what he calls the ‘declaration of wrong’ by those who are excluded by a given distribution of the sensible (Rancière, 1999, p. 39). This declaration of wrong marks the essence of democratic politics as a disagreement. Such disagreement arises in the confrontation between two forms of logic: the logic of what

Rancière calls ‘the police’, on the one hand, and the logic of disagreement, on the other.

The first thing to underscore when we bring Rancière’s political theory to bear on the student protests is that, at bottom, the student protests reside in a fundamental discontent about the (slow) pace of transformation in higher education in South Africa and in the conviction that this state of affairs constitutes the ‘perennial persistence of a wrong’ (Rancière, 2004, p. 84), because it perpetuates inequality and hence, injustice. Accordingly, the students’ disagreement has never been simply with the continuing and prominent public exhibition of symbols of colonialism, imperialism, apartheid and oppression (which of course entrenches oppressive and offensive space), it has never been ‘just’ about the lack of representation in the academic staff, or the fact that the student demographics are not representative.

Perhaps, most importantly, the discontent has (also) been with – even if, at times, this could have been articulated much more explicitly – forms and processes of thought and ways of doing. The disagreement, in other words, is with a ‘conservative’ form of logic that underlies all the phenomena from which it can be deduced that higher education in South Africa has not transformed adequately. This conservative logic is what Rancière would call a police logic. It is a ‘police’ logic, because it corresponds to, and is aimed at, the maintenance, sustenance and vehement protection of an established order’s distribution of inclusion and exclusion, privilege and dispossession, entitlement and oppression. It is the logic by

which it is determined who counts, whose voice is heard, whose plight is visible. Police logic in a given distribution of the sensible is that order's entrenched, default, unquestioning and unquestioned logic – the logic by way of which things are and are done simply because they are and are done 'that way'. In the postcolony, it is the logic of advanced late capitalism, the logic of neoliberalisation (Bond, 2016, p. 192) and of the financialisation⁶⁷ of social goods such as higher education – a logic which has without a doubt produced a heightened invisibility effect in relation to the poor, the dispossessed and the displaced.⁶⁸

The student protests should thus be recognised and acknowledged as part and parcel of what Mbembe calls the "broader search for forms of organisation that could effectively disrupt late capitalist society's dominant *logics*" (Mbembe, 2016). The politics of these movements occur/have occurred when the above-mentioned police logic is confronted with the emancipatory logic of disagreement. The declaration of wrong as the aesthetic marker of such disagreement arises when an

⁶⁷ Brown (Brown, 2015) describes financialisation as follows, "Today, market actors – from individuals to firms, universities to states, restaurants to magazines – are more often concerned with their speculatively determined value, their ratings and rankings that shape future value, than with immediate profit. All are tasked with enhancing present and future value through self-investments that in turn attract investors. Financialised market conduct entails increasing or maintaining one's ratings, whether through blog hits, retweets, Yelp stars, college rankings, or Moody's bond ratings" See also (Shenk, 2015).

⁶⁸ In the American context, West (2014) draws an explicit connection between "the sheer invisibility of poor people's plight" and President Obama's "substantial neoliberal policies".

emancipatory, mostly collective, political subject polemically contests her subordinated position in a given distribution of the sensible by asserting “the universal presupposition of politics: we are all equal” (Rancière, 2004, p. 3). As a political moment, disagreement therefore turns on the insistence that the subject’s subordination/exclusion/invisibility amounts to a wrong that can only be “processed” (Rancière, 1999, p. 39) through a reconfiguration of the distribution of the sensible – a calling into question, then, of “the aesthetic coordinates of perception, thought, and action” (Rancière, 2004, p. 83) by way of which oppression is produced.

Žižek has pointed out that Rancière indeed sees the beginning of politics in the demand of the excluded to be included, to be heard on equal footing and to be “recognised as a partner in the political dialogue and the exercise of power” (Rancière, 2004, p. 69). This is an accurate estimation of Rancière thought as long as it is understood that ‘inclusion’ here does not refer to the mere or simple eradication of barriers to entry into the system’s existing classifications and categorisations. The ‘beginning of politics in the Rancièrian sense is about more than the simple demand for ‘inclusion’ in the given configurations of the extant distribution of the sensible. Rather, it is a contestation of that order’s configuration itself – a constestation of its institutions, policies, procedures, categories, identifications, classifications, hierarchies, and so on. Rancière refers to the process through which emancipatory inclusion occurs in this way as ‘subjectivation’, which he defines as follows, “the process by which a political subject extracts

itself from the dominant categories of identification and classification” (Rancière, 2004, p. 92). As a process of subject formation, subjectivation entails the production of a body and “a capacity for enunciation not previously identifiable within a given field of experience, whose identification is thus part of the reconfiguration of the field of experience” (Rancière, 1999, p. 35).

May further adds that subjectivation is a production, the possibility of which arises solely through collective action (May, 2009, p. 7). It is, in fact, the production of a new collective subject, the production of a ‘we’ that comes about as part and parcel of the political process. As May remarks, “with the advent of a democratic politics there arises a subject of action, one whose members recognize one another and those in solidarity with them, and confront the police order as such a collectivity” (May, 2009, p. 7).

When we apply the above insights to the student protest movements, it cannot be denied that a process of subjectivation has taken place that has profoundly shifted the hitherto dominant categories of identification, classification and categorisation available within the (liberal) university as a distribution of the sensible. First, although the initial protest action consisted of an individual act (Maxwele flinging human excrement at the Rhodes statue), it was from the outset characterised “as a rallying call to students, staff and workers alike” (#RhodesMustFall, 2015), the formation, then, of a collective subjectivity in opposition to the police order. In addition, movements incorporated the importance they placed

on collectivity into their names and made collectivity a prerequisite for demonstrative action and for engagement with the university leaderships. Organisations also wrote as collective authors to the press (#RhodesMustFall, 2015). Second, the process of subjectivation became legible in the ways in which the #MustFall movements routinely constituted themselves either outside of, or as a kind of Derridean ‘dangerous supplement’ to, the official structures of student governance and participation in the universities. In the process, they rejected the categories on offer in the extant distribution of the sensible. Third, and more controversially, the tactics of widespread occupation and lecture disruption turned on a rejection of the conventional hierarchical role of the student as mostly passive, mostly silent recipient of knowledge in the lecture space. Finally, the very identification of a student movement with, and as, a Twitter hashtag signified and testified to subjectivation’s capacity for enunciation not previously identifiable within an extant field of experience – the movements deliberately avoided identities that were already available within the student governance structures in the university.

That this process of subjectivation has been, to a great extent, undergirded by a strong measure of the need to verify one’s equality as a speaking being, to be included, to be and play ‘a part’, as Rancière would put it, cannot be denied. Many commentators (most recently Habib (2016)) have made the point that the protests have been marked throughout by a certain fixation on spectacle. But not many commentators have

surmised a connection between the spectacle and the process through which a verification of equality and a consequent subjectivation occurs.

Rancière's aesthetics of politics tells us that an element of the spectacular is always already inscribed in the process through which an emancipatory subject *appears*, that is, asserts her equality against a distribution of the sensible that, at best, is blind to it and, at worst, actively disavows its existence. I do not wish to deny here the dangers of a politics of spectacle for its own sake. But as Debord wrote long ago, the spectacle is a 'social relation' between people and, as such, 'is real' (Debord, 1983). A politics of spectacle for its own sake can ultimately undermine the assertion of a presupposed equality, but, on the other hand, it would be equally unjust to dismiss as mere spectacle the assertion of a presupposed equality. As Rancière sees it, the link between democracy, politics, appearance and hence, a certain kind of spectacle, is unavoidable because it is foundational. As Msimang wrote in 2015, "We are all beginning to understand that what has been hidden must now be made public" (Msimang, 2015).

3. Monument and memorial

Santayana famously wrote: "Those who do not learn from history are doomed to repeat it." The time has perhaps come for those of us in higher education to seriously consider the question as regards the extent to which the student protests

have consisted in a kind of social diagnosis/determination that history was/is repeating itself, because ‘we’ have not learnt from it. In October 2016, Maluleke, in a piece comparing the student protests in South Africa with those elsewhere in Africa, insisted that, “we must ensure that we learn from, rather than merely repeat, history” (Maluleke, 2016).

When the demand for the removal of the Rhodes statue inaugurated student protest in early 2015, there were those who all too hastily reached for Kundera’s *The Book of Laughter and Forgetting* in the course of an even hastier argument that the students wanted to ‘erase history’. For those who paid close attention to the protests’ discourse, instead of fixating on the students’ demand to remove the Rhodes statue (which is where the ‘erasure of history’ was allegedly located), it was abundantly clear that, far from ‘erasing the past’, the students repeatedly insisted that it is precisely history – the past – that had gotten us into the mess in the first place. In other words, history has been a central feature of the #MustFall campaigns, emphasising at every turn how the presence of the past in the present has shaped it, how it persists. “We believe that apartheid-era inequalities have not been addressed or removed. In fact, decisions taken since the end of apartheid have entrenched inequalities”, wrote Davids and Waghid in the midst of the second wave of student protests for the *Mail & Guardian* in October 2016 (Davids & Waghid, 2016).

Upon closer scrutiny, it would be more accurate to say that what the students have, in fact, been contesting is a certain version of, or approach to, history — one that has been all too

prevalent in South Africa, past and present — and one that is aesthetically exemplified, once again, by the location and form (collectively, the symbolics) of the Rhodes statue. Snyman would refer to this as the ‘monumental’ version of history (Snyman, 1998, p. 312). In this regard, Snyman quotes Danto who writes, “[m]onuments make heroes and triumphs, victories and conquests [...] [w]ith monuments we honour ourselves” (Snyman, 1998, p. 317). The monumental approach (which, after all is said and done, is none other than the Hegelian version of History as the progressive self-actualisation of Spirit), adopts a reading characterised by a celebratory attitude that accounts history as a series of achievements, advances and conquests — it ‘reads’ the great events of history as signs of progress and overcoming. It privileges and highlights those moments in the past that deserve to be celebrated.

An example of the monumental version of recent South African history is encompassed in the version that accounts the transition between 1990 and 1996 as ‘a miracle’ achieved by the ‘rainbow nation’. This celebration of the past comes, in fact, at the cost of memory and remembering in that it suggests that the human cost, pain and suffering of what Gillian Rose has called the ‘disasters of modernity’ can ‘now’, ‘finally’, be forgotten/buried at the feet of the great heroes and their magnificent achievements. And it cannot be denied that there is an aesthetics that accompanies this monumental version of history, and it is, in fact, the monumental aesthetics of the statue.

Olivier discerned a conceptual link between the aesthetics of the statue-as-monument and the Rancièrian aesthetics of politics when he argued that the Rhodes statue “distributes the sensible” (Olivier, 2015) – it is not aesthetically neutral or ambiguous. Price implicitly acknowledged this when he wrote that it is, “the particular location and setting of the Rhodes statue that is the problem and it cannot be addressed by contextualising the statue or installing alternative icons. It is because the brooding presence of Cecil John Rhodes is located in pride of place, at the focal point of the campus, that it acquires the connotations of founder, hero, patron, role model, and embodiment of UCT’s heritage” (Price, 2015). In this sense, then, the Rhodes statue was a monument which exemplified the imperial gaze, portraying and celebrating colonialism and imperialism as incontrovertible and unequivocally positive historical progressions (perhaps making room for a critique of apartheid as the moment of ‘aberration’ in these ‘overall’ progressions). The connection between these monumental aesthetics of the statue and Rancière’s aesthetics of politics enables us to see that these monumental aesthetics *also* operate to produce invisibility, erasure and even oblivion.

Du Plessis, following Snyman, opposes the monumental to the memorial approach (du Plessis, 2007, pp. 61-62). He argues that, whereas the monument celebrates, the memorial commemorates. As such, it is closely connected to the rituals and processes of remembrance, mourning and melancholia (Snyman, 1998, p. 318). A great part of the student protests has consisted in constituting an aesthetics of commemoration – not

just of fallen heroes of the liberation struggle, or of the failures of rainbowism in general, but also of the ordinary fallen of the post-apartheid era – most prominently the victims of the Marikana massacre.⁶⁹ If the politics of the #MustFall campaigns can be characterised as the confrontation of a logic of the police with a logic of disagreement, then these logics can be mapped onto the distinction between the monumental and the memorial approaches to history. The police logic exudes the monumental orientation; the protest logic of disagreement (mostly) adopted (in this aspect) a memorial and commemorative posture, insisting that there was nothing to celebrate, least of all ‘transformation’ and ‘the Constitution’. Where the logic of the police insisted on the achievements and progresses that transformative constitutionalism has made possible, the logic of disagreement insisted on the incapacity of the above to deliver ‘decolonisation’.

Yet, the fundamental lesson of deconstruction should not be forgotten here, namely that there is no such thing as a ‘pure’ opposition. In the terms I have employed here, deconstructing the monument/memorial binary would suggest that there is always a certain potential ‘contamination’ of the monument by the memorial, no monument without the possibility of the

⁶⁹ As Naicker (2016) p. 58 points out, “Calling out UCT for having shares in the Lonmin Platinum mines and telling the university board that they had the blood of mineworkers on their hands is just one indication that students saw themselves not merely as part of a post-apartheid South Africa, but also increasingly as part of a post-Marikana South Africa”.

memorial, no memorial without the possibility of monument.⁷⁰ Understanding the confrontations between protesters and university authorities according to this logic, allows room for a more nuanced understanding, one that can see that, within the monumental orientation, there are and have been moments and voices of the memorial logic and orientation, just as there have undoubtedly been, within the memorial orientation of the student movements, moments and voices of the monumental logic of a rigid and uncompromising totalisation. To put it another way: the logics of disagreement and the police can undo one another. The possibility of this undoing, and of what will come undone, is precisely what is at stake in politics and will, partially at least, be examined under the heading of violence below.

Derrida's point, however, was not just that the two poles of an opposition are always in a sense enmeshed with/contaminated by one another, but also that one of the terms in an opposition is ideologically or structurally or historically dominant. Deconstruction could serve as a strategy by which it was possible to (temporarily or permanently) unseat the privileged term, disturb it, and make it tremble. In our example of the monument/memorial distinction, the contention of the students has certainly been that the monumental approach to history has been dominant and that it should be more prominently supplemented with the memorial

⁷⁰ As Snyman's discussion of the fate of the Women's Memorial outside Bloemfontein makes patently clear, the memorial can fail, can become (read as) a monument. See Snyman (1998, pp. 320-324).

approach. However, if, as one of the student leaders asserted in September 2016, “collective action is needed to deconstruct our many societal ills” (City Press, 2016), then the Derridean lesson must here be taken to its logical conclusion, namely that just as the monument can, and must, at times give way to the memorial, the opposite is also the case: the memorial can always become yet another totalising and oppressive monumentalisation.⁷¹

⁷¹ Derrida explicitly linked this task of deconstruction to the university when he wrote of “the Humanities capable of taking on the tasks of deconstruction, beginning with the deconstruction of their own history and their own axioms” (Derrida, 2002).

4. Violence, the narcissistic subject and the politics of enmity

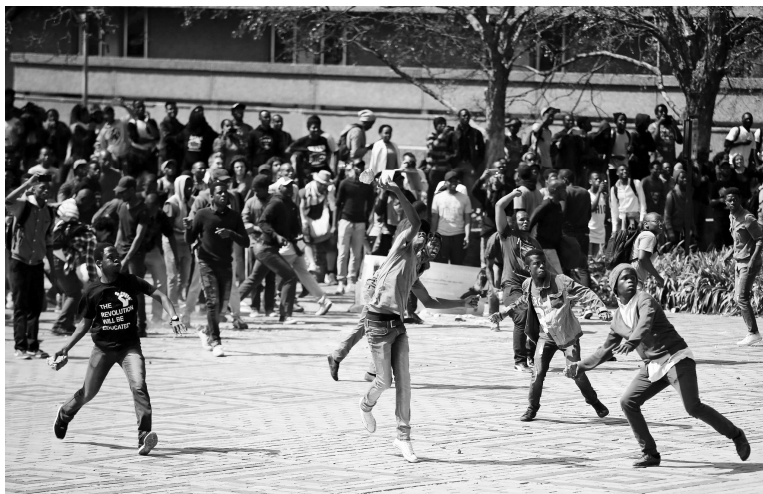


Figure 3: Violence during student protests in September 2016.⁷²

When student protest again intensified after Minister Nzimande's fee announcement in September 2016, this coincided with the fifteenth anniversary of the event that has had a decisive impact on global politics ever since: 9/11. Three years after 9/11, in 2004, Butler published *Precarious life: the powers of mourning and violence*. In 2002, Žižek had published *Welcome to the desert of the Real* in which he declared that 9/11 introduced America to 'the desert of the Real' in the sense that, as a 'defining catastrophe', it represented the culmination

⁷² Source: https://www.nytimes.com/2016/09/23/world/africa/fees-must-fall-anatomy-of-the-student-protests-in-south-africa.html?_r=0, Siphwe Sibeko/Reuters, Students at Wits University

of the twentieth century's obsession with "the direct experience of the Real as opposed to everyday social reality – the Real in its extreme violence as the price to be paid for peeling off the deceptive layers of reality" (Žižek, 2002, pp. 5-6). In this context, Žižek referred to how Jünger, in the trenches of World War I, celebrated face-to-face combat as, "the authentic intersubjective encounter" (Žižek, 2002, p. 6). Žižek's overarching point is that our idea of the experience of authenticity/the Real had, in the twentieth century, become intertwined with the "act of violent transgression" (Žižek, 2002, p. 6).

Butler's book similarly foregrounds the question of violence, but her starting point is a question that has become a pressing issue in public discourse in South Africa over the last year; namely, whether the experience of loss has to lead straightaway to violence and retribution. "What, politically, might be made of grief besides a cry for war", Butler asks (Butler, 2006, p. xii).

If anybody thought that Mandela's rainbow nation had overcome the violence of apartheid, 2015 and 2016 presented incontrovertible proof that, (now) twenty years after the Truth and Reconciliation Commission, we have barely begun closing the book on the past – the structural violence of apartheid remains, along with the losses that it exacted, unacceptably high levels of intersubjective violence continue to plague the post-apartheid community. And these are all inextricably entangled. As De Vos has written, "violence is deeply embedded in our society" (De Vos, 2015). Against this

backdrop, read with the history of student protest during the twentieth century, both elsewhere in Africa and indeed, in the world, the student protests of 2015 and 2016 were always going to be intimately connected – if not immediately with the fact of violence, then inevitably with the question of violence. I want to argue here that the proximity of the question of violence to the politics of presupposed equality renders it precarious in a number of ways.

One of the first ways in which the connection between the politics of presupposed equality and violence played out, was through the trope of Black pain. #RhodesMustFall declared that it was “an alliance predicated on the centrality of black pain” (#RhodesMustFall, 2015), which is defined with direct reference to the violence of apartheid and the violence of whiteness in general.⁷³ “There is no vocabulary to explain black pain”, wrote Nhlapo in the midst of the “F*** white people” controversy (Nhlapo, 2015). It was in this context that student leaders declared that “[intersubjective] violence is a perfect reaction” (Nhlapo, 2015) to generations of systemic violence, or as February put it, “the torching of buildings and buses and the burning of artwork [are] justified and accepted as a response to exclusion or so-called ‘black pain’” (February, 2016). The primary intellectual inspiration for the call to violence was undoubtedly Chapter 1 of Fanon’s *The Wretched of the Earth*, in which violence is argued to be indispensable in the process of decolonisation (Gibson, 2016) (Manzini, 2016) (Webb, 2016).

⁷³ See definition of ‘black pain’ in Appendix 2: Student protest glossary of terms in Booysen (2016, p. 328).

This version of the politics of pain proclaimed that the burning of a few lecture theatres, residences and a library is nothing compared to the structural, objective violence of apartheid, “white monopoly capital” and the corrupt post-apartheid state.⁷⁴ The response seemed to be a postcolonial modification of Horkheimer’s famous statement that those who do not want to talk critically about capitalism – which students repeatedly link to the spoils of apartheid and in that sense its postcolonial continuation - should also keep quiet about fascism.

Butler, however, argues precisely in the hope of thinking through what might be required to interrupt this seemingly endless cycle of wrongs and counter-wrongs, violations and retaliations. It is in this respect that she considers it crucial to approach the possibility of a non-violent ethics by attending to the “frame for understanding violence” (Butler, 2006, p. 4). Her starting point here is the proliferation of exclusive first-person narratives after 9/11. She writes that this narrative form emerges to, “compensate for the enormous narcissistic wound” that opens up after the public appearance of physical vulnerability; “[w]e have to shore up the first-person point of view, and preclude from the telling accounts that might involve a decentering of the narrative ‘I’” (Butler, 2006, pp. 6-7). In a different context, Žižek has referred to how “the attitude of narcissistic subjectivity that experiences itself as vulnerable,

⁷⁴ “The demonstrations are pitting the first university-going members of the country’s ‘born-free’ generation, those born after 1994, the year the ANC gained power, against a system they see as unequal and failing to give poorer black South Africans access to education” (Financial Times).

constantly exposed to a multitude of potential ‘harassments’” (Žižek, 2008, p. 92), has become the socially mandatory subjectivity of the post-industrial society (Žižek, 2000). Butler is not saying that there are no stories worth telling from the point of view of the I. And Žižek is not saying that narcissistic subjectivity is the only contemporary subjectivity that remains, only that it is the subjectivity most likely to be dominant in our postmodern world. The problematic here is how the I narrative can be, is, and has been, used to skirt the question of personal and collective responsibility, not necessarily for the source or cause of the loss, but rather in coming to terms with loss in a way that does not (re)create the conditions for the reproduction of violent history.

Ultimately, Butler makes these remarks with a view to underscoring that the atomism of the sovereign I has always been hopelessly unrealistic, especially now that we are living, more than ever before, in a global, interconnected reality (a fact that is no less applicable to the contemporary postcolony). More than ever, our lives are “profoundly implicated in the lives of others” (Butler, 2006, p. 7), yet it is as if the reality of this fact in a world as populated as ours is too traumatic to rise to the full level of our consciousness. Instead, the profound implication of our lives in those of others is derealised. One of the ways in which this derealisation (which is also, in the post-Marxist versions of social ontology such as that of Jean-Luc Nancy, a dehumanisation), takes form is through coding the difference of the Other (yet again) as a threat against which any number and manner of defensive formations designed to ward

off the Other will do. And this is the case on both sides of the political divide (Right and Left) and in all three orders or 'modes' of violence that Žižek has discerned – objective (systemic), (inter-)subjective and symbolic (epistemic, linguistic) (Žižek, 2008, p. 10). The result is what Mbembe has referred to as, "this astonishing age of solipsism and narcissism" (Mbembe, 2015).

For all its emphasis on the collective, on collectivity and on intervening to prevent history from repeating itself in relation to the collective South African subject, the student movement has, at times, appeared to be captured by a deeply narcissistic subjectivity: from the emergence of highly charismatic leaders, to the fixation on personal suffering; from a rigid construction of the markers of 'pure' Black identity, to the patriarchy and chauvinism that beset fallism (Kim, 2016). And that there is a link between narcissistic subjectivity and a propensity for violence is well established. We have it, for instance, from Lacan, that narcissism co-occurs with what he calls 'aggressivity' (Lacan, 2001, p. 9-32). The political correlation of this 'personal' disposition is the politics of enmity, a form of political interaction according to which the difference of the Other turns her into an enemy to be obliterated, whereas the similarity of another is the condition of her being a friend to be supported and cared for. What we have here is none other than a Schmittian account of the political and of politics as the confrontation between enemy and friend. The violence that accompanied the student protests over the last few years thus

cannot be justified in the name of, or as part and parcel of, the assertion of a politics of presupposed equality

There is no time to go into it in detail here, but it must be said that the politics of enmity correlates with what Rancière has called a ‘hatred of democracy’, and thus threatens the politics of presupposed equality, and as such, lies at the root of fascism.⁷⁵ It could even be said, as May argues, that the threat or the enactment of violence is always antithetical to the politics of presupposed equality for the simple reason that the relation of intersubjective violence turns on the creation or recreation of an hierarchical relation – an *inequality* – because the one who commits a violence against the Other inevitably *subjects* that Other to the means of violence. As May (2010, p. 38) puts it, “The introduction of [...] violent resistance generally, has a tendency to militate against the presupposition of equality. Weapons tend to create hierarchies.”

We can now understand that the problem of this form of politics is not simply that it engenders the polarities that give rise to political violence. It engenders these polarities because it strikes at the very basis of the political relation: plurality as an *equality in difference* (Arendt, 1998, pp. 7-8). I don’t want to be misunderstood in this respect. I am certainly not arguing that current configurations of power in the postcolony are simply ‘different’ and that for this reason the violence they engender (systemic, subjective, symbolic), should be uncritically and complacently tolerated. Power relations and the hierarchies

⁷⁵ For a polemic on the fascist tendencies of the student movements see Kruger (2016).

they generate are fundamental in politics, and the politics of presupposed equality that I have elaborated here always arises at that moment when a current configuration of Power and hierarchy is called into question, made to tremble, and is even undone or unravels as a result.

But here is the rub: narcissistic identification's proximity to violence renders a politics of presupposed equality as, at best, precarious and, at worst, objectively impossible, because it strikes at the equality-in-difference on which plurality is predicated as the *conditio sine qua non* and the *conditio per quam* of all political life (Arendt, 1998, p. 7). The politics of enmity delivers words that are empty and deeds that are brutal – what we end up with is what Mbembe calls the replacement of one form of damaged life with another (Mbembe, 2015). Even if it is true, as Jameson argues, that violence is the external sign of a successful disturbance of the existing configuration of power relations, this does not – against the backdrop of the twentieth century – absolve us of the responsibility to point to the historical tendency of “violence as something which cannot be mastered/instrumentalised by any political agent, which threatens to engulf this agent itself into a self-destructive vicious cycle” (Žižek, 2005).

This is, ultimately, Butler's argument about precarity: our ontological interconnection implies a fundamental vulnerability of every one to every other one. Violence is always an exploitation of this basic vulnerability (Butler, 2006, p. 27). Taking stock of the place of violence in our societies presupposes that we are interested in pursuing a non-violent,

or, at the very least, a less violent resolution. Such a presupposition cannot, however, be taken for granted as a starting point for negotiation in a public sphere where the normalisation, justification and even glorification of violence is at concert pitch (Nicolson, 2016) (Manjra, 2016). So, the first thing to do if we are interested in breaking cycles of violent repetition would be to recognise again how violent, and how used to violence, we have become, how ‘deeply’ it is ‘embedded’ in our society – and again, violence in both its subjective, symbolic and objective/structural appearance.

Further, this recognition of violence hinges on what Butler calls being “awake to what is precarious in another life or, rather, the precariousness of life itself” (Butler, 2006, p. 134). Language in its manifestation as discourse is critical here, since it is in, and through, language that difference is communicated and the Other’s vulnerability communicated to us. Of course, it is not the case that language is over there and violence over here in the sense of a discrete separation – often enough language itself is used and experienced as violence (this is what Žižek terms symbolic violence). But the question of a non-violent ethics turns on the possibility of language as a mediator, as a mechanism through which the resort to instrumental inter-subjective violence can be interrupted. As Arendt wrote in her meditation on violence in the aftermath of the student protest movements of the late sixties and early seventies in America and Europe, “The practice of violence, like all action, changes the world, but the most probable change is to a more violent world” (Arendt, 1970, p. 80). This, I would argue, is the

realisation that (still) needs to make itself felt in the student movements where the practice of violence has at times taken the form of the aggressive trait that Lacan (2006, p. 153) called a “narcissistic suicidal aggression” – a form of striking at the subject’s own being by striking at the Other. I would situate the various form of arson, burning, petrol bombing and other destructions of university property as well as the assault on the UCT Vice-Chancellor in this category. It is the kind of practice of violence that caused philosopher, Achille Mbembe, to controversially compare the student protest conduct with the tactics of Boko Haram (Kamaldien, 2016).

Borrowing from Levinas, Butler argues that my encounter with the Face of the Other produces two contradictory demands at the same time: the temptation to kill, on the one hand and the call to peace, on the other. Ethics resides in a constant struggle between these two demands. “There is fear for one’s own survival, and there is anxiety about hurting the Other, and these two impulses are at war with each other in order *not* to be at war, and this seems to be the point” (Butler, 2006, pp. 136-137). Non-violence, then, doesn’t come from a peaceful place as such, rather it comes from “a constant tension between the fear of undergoing violence and the fear of inflicting violence” (Butler, 2006, p. 137). “The face of the Other calls me out of narcissism towards something more important” (Butler, 2006, p. 138). That “something more important” is what Levinas calls the situation of discourse, the possibility of speaking, recognition, humanisation, realisation,

negotiation and meaningful engagement invested in radical outcomes.⁷⁶

None of what I've written above should be interpreted as a silent condonation of police brutality or the excessive use of force by private security, nor as an attempt to downplay the role of police in protest-related violence. As Arendt writes, "the student movement has been seriously radicalized wherever police and police brutality intervened in essentially nonviolent demonstrations" (Arendt, 1970, p. 18). These are unjust and unjustifiable exploitations of the precarity of the student bodies that place themselves on the line and should be condemned without exception, while accepting that there is a major difference between the mere presence of a democratic police force on a campus in order to keep the peace and the occurrence of police brutality. Police brutality present the most serious external threat to the politics of presupposed equality and greatly contribute to its precarity. One must, in the course of condemning police brutality, recognise that there is a difference between the use of excessive state force against peacefully protesting students and the use of lawful minimum force to prevent the destruction of property, personal injury or death – the first marks the point when the Benjaminian distinction between legitimate and illegitimate violence collapses, whereas the latter relies on the still intact operation of that distinction (however problematic it may be for other reasons that cannot be elaborated here). As De Vos has

⁷⁶ The great strength of Ray's *Free Fall* is the 'model of social engagement' that it advances (Ray, 2016, p. xxi, pp. 389-406).

repeatedly pointed out, the use of force by police is carefully regulated, and if not exercised in accordance with the procedures laid out in various statutory instruments and orders, is unlawful (de Vos, 2015).

5. Conclusion

Whatever critique one is inclined to hurl at the imperfect transition that was 27 April 1994 in South Africa, one cannot deny that at that moment we collectively chose to resist the culture of violence with a commitment to bringing into being a culture of discourse (what I would call a politics of the signifier). The South African Constitution is both a product of the situation of discourse at the same time as it inaugurates and envisages the conditions for sustaining the culture of discourse. That immense, unnecessary, illegitimate structural, symbolic and subjective violence persists, goes without saying. One does not achieve the shift from a culture of violence to a culture of discourse in the blink of an eye.

Žižek, with reference to Lacan, has argued that the student slogan of 1968, that “structures do not walk the streets!” was, in a sense, wrong (Žižek, 2008). Structures *do* walk the streets in the sense that they are populated by human subjects who can always be brought back to the situation of discourse. And this means that structural violence *can* be apprehended in ways other than subjective violence. We need to find more creative and productive ways of bringing the situation of discourse into

being in South Africa. The starting point of the situation of discourse must be that the explosive events that we have witnessed on our campuses during 2015 and 2016 are ultimately the result of a structural imbalance that can no longer be sustained. If that can be the agreed point of departure for the inauguration of the situation of discourse, it may be possible to create and produce the non-violent democratic politics of presupposed equality that are so desperately needed to improve our situation in higher education in South Africa. One thing is certain: endless oscillations of violence and counter-violence, of the replacement of one police logic with another, will not achieve such an improvement / transformation / decolonisation. It is in fact bound to make our situation worse.

What the students' politics of presupposed equality have ultimately signified is that there are too many conditions attached to the university, too many requirements for inclusion in the hallowed halls of learning, too many obstacles to be overcome in order to access, and be successful in, higher education. From this point of view, the students have, in their own way, gestured at what Derrida calls, "the university without conditions": "the university without conditions does not, *in fact*, exist, as we know only too well. Nevertheless, in principle and in conformity with its declared vocation, its professed essence, it should remain an ultimate place of critical resistance – and more than critical – to all the powers of dogmatic and unjust appropriation" (Derrida, 2002, pp. 202, 204). The politics of presupposed equality of the student

movements of 2015 and 2016 have opened up the space for this 'critical resistance', but it has been from the outset a precarious space for the reasons that I have elaborated here. Internal and external, several dangers have and will no doubt continue to beset the politics of presupposed equality. But we have the students to thank for the empty plinth which resembles a blank slate. What will be written on that blank slate is the responsibility of all of us who are concerned about tomorrow and the future in general, the future as such. Only politics as the non-violent interaction between parties who are in the situation of discourse can negotiate a future that does not reproduce the past. Violence, it is certain, will not produce such a future. The process of the memorialisation of the monument is intricate to the negotiation of such a future and thus will, and will have to, continue until such time as the fundamental injustices of the present distribution of the sensible have themselves become a thing of the past.

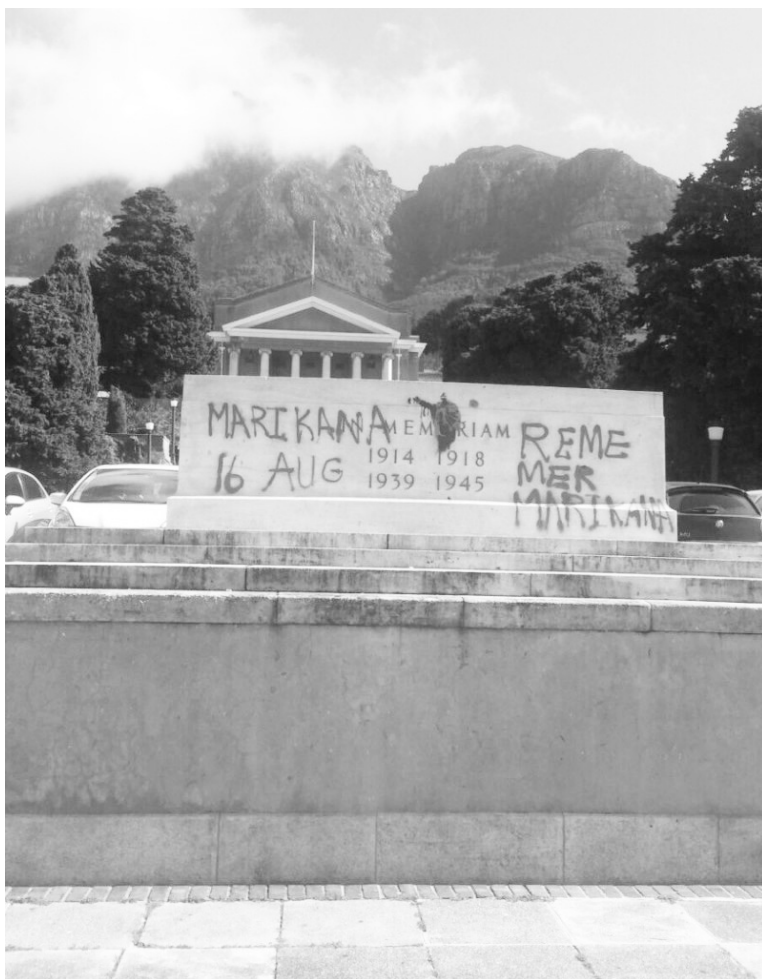


Figure 4: Plinth, UCT Upper Campus⁷⁷

⁷⁷ Photo: *The Daily Vox*, <https://www.thedailyvox.co.za/marikana-graffiti-stirs-up-debate-at-uct/>, accessed 11.02.2017.

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‘Academic Freedom, Affirmation and Violence’: A dialogue with Adam Habib.

John Higgins (JH)

Adam Habib (AH)

JH: Adam, you are well known as an astute commentator on politics in South Africa, and are often called on for your analyses by public media.⁷⁸ Your recent book, *South Africa’s Suspended Revolution* was hailed as “the most important book on South Africa’s politics to be published in a decade”, while writing with Kristina Bentley and Sean Morrow, you made an important contribution to the Council on Higher Education’s survey of the hotly-contested debates around differing ideas of academic freedom in South Africa.⁷⁹ All of this, together with your long personal history as an activist, and your current position as Vice-Chancellor of the University of the Witwatersrand, makes you seem particularly well-placed to

⁷⁸ The dialogue took place in December 2015, and was transcribed and edited by Higgins.

⁷⁹ See Habib (2013) (back cover blurb; Dahl (2013, p.73) describes the book as a “must-read” for “anyone who considers South Africa’s problems as important and in dire need of action”), and Bentley, Habib & Morrow (2006). In addition, see the concluding CHE Task Team Report CHE 2008, and, for a critical engagement with the CHE process and report, see du Toit (2013).

comment on the current situation of academic freedom in South Africa. Let's begin with your sense of the implications for academic freedom of two things: the revised bill for the Amendment of the Higher Education Act, and the past year or so intense student protest.⁸⁰ What is your sense of the impact of these on academic freedom today?

AH: As you well know, academic freedom is usually discussed in terms of the threats posed to it by the state, but what you are asking (or at least intimating) is there a sense of populist activism in the students that imperils the university purpose. Now I think that is an interesting take on the issue. With regard to the Amendment Bill, I hold a somewhat controversial position, in that I am less worried about it than I am about other things, though there are concerns. In the larger scheme of things, I think the Amendment Bill is a far smaller worry, and there are currently greater threats to academic freedom.

But let me begin by saying three things. Part of my views are influenced by my work for the Council on Higher Education Task Team; but I am also influenced by the recent protests, where the two things that struck me about the protest movement are not the ones most people will imagine.

⁸⁰ For a survey of some of the immediate critical responses to the Higher Education and Training Laws Amendment Act of 2012, see Higgins (2013, pp. 3-6). For some first accounts and analyses of the student protests, see Booysen (2016) and Nyamnjoh (2016).

First, I have to say that the Friday night that I sat in the Concourse, I wasn't actually forced to sit.⁸¹ I know that at the University of Cape Town, the students forced the Deputy Vice-Chancellors to kneel down and so on, but I sat down on my own with the students, and we were talking. And as the day evolved in the evening, a set of theatrics emerged that created the impression that there was a hostage situation, when in fact there wasn't. During the day, there was no hostage situation. So it's interesting how something evolved into something else, something it wasn't originally.

The second point is from an academic freedom point of view. I do think there is a serious question raised by two groups of people in the protests that I am very struck by. The first group is the students themselves, and the second, a particular grouping of scholars aligned with the students. I think that these two groups have, under the pretext of claiming the protection of academic freedom, have themselves become complicit in violating the freedom of others. And I worry about that.

What I mean is that there was a group of academics who, on principles of academic freedom and the right to protest, were

⁸¹ For a useful account of the events of Friday, October 16, 2015, see "Wits Protest: Habib forced to hear student demands" (Nkosi, 2015). "To loud cheers from students, student leader Mcebo Freedom Dlamini of the ANC Youth League told the crowd Habib was not being held against his will, but 'we're bonding with him as our father, he's our father ... It must be clear to people that no one is being held hostage here". The issue of force is legally significant as South African common law defines the serious crime of kidnapping as "unlawfully and intentionally depriving a person of his or her freedom of movement".

there to defend the students. But, in the process, when the students violated the rights of others, they looked the other way. And, more interesting still is the fact that when violence happened, or when the threat of violence emerged, this same group were effectively complacent about it. Some of the students and the staff held the view that violence may be necessary in the moment, and is legitimate given the progressivism of their cause.

So here is the interesting thing: freedom was used as a right to engage in protest, and to protect what you see as your allies in the protest. But freedom was not regarded as legitimate for people who you thought were not progressive, or were the people in authority. Freedom became a tradable commodity. For us, it is legitimate; but not for anybody else. I really worry about the implications of this stance. And what I was quite struck by was that this stance really manifested itself among some scholars. It manifested itself among a group of scholars who are left-leaning and left-wing, and believe that their cause...

JH: ...was just...

AH: ... and that it was a moment of revolution. This itself poses a number of interesting questions.

JH: Indeed. What you get here might perhaps be described as a shift from engagement or commitment to one of entitlement: the sense that your own motives are so pure that you cannot be questioned about what you actually do because your cause is just and your heart is pure.

AH: That’s right.

JH: But once that happens, the danger is that you are engaged in monologue – perhaps even amplified monologue – but not in dialogue, or not dialogue in any meaningful sense. For, if you or what you do cannot be questioned or interrogated, the grounds for meaningful dialogue around disputed issues have disappeared.

AH: That’s right...so I ask the question, “If you really believe in the academic freedom, is it legitimate for you to claim it when a young student goes and accuses the manager of a unit, and says ‘You are a white bitch, and I will kill you!’” Is it right to defend that as an act protected by academic freedom, even when it is a clear violation of the rights of the other, and you justify this because (in your view) the unit manager is conservative politically. Now whether that judgement is correct or not is actually immaterial. Because suddenly you are saying some rights are available to some people, but not to others, and whether they are or not depends on whether you like or approve of their ideology...

JH: Yes, absolutely. And I wonder if that short-circuiting of dialogue isn’t in some way connected to the issue of the pervasive virtuality of the social media through which so much of this protest action has been communicated. As Raymond Williams noted long ago, means of communication are always,

at some level, and at the same time, means of production, and including in this, the production of subjectivity.⁸²

For sure, social media are powerful tools for bringing people together, and have an extraordinary capacity to bring people together for demonstrations and so on. But isn't there a way in which the virtuality of address and exchange somehow removes what we might call embodied civility from communication? This is the civility that accompanies the often still difficult recognition of the fact that you are addressing someone different from yourself, who, for sure, may be there to listen to your complaint and acknowledge the perspective it comes from, but also has a right to reply or respond. Somehow the speed and reach of the communicative form may lose the depth that comes through an attempt at recognition of the closeness of the other, and the nature of the human or ethical relation that comes with that. In addition, there are issues of analysis as opposed to sloganeering here. So I wanted to ask you about the mutability of the protests this year, and the significance of the different interpellations activated by the RMF versus the FMF slogans....⁸³

⁸² See Williams (1980), while for a précis of Williams's attention to the constitutive relations between forms of communication and forms of subjectivity, see Higgins (1999). Manuel Castells is perhaps foremost amongst contemporary social theorists for his reinvigoration of these concerns around social media and the network. See especially his three-volume study *The Information Age: Economy Society and Culture* (Castells, 2000a, 2000b, 2000c); the more recent study, *Communication Power* (Castells, 2009); and, with particular relevance to the student protests here, his *Networks of Outrage and Hope* (Castells, 2012).

⁸³ #Rhodesmustfall; #Feesmustfall

AH: And there is a third danger in what you suggest – social media has breadth, but it doesn’t have depth. It doesn’t allow for in-depth deliberation. And there is also... Well, I am stunned at how many people will say on social media things they would never say if they were out and about. Foul language, extreme views, racist views, homophobic views. Some of it is just theatrics, to be sure. But what struck me is how much of this there is.

I began to do Twitter when I took the job as Vice-Chancellor. It’s very powerful tool. It enables me to be in touch with 25,000 people of whom 9 to 12,000 are students, and I can find out things happening on the ground the moment they happen. But, over the course of the past three months of protest, I have withdrawn from Twitter. I found that as I tried to engage with people through it, the communication became so extreme that it just wasn’t worth it anymore, and so I completely withdrew.

JH: Can you give a little more detail here, for the record?

AH: Let me explain.

In September, I suspended some students from the university. In the Twitter response, the students went on about how I had suspended them for their political views. I responded by saying it was because you engaged in violence that you were suspended. After that, something like a Twitter War broke out! Suddenly people like Julius Malema and Floyd Shivambu were involved, with Malema writing “Fuck you!” Others said; “I’ll kill you!” And, at that point, I just withdrew from Twitter. It had reached a point where this was very crazy stuff! The things

people say on it bring to the fore some of the most vile thoughts, just whatever comes off the top of your head...

JH: But isn't that precisely the nature and the danger of virtual communication? It's something you can see at work even in departmental emails; they suffer from this same thing! There is no one physically present with you as you write or type, and the form lacks the substance and oversight of formal written communication. In it, you are somehow not fully engaged as a social subject. In person or in formal writing (which is always subject to revision), there is quite a lot of the polite censorship that we call civility: something that enables or engages the necessary or even basic minimum of respect for the other in a social setting. But when you remove that, then powerful elements of fantasy, of narcissism, even of omnipotence can come through – It's a bit like road-rage in written or at least texted form...

AH: That's right.

JH: Indeed, you might say that virtual communication may be closer to the irresponsibility of the dream state... but surely the real you is to be found in real social life, communication and activity – the danger of social media is that it appears to have removed what Freud referred to as the censorship of the preconscious... or left "His Majesty, the Baby!" in control...⁸⁴

⁸⁴ In *On Narcissism*, Freud writes "The child shall have it better than his parents; he shall not be subject to the necessities that we have recognized as prevailing in life. Sickness, death, renunciation of enjoyment, and restrictions on his own will shall not be valid for the child: the laws of nature, like those of society, shall come to a halt before him; he

AH: Something else also struck me. The other thing students are quite keen on and that I notice and worry about. Students repeatedly say, “We don’t want leaders”, or, “there are no leaders of our movement and we want everything decided in the...”

JH: ... in the moment...

AH: Yes, in the moment and in the collective. So that the Assembly of the moment decides and they argue that the Assembly is more democratic. But what I observed is just the opposite. The Assembly is profoundly undemocratic. Because what it does is that it allows the amplified voice, the louder voice and the potentially more violent voice not only to be heard, but to dominate. I’ve seen so many times people being silenced for views that some others don’t like in the collective. And that is profoundly ironic.

JH: Assemblies, or the idea of them, has a long history, perhaps as long as the history of human communities themselves, and certainly as long as there has been any discussion of democracy.⁸⁵ And a part of this has always been the discussion around how to maximize the possibility of deliberation – democracy as dialogue – rather than grandstanding: demagoguery as opposed to democracy.

shall really be the centre and heart of creation, *His Majesty the Baby*, as we once thought ourselves to be” (Freud, 1964, p.91).

⁸⁵ For a useful survey of the historical picture, see Held (1987), while for a spirited intervention and historicisation of currently received and complacent ideas of democracy, see Dunn (2014).

I had some direct experience of some of the tensions involved around this at the conference on curriculum held at Rhodes back in April 2015, right at the beginning of the protests.⁸⁶ What was striking here was the ways in which there was a real tension – or rather eclipse – of the academic conference, and its conventions of polite but rigorous disagreement by an occasion for consciousness-building, in which everyone benefits from seeing just how what they thought was a private affront was in fact common, so common that it is best understood as systematic.

Great strengths come from this, as the growth of the international feminist movement has shown; but there are also weaknesses in this mode, and notably around the ways in which the celebration and bringing into being of a powerful collective voice can cover over or even repress significant differences in experience, understanding and analysis. At Rhodes, and perhaps in the student protests in general, I began to fear that there was a way in which the urgency and enthusiasm of consciousness-raising eclipsed the opportunities for analysis, and a set of somewhat hollow received ideas and phrases began to dominate and get set in place.

And you can see all of this at work in the semiotic power of the # slogan. For is #FMF really about fees; or does it just cover over all the real problems besetting higher education in South Africa? Does the focus on fees exclude some of the real issues?

⁸⁶ (Re) *Making the South African University: Curriculum Development and the Problem of Place*, 17-18 April 2015, Rhodes University.

At Grahamstown, I put it to the students that the focus on whiteness – while useful enough in a country where most people cannot grasp the reality of their own privilege, and so often mistake that prior privilege as something fully earned – may also be a distraction from some of the material things needing attention, like the funding of the whole system, of which the question of students fees are a part, but so also are issues like staffing, library provision and so on.⁸⁷ And, at the same time, too much attention to fees alone can actually prevent or inhibit the understanding of what we might call the ecology of the system as a whole: the severe strains and difficulties in the higher education system that actually need to be addressed as a series of interrelated and interlocking issues.

So, in your view, is #FMF really about fees, or is that slogan better understood as a preliminary attention-grabber for more sustained attention to what are larger systemic problems?

AH: Yes, I do think that there are much broader issues at stake. I think that there are at least three levels that we need to understand here.

First, there is the fact of a broader polarisation at work in society, and this polarisation is a product of inequality, and of massive despondency. There is this broader unhappiness, and that unhappiness is spilling over into higher education from the larger society, and it is developing into an acute form. At the same time, I think it's also the expression of a broader questioning of authority in our society, a questioning that is

⁸⁷ For some preliminary arguments in this regard, see Higgins (2015).

becoming more acute because authority and the social elites are seen to have failed in their emancipatory project.⁸⁸ And thirdly, I think it's also about the project of higher education itself, and how this project is seen to have failed.

I think there are two manifestations of this failure.

The first of these is evident in the initial *Rhodes Must Fall* movement. This movement is effectively the product of middle-class students (though some are working-class with middle-class aspirations), ones who feel alienated from the institutional environment. We can debate why they feel alienated, but they themselves really do feel that this alienation is a product of the failure of the 1994 political pact, and the failure to fully realise the promised transformation of the social order.

The idea of decolonisation is important here. Increasingly, though, I am coming to think that there are some elements of decolonisation that the students understand, and some they don't. I'm fascinated, for instance, by the conversations about decolonisation of the curriculum that are going on because every time I push people into a corner about what they mean, they really have no idea about what they want, and they just say the easiest things that come to mind. They say, let's have more black staff, let's have less neo-classical economics, and that kind of thing – all utterly simplistic stuff!

⁸⁸ As Habib observed in 2013, one of the main political challenges is to seek to condition "political elites to become more accountable and responsive to the concerns of citizens" (2013, p. 201).

But the second dimension of this failure in the higher education system is the access question, and how this comes through in the *Fees Must Fall* movement. Here the real underlying question is – “Can I get access to a quality higher education, and on what terms can I get it?” The questions of access affect both the rural population and the middle-classes for whom education is becoming more and more expensive, and who are now having the angst that many students in the USA are feeling: the sense that they are going to leave university ridden with debt, and that that debt is going to be very high in relation to what they can actually earn as graduates.

What we have seen in 2015 is these two waves of protest breaking together. I don’t think you would have had the explosion we have seen in October [2015] if there hadn’t been RMF earlier in the year. It was the interesting ways in which the two waves combined.

And now a third dimension is becoming visible: the call for the 0% fee reduction. I don’t think the students anticipated how big this was going to get. And, from there, the demands have just kept on shifting. It started out as fees; it moved on to free education; and now it has also become a call to end the out-sourcing of auxiliary staff. It’s all become part of a growing narrative.

In addition, I do believe that, in all of this, there are a whole series of political actors who are getting involved, and who are manipulating the protest movement for their own purposes. I think that the Economic Freedom Fighters are involved; I think

that the African National Congress has got involved, and say that they want to take charge of this now; and that the Democratic Alliance is involved for its own reasons, while the RMF group represent a kind of black intelligentsia.

And it all gets quite bizarre. I observed with fascination this young woman a couple of weeks ago, a Zimbabwean who is a graduate student from Wits.⁸⁹ A very articulate person, she was speaking recently at the Ruth First Memorial Lecture. She said she sees herself as a ‘coconut’, and she wouldn’t like to have white friends. That’s what she says!

So she’s just come out with a novel; and she’s launching the novel, and the places she is choosing for the launch are Cape Town (yes, she feels very offended by Cape Town, but she wants to launch it there); New York; London and then, finally, also in Johannesburg. And I thought to myself, “How interesting these choices are for a Black Consciousness person! For what you are showing is that you only get your affirmation from the very places that you find so offensive!”

And it’s exactly the same with the EFF – where do they go for affirmation and recognition? They go to the UK. They are absolutely thrilled that they get a chance to speak at Oxford and at Chatham House – and in a sense they too draw their affirmation from the very place that they say they reject.⁹⁰

⁸⁹ For commentaries on the fiery inputs and discussions at the Ruth First Memorial lecture at the University of the Witwatersrand in 2015, see McKaiser (2015) and Naidoo (2015).

⁹⁰ Malema, commander-in-chief of the new radical political party, the Economic Freedom Fighters, spoke at the prestigious Oxford Union debating society on

There’s a kind of interesting irony in this, and its one I see in many of the students. These are all different manifestations of how the race thing plays out.

JH: And next year? With the increasing mobilisation we have seen must come a sense of achievement. We protest, and we get this; so we ask for more, and then we get that too... But I want to ask you whether in all of this do you have a sense of reflection and introspection at work in the protest movement, an in-depth analysis of the situation of higher education? For there is a strange sense in that it seems at times as if no one thing in particular is wanted, so that when one thing is granted, the demand just shifts on to something else...

AH: It’s an emotional roller-coaster. For some years now I’ve been writing of a massive protest in the making in higher education. Ironically, a group of us met with the President, about ten days before the protests began. Basically, I had written to the Vice-Chancellors at the end of September, saying, “We are heading for a major challenge and it’s going to be a social disaster.” Our problem was that we had expected the social explosion to happen in January, not in October.

We had a meeting and set up a Task Team to prepare a report for the end of November on how to prepare for and meet the oncoming crisis where we needed, at Wits, a ten and a half per cent fees increase for 2016. How could that be

Wednesday 25 November and at Chatham House – home of the influential think-tank, the Royal Institute of International Affairs – on Thursday 26 November 2015. His speeches gained immediate notoriety for their attack on and characterisation of Nelson Mandela as a ‘sell-out’. For an account see Munusamy (2015).

resolved? We argued that we can't avoid a double-digit increase because of the cost-structures of higher education, and pointed out the simple fact that you, Mr President, have only been giving below inflation subsidy increases for some years now! We need to mitigate the costs, and we need to talk to you about it. That was the logic of the meeting, so in a way I can completely agree with the student demands for lowering the cost of higher education to students.

This is a legitimate demand. I don't think we can possibly address the question of inclusion and the inclusivity development proposals without addressing that demand. If higher education is to be the instrument for addressing inequality, then poor people must be able to get into the system, and poor people can't get in if they can't afford it. We need to lower the costs.

The irony is that after having written about this so much prior to the demonstrations, I never imagined that I would then have to manage the protests themselves!

Two things about the protests have troubled me. The first regards some of the tactics and strategies that the students adopted. Here, I think that what the students gradually developed was a politics of humiliation, and I think that this politics of humiliation is not simply a question of theatrics. The danger is that it infuses and spreads itself in an institutional culture, and then moves across into a societal culture. It is fed by the societal culture at the same time it reinforces it. My main point is that this politics of humiliation violates the rights

of other people in serious ways. I think it’s a very dangerous thing to just allow this to happen.

The second thing that worried me is that in all of this we weren’t talking of trade-offs, and this at the precise moment when trade-offs are the one thing you need to think through and address.

The Italian Marxist, Antonio Gramsci uses the phrase, “Change happens within the limits of the possible”.⁹¹ Now, I think the students were completely right to say that that this observation does not mean that no change can happen, that you are so constricted by the parameters of the institution and the society it’s in that you cannot even imagine change except within those parameters. But, at the same time, you can’t just adopt the complete opposite position, and say, “Any change is possible!” There has to be a balance struck between the two alternatives; we have to understand that there must be trade-offs, and we must then work out what these trade-offs are going to be. But what I found instead was that the students were not prepared to talk trade-offs. They were not prepared to ask the key question that if you fund a 0% fee increase, then

⁹¹ Indeed, this phrase might well be described as the organising motto for Habib’s vision and arguments in *South Africa’s Suspended Revolution*. Here he writes of how the political struggle for Gramsci was “not for just any type of reform, but rather for reforms that could serve as the bridge between the social realities of the present and the vision of the future... This same challenge confronts progressive South African activists today: what reforms have the potential to fully transform the social realities inherited from apartheid?” (Habib, 2013, p. 204).

who really pays for that?⁹² Or, if you fund insourcing, what really is going to be the cost of that in terms of not funding other things?

And at the same time (and this worried me a great deal) I saw a series of academics who were supportive of the students, and who were also not prepared to look at trade-offs, as if this was some magical democratic moment in which the state must simply deliver. But then the real question is, what if the state doesn't pay? Personally, I accept that the state must pay. But what are the trade-offs that we will need to make this possible? No one was even prepared to consider such a question. There was no potential for deliberation...

So, how on earth do you navigate your way through such a moment? How do you manage both to be responsive to the legitimate demand to lower the cost of higher education, but also to make sure that, in the process of doing this, you do not end up compromising the very essence of what it means to be a university by completely eroding the foundations of quality in the institution?

For me, personal experience brought all of these questions very much into focus.

When I was at the University of Durban-Westville in the late 1990s (from 1994 to 1996) there was a similar social

⁹² For a useful discussion of these and other related funding issues, see Cloete (2016), and for a magisterial summary and analysis of the funding landscape as a whole (Simkins *et al.*, 2016).

explosion.⁹³ I wasn’t leading it, but I did act as an interlocutor between students and management. The students had the feeling that this was now – post ’94 – effectively a moment of dual power, and we were going to apportion posts and take over control of the university. I said to them, “This is madness!” What happened as a result of this was a counter-reaction by the state. They closed down the university, they smashed the student movement, and what they also did is create a set of processes that after four or five years or so meant that UDW didn’t have a single professor in the humanities, except for the dean. This experience made me very mindful of the danger of unintended consequences, and how in overplaying your hand, you can effectively destroy an institution.

And my argument with students and their supporters follows on from this experience. For if you destroy the institution, or erode its very nature to the point of no return, then you are actually reinforcing the very inequality that you claim you are fighting against. Wits is one of the very few places that have 75% black students; if you destroy it, you are reinforcing inequality.

There were two things that excited me in this year’s upsurge: the legitimacy of the demand around fees, and the simple fact that what the students had managed to do was to put higher education on the national agenda in a way that we hadn’t been

⁹³ The University of Durban-Westville was opened in 1972 as a part of the apartheid provision of higher education for non-whites to cater for the ‘Indian’ population. It was merged with the University of Natal in 2004 to form the University of KwaZulu-Natal. In the mid-nineties, it was the scene of extensive conflicts.

able to do in seven years of trying! In seven days, the students opened up the state's purses in a way that had never happened before! I've seen letters – emails and so on – from the Treasury, saying "We were wrong! We need to reconsider the financing of the higher education sector". I do think none of this would have happened without the students!⁹⁴

JH: I think that is right.

AH: But ironically, at the same time, there was a significant failure to think in terms of trade-offs; there was a failure to enable real deliberation; and there was the infusion of the politics of humiliation into the whole thing. So many of the students, and more importantly, some of our staff colleagues, are proving too willing to tolerate the abuse of the rights to freedom of protest and academic freedom, and do not take seriously the threat of violence. There is a growing complacency about calls for violence, and that is something I really worry about.⁹⁵

Do I think this will continue in 2016? Yes, I'm sure it will.

⁹⁴ Habib refers here to the culmination of the first waves of protest in the massive student demonstrations outside the Union Buildings in Pretoria on October 23 (2015) as President Zuma and his advisors met with selected student representatives. At the end of the day, and contrary to the Minister of Higher Education and Training's earlier stance, Zuma announced in a televised studio address that there would be a zero per cent fee increase for 2016.

⁹⁵ The estimate of damage at universities by USAF was a billion rand. Although if you simply take 2015, then it was much lower. So far three people have been killed: one student leader, one support staff member; and one policeman. The damage to relations within and between students, management and academic staff are more difficult to quantify.

The students were vindicated this year. I think they have a sense of accomplishment. My worry about that sense of accomplishment is that they now think anything is possible. They feel empowered, and good to go for 2016 and everyone is worried about that, particularly when some of the political parties are utilising the movement to do their own things, and next year may use the universities’ registration process as a base to mobilise to march on Parliament and on the State of the Nation address, and agitate around the local elections and particularly on June 16... Some people are saying that a Marikana moment is coming to higher education...

But on the other hand, a lot of this might simply be the product of grandstanding. So if you ask me if I’m a gambling person, then I would bet that we are heading for something. There’s now such a sense of accomplishment and a kind of bravado that’s feeding all of this...

JH: Yes. It’s what I would call the power of righteous anger, self-righteous anger.

AH: That’s a lovely phrase.

JH: But maybe we can approach all of this from another angle, one that helps to throw light on a lot of what is troubling you and many other people in all of this, a point from which to grasp the root of some of the complexities and contradictions we are dealing with. What I would propose here is simply the question of citizenship, and ask where is the idea of citizenship in all of this? Is the idea of citizenship affirmed or denied in the protest movement; how is it understood and practiced?

1994 was, after all, the moment when, formally at least, all South Africans became citizens, equally, though of course in formal and not necessarily substantial terms. Or, perhaps a little more precisely, we could say that 1994 saw the beginning of a process in which all South Africans began (to borrow Williams's phrase), the long revolution from subject to citizen. 1994 saw the beginnings of a process of democratisation, or a potential process at least, rather than achieved it at one blow. What role or roles do the student protests play in this process of democratisation?

Or, perhaps another way of putting this is through the theory and vocabulary of interpellation, as it's developed from Althusser through Laclau and Mouffe and others and into the work of contemporary theorists such as Butler and Brown. (But has there been much attention to the question of interpellation here, or is that something our forms of identity politics prefers to ignore?)⁹⁶ What kind of interpellation is going on in the protest movement? What kind of democratic – or anti-democratic – subject does it call up, particularly, as you say, when aggressive forms of humiliation are used? What is involved in the decision to project the reference point of your protests into the past, and choose a historical figure such as Rhodes rather than a contemporary capitalist like Zuma or Ramaphosa?

AH: You are absolutely right. But to take another tack, and to return to questions of academic freedom. The university clearly

⁹⁶ For one considered attempt at this, see Chipkin (2007).

needs to be – for sake of another word – globally competitive, but at the same time it must be nationally responsive and these do not have to be mutually exclusive goals.

If you consider the question of local responsiveness, then you have to ask whether the academic project speaks relevantly to the society in which it is located? At the most obvious level, a part of the answer to this lies in whether universities are producing graduates that can get jobs, and in areas that the economy requires. And, at the same time, the university should be producing research that the society requires.

But this does not mean that you reject the corpus of scientific knowledge in the global academy. It’s rather that you adopt and adapt some of this knowledge, and, in so doing, by deploying it to your interests here, you can give back to the global academy because of the new insights you produce in doing this. So, for instance, I think, there are whole new sets of disciplines emerging over the past twenty years – ones that actually address the concerns of the SA economy. There has been a lot of new research that spoke directly to problems here: AIDS research; problems around local mining engineering; problems in the social sciences and medicine. I think a great deal has been happening in this regard.

But, at the same time, I do think that we have not been able to do this visibly or with the same depth across all disciplines, or in ways that are immediately obvious to people. That is, we haven’t been able to package it in a form that people recognise as responsive to, that speaks to our world, our context. Let me give you an example.

How do you rethink the teaching of mathematics? While there is this crazy kind of debate about whether there is such a thing as an African mathematics, what I think is important is the question of how you teach mathematics in this southern part of the African continent. In 2015, this may very well be different from how it was taught in the USA in the 1960s! So, we need to really think about and deliberate on the teaching of maths here; but we don't have that necessary debate, and partly, I think, the problem is exactly what you say it is: the funding of higher education.

The fact that you've got more students and less staff means that don't do deep thinking about these kinds of problems. Instead, you take exactly what was taught before – well, maybe you repackage it slightly in the simplest way possible –but then you go and teach it again. And this is partly because you have too much marking to do on the train home to rethink how you might teach!

A second problem is that even when you've achieved fantastic things with your teaching, you've still not packaged it in a way that speaks to how people perceive transformation. So, for example, in our Engineering Faculty, there's been a complete rethinking about how to teach engineering students. Partly, this has been necessitated by the high failure rates in the faculty. So one of the things the engineers are thinking of doing is creating what they call a '3+2 programme'.

What they did was go and speak to a whole range of institutions. Like the University of the Free State. They said to them, "Look, you don't have an engineering programme, but

you do have students doing a BSc. Can we work with you on your BSc programme so that when your student finishes it, they can, if they like, join our third-year engineering programme at Wits. We’ll take them in.” So that over five years, the students will get through a three-year BSc, followed by a second qualification in engineering at Wits. Great idea! But when you speak to people, they don’t see this as part of the transformation project, yet it’s fundamental to it!

Yes, this was done by engineers in a kind of technicist way, and it presents a technical way to deal with what they perceive as the problem of engineering education. And it doesn’t use any of the rhetoric of transformation, or refer to the ‘decolonisation of education’ and so on that is built into that.

So what you then have is some of the students sitting in on this conversation, being a party to it, but not being able to see this as part of what the transformation of education might mean. And this is because of the mental imagery they have for transformation in higher education, where it only means things like Black, Working-Class, and that kind of stuff... So there’s a disconnect between the imagery they have of transformation and the practicality of how it might work in practice. Of course, the easier side of this is with something like literature, where you simply include more black authors on the curriculum...⁹⁷

JH: Yes, I think it is also, as you say, a failure of rhetoric, and something akin to what Marx observed around 1848 and the

⁹⁷ For further detail on this, see “The Politics of Transforming and Decolonizing the University” (Habib, 2015)

way the vocabulary of the uprisings drew on the past rather than sought to create “the poetry of the future”.⁹⁸

AH: That’s really right. And what I think needs to happen now is for every campus and every school within the universities to start a conversation with students, staff and stakeholders, and ask how its curriculum is trying to meet the needs of South African society in the twenty-first century. And at the moment, I’m not even asking for answers, just saying that we really need to think through the questions, and to say that we need to go through a process of deliberation. If you do that, I think you can take any outcome that comes out of the process, as long as it’s thoroughly thought through.

I am fascinated by the language question. Everybody says – and I’m thinking particularly of the debates and protests going on at Stellenbosch – “We need to legitimate African languages, and the logic of that is, we need to create African languages as an academic language.” So, in response, I say, “That’s fascinating – I have no problem with it – but just remember this. It took the Japanese fifty years and billions and billions of dollars to do that for a single language. It took Sweden the same. It took the Afrikaans community here fifty years and

⁹⁸ For this, see especially the opening paragraphs of Marx’s *The Eighteenth Brumaire of Louis Napoleon*, where he writes of how the “tradition of all the dead generations weighs like a nightmare on the brain of the living. And just when they seem engaged in revolutionizing themselves and things... they anxiously conjure up the spirits of the past to their service and borrow from them names, battle cries and costumes in order to present the new scene of world history in this time-honoured disguise and this borrowed language... The social revolution of the nineteenth century cannot draw its poetry from the past, but only from the future.” (Marx, [1851] 1977, pp.300-302).

eight universities to create Afrikaans as an academic language; and even then, it hasn’t entirely succeeded. And we want to try do this for eleven national languages, in a context where the state is making no resources available!!” And that’s the first problem I have with the debate: that we are not even beginning to interrogate what is at stake within it. Nobody is asking, “Is this feasible, even in a situation in which the state was agreeing to fund such an initiative, when we are in a situation in which the state is not properly funding the existing higher education enterprise?”

But the real underlying question is this. Are you still talking about language as a coherent body of words and thoughts, at the dawn of the twenty-first century, in a South Africa where every engagement and conversation I hear from young people suggests that they are using not just one, but usually three, languages in a single conversation: Zulu, English, Afrikaans. What does this reality mean methodologically for any attempt to think through the language question in the university in 2016? And I don’t see that kind of discussion happening. It’s a false debate. We all know it’s not a real debate. But we are all too politically correct to say so, and we keep on running on the same old treadmill.

Similarly, everyone talks about the institutional culture of naming, and the argument that is coming from young black students (and particularly the RMF students) is this. “You named these buildings after white colonial heroes, now we want to name them after black heroes” – as if that kind of naming belongs at all to indigenous culture. What I find

fascinating here is that indigenous culture itself, it never names things after individuals. If you go into the deep rural areas, you will see that naming is instead part of an imaginative process of evocative description. So, actually, simply using the names of black heroes rather than white ones simply reproduces, though in a subverted form, a Western custom, one that is now racially subverted.

Now I'm not suggesting that Western is not part of who we are – of course it is. But if you really want indigenous, you have to completely re-imagine naming. But once again, that kind of thinking and analysis is missing, missing from the very movement that claims to be the authentic expression of indigeneity.

JH: Similarly, you might ask how you can use such essentially Western media – not at all value-free or without effects – such as Twitter and social media in movements which claim authenticity as a key value...

AH: And for me that is the problem, right at the heart of how these debates happen! And I don't think it's simply the failure of the students! It is a failure of, and in, the universities: How come we never created – in 20 years – these kinds of debates and discourses and thought processes –

JH: Again, this reminds me of the difficulties Marx described in the 18th *Brumaire* of the difficulties of articulating what is going on in the present, with a language cast in the figures of the past, and that also seems to run through your own thinking in *The Revolution Deferred* ... Do you think it matters much, or

at all, if much of the current debate uses a vocabulary first cast in the post-colonial moment of the 1960s, and forged in the Black Consciousness movement of the time?

AH: Well, you can certainly observe an interesting disjuncture between the living icons of Black Consciousness and some of its new adherents. Take, for instance the discussion at the University of Cape Town with Barney Pityana, when he emerged to chair the assembly.⁹⁹ This is the guy who walked with Steve Biko, who was in prison with Steve Biko, and the students say, “No, no, no, no, no: we don’t recognize you as a representative of Biko. We are the representatives of Biko.” And I see that same stance repeated across many conversations. There is then an interpretation of Biko in a way which suits your outcomes, what you want to do, and there is an interesting disjuncture between the Biko adherents: the real Biko adherents of the ‘70s who walked with Biko, and the professed adherents in 2015.

Even then, and even by Black Consciousness standards, there is a very crude understanding of race put to work. And this was visible in one of the things that happened on that Friday night at Wits, at the Concourse.

We are sitting down in the evening, and some of the Council members have joined me. And everybody is holding the line, and the students would look down and mutter amongst themselves. And then [Council member] Len Sizani stands up.

⁹⁹ This was the assembly held on 25 March 2015 to discuss transformation issues. For a critique of Pityana’s participation, see Naidoo (2015).

He is a black African, and he gets masses of applause from the students... But then he basically says what every other Council member has said, and there is a huge backlash against him! And this angry reaction is simply due to the fact of what the students had anticipated from him, because of the pigmentation of his skin, and then the disappointment at what they heard when he didn't conform to what they expected....

This fascinates me. I said to Barney Pityana, "You've spent time in prison, walked with Biko, been in prison with Biko, paid the ultimate sacrifices and then you get a 21-year old, who's never been in prison, never sacrificed anything, and he'll give you a lecture on learning to understand sacrifice, and all this without any hint of irony!" I've said to students, "You have no idea what police repression is! No idea!" I heard the VC from NMMU – Derek Swartz – say to the students, "Excuse me, I will not sit down. I will not allow you to tell me what to do. The last time I was forced to sit down was in prison, by apartheid security policemen. I will not allow you to subject me in that way. It's a different matter if I decide to sit..." And it was this interesting contestation that I think really needs to be deliberated on...

JH: There is a sentence by the writer and academic, Njabulo Ndebele, which has been echoing in my mind over the past months. It's a sentence written apropos Jacob Zuma, but perhaps also helps to characterise some of the negative elements in the student protests which we have been discussing. "[W]here there may have once been the inner pain

of self-degradation”, writes Ndebele, “there is now an inner sense of entitlement” (Ndebele 2016 p. 26).¹⁰⁰

AH: Indeed, and you see this in multiple ways all the time.

JH: Arising from this observation, I want to put something like this to you. We are all familiar with the role of economics in determining or affecting behaviour. It was a key feature in Marxist analysis, and has long ago entered the mainstream, though with very different emphases. But, in a country like South Africa, with such a history of violence and deprivation on all levels of life, we perhaps need to be more aware than we usually are that there is also always a psychic economy at work. But few people seem to be particularly keen on describing or probing or analysing this, or bringing it into play as an active dimension of political analysis, despite the fact that the politically motivating force of pain and anger is evident enough. And this is surely what is coming through in some of the powerful negative feelings now expressed around Mandela and the 1994 settlement. And this is particularly the case for those who were too young to actively participate or engage with the struggle for democracy, or live it through in any sense, and therefore see as a matter of experience the transition from the apartheid state to constitutional democracy, or the beginnings of that transition...

AH: ... There’s little real historical thinking...

¹⁰⁰ Ndebele’s essay is published in a special issue – *State of Urgency* – of the UK journal, *Arts and Humanities in Higher Education*, devoted to the student protests (Higgins & Vale (eds.), 2016).

JH: ... but do you view '94 as a huge achievement?

AH: A massive success. But look. I've had conversations with a number of students, and with some staff, about the right to violence. They have said that at this moment, violence may very well be required. And I replied, "You must be very careful about glorifying violence." I won't take the position that violence is never necessary, but I am also mindful of the fact that sometimes the violence of armed revolt may end up in outcomes that you come to regret. I gave the example of Libya and ISIS. And a number of them said, "So be it!" And I thought to myself, "Only somebody who has never experienced real violence could pronounce on it so easily!" So we are facing many interesting challenges! Going forward is not going to be easy. Particularly when at the heart of the state, there is a kind of anti-intellectualism...

JH: In a sense, many of the things we have been talking about – the importance of deliberation, the need to think historically, the importance of the conjunction of psychic and material economies – are all instances of what we might perhaps call the duty or responsibility side of academic freedom. This moves away from discussions which stress the individual's right to academic freedom, or what Mamphela Ramphele once referred to as the 'extra portion' of freedom that liberal versions of academic freedom seem to promise (Ramphele 1999). It moves towards what I think of as a more Foucauldian conception. Here, academic freedom is regarded as a practice, a practice which involves an obligation to try and think things through, to borrow the phrase, "without fear or

favour”. How do you think the current Minister of higher education, Dr Blade Nzimande, views academic freedom in higher education? Does he share the anti-intellectualism which you just spoke of?

AH: My view of him is slightly different. I think if you compare him to many of his colleagues in cabinet, you’ll see he understands the project of the university much more than they do, he grasps it an imaginative sense. But I also think that in terms of implementation, he is quite different. I think there is a sense of – I hate to use it – but let’s say a sense of Stalinist history informing this idea of implementation, so that in practice, the regulation of implementation overcomes the imaginative imperative.

I think his idea of broadening higher education outwards makes a lot of sense; and I think his idea of the Humanities is good. I don’t know of many higher education ministers who would do this kind of thing. But, on the other hand, the way he puts these into practice is horrendous.

To get back to where we started from, and the question of the Amendment Bill, and the outcries about this.¹⁰¹ If you ask me – in December 2015 – “Is our big fight, the threat to the university, what Blade is going to do in 2016 around academic freedom”, my answer is “No”. I think that actually the real threat lies in the fact that the state doesn’t have the resources, so what it gives you is some funding but not enough. At the

¹⁰¹ For a brief discussion of initial responses to the Amendment Act, see Higgins (2013, pp. 3-6).

same time, it doesn't reduce its obligations, and this means that bureaucrats like me have to start making cuts, and even though you're trying to protect the university, you're not able to. Trade-offs happen and these cut deep into the roots of the university system, and when that happens the real basis for higher education...

JH: ...disintegrates...

AH: Yes, disintegrates. And that's the real threat in 2016 for me and for going forward. So let's not get deflected by a debate on legislation when the real war is about that question. That's where my real fear lies. It's where the big battles of 2016 will lie.

I worry when students say to me, in the negotiations around the call for a 0% increase, "We agree that the state should take over, and that academic freedom is preventing transformation". I was asked to reply to this on behalf of the Vice-Chancellor's association, and I spoke about how it was in the '70s, when many people on the African continent argued the same thing. But then, in the '90s, they began to cry for the very academic freedoms they had previously distanced themselves from... I then said what we need to think about is strengthening the mechanisms of public accountability, which is different from accountability to the state.

JH: Yes, and I think there is a really interesting constitutional dimension to this, one that came under some scrutiny in Germany, where it was argued that accountability was a two-way street. Yes, the university system was accountable to the

state; but, at the same time, the state was accountable to the system in the sense that it needed to provide adequate funding to enable the realisation of the state’s demands on the system. And this is particularly important, as I have argued elsewhere, when it comes to the imperative for transformation. Here, it has to be recognised much more than it is that the state needs to be held responsible for not only growing student numbers, but for growing staff numbers, if transformation is to proceed. There is an onus on the state to provide the funding necessary for transformation to succeed in terms of the provision and development of staffing.

AH: That’s right. There needs to be a recognition of reciprocal obligations. But I also think that the real debate is the politics of it all. If you lose the students, my big fear is that we get involved in a certain kind of debate in legislation, and the students go on one side, and the government on another, and while we wanted the more rational argument to prevail, then we lose the politics of that moment. We need to understand that politics, and recast that narrative, and make it more appealing.

JH: Let’s hope this can be done.

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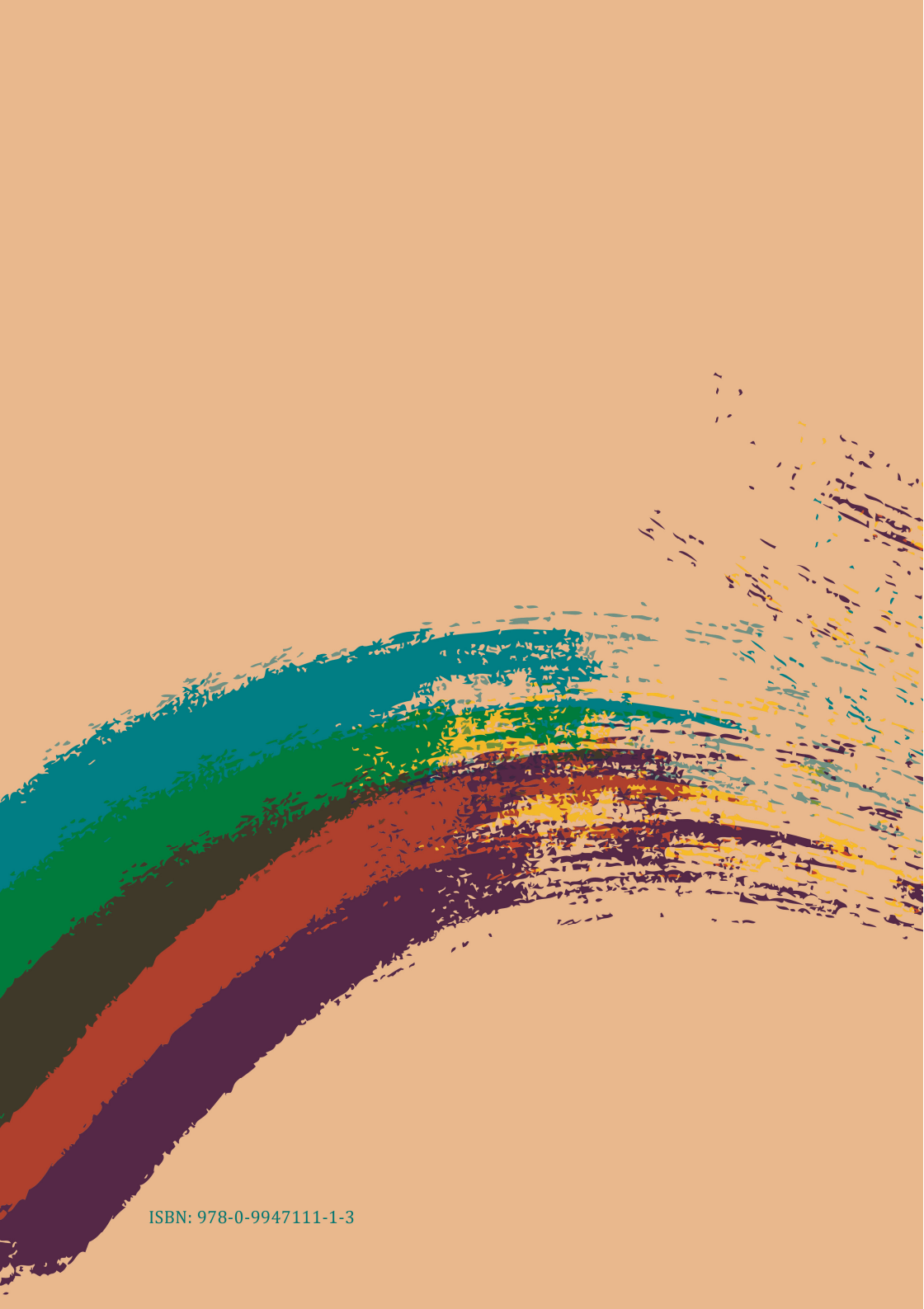
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