Law as a humanities discipline: Transformative potential and political limits[1]

In this special edition of *Acta Academica*, we called for contributions to engage in critical reflections on law as a humanities discipline against the background of US Crit Karl Klare's suggestion of transformative constitutionalism. We were interested in, for example, reflections on law's epistemological foundations, how the law intersects with historical analyses and with society. A pertinent question was: To what extent does present legal education and training give expression to the transformative ideal of a new order?

The articles included in this volume address these concerns as well as others from multiple theoretical, philosophical and political vantage points. A few authors tackle the present constitutional project as such and the prevalent understanding of human rights to show how they lack an ethical response and a political understanding. Linked to these concerns is also a warning against over-optimism about the potential of human rights and constitutional discourse in current form. Many authors underscore the limits of a narrow understanding of legal education and training and call for an education that strives to exceed the instrumental and economical. An understanding of law as a humanities discipline and for legal education to push constantly against its own limits and take up, even if failure is inevitable, the ideal of justice is called for.

Joel Modiri focuses on *The crisis in legal education* and analyses some of the recent debates on legal education in South Africa. In contrast to the arguments usually raised, he argues that the value of legal education should not be indexed by how well it serves the needs and expectations of the legal profession and judiciary, but rather how it contributes to a new jurisprudence suited to the legal, social and political transformation of South Africa. He rejects views that describe the crisis of legal education in mere instrumental and economical terms (the inability to produce efficient legal professionals) and focuses rather on the jurisprudential *crises* that lie at the heart of law and jurisprudence, namely the crisis of justice.

Isolde de Villiers, in an article titled *The lawyer as mapmaker and the spatial turn in jurisprudence*, works from the perspective that the transformative project calls for different intellectual tools and approaches to argumentation in law. She argues that the spatial turn, in law and the broader humanities, could possibly present new ways of thinking in the form of cognitive mapping and mapping loss.

1 I would like to thank the editor of the journal, Lis Lange for her initiative in conceptualising this volume as well as the editorial assistant Rene Eloff for assisting in many ways.

For Bezuidenhout and Karelse, the teaching of law is not a methodology, but rather an obligatory epistemology. They submit that legal education should go beyond mere technical training and should deliver LLB graduates and lawyers who are attentive to the betterment of society.

Emile Zitzke, in his article, reflects on what it means to teach law, specifically "law of delict", "critically" as a response to what he regards as the prevalent conservative legal culture in South African legal education. He draws on US Critical Legal Studies (CLS) and its successive theoretical progeny (Feminist Legal Theory, Critical Race Theory and Queer Theory). Klare's project of transformative constitutionalism is central to his argument.

Anri Heyns rethinks the foundations of legal culture through the notion of an 'inoperative community'. She argues for a view that, in contrast to the celebratory view of the Constitution presented to law students, takes seriously the idea of the Constitution as the outcome of a negotiated revolution or historical compromise that merely represents the balance of interests at the time of the political transition. In light of the uncritical views of, and exalted status given to the Constitution in legal education, she asks the question as to whether law students and even lawyers can contribute to transformation.

Terblanche Delport asks how do we critically engage South African constitutionalism today and address the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution) from the perspective of an ethics of liberation. He draws on Enrique Dussel's formulation of an ethics of liberation before applying it to the Constitution. His main contention is that the constitutional project in South Africa cannot address the issues of material oppression and formal exclusion brought about by colonialism and conquest. He engages critically with Klare as well as commentators applying his project, and argues for a utopian critique instead.

Ulrike Kistner investigates the possibility of a politics of human rights at the core of democratic politics. She relies on Hannah Arendt's reconstitutive critique, and Claude Lefort's analysis of political modernity, which could be seen to converge in a justification of a 'politics of human rights' and, even more specifically, of 'the political' of human rights.

In a contribution titled *These queer gardens: a South African story*, Barnard-Naudé and De Vos engage with the history of the struggle for sexual minority freedom in South Africa. In the process of writing, they reveal how they were confronted by their own histories, contradictions, literary influences and context and argue that these confrontations mirror the instability of subjectivity and the valences of a critically queer positionality in post-apartheid South Africa.

George Pavlich, in his contribution, focuses on a strand of sociology he calls 'administrative sociology' that actively defined, supported and defended the vanguard of apartheid thinking and practice. He reveals how biopolitical commitments were hidden beneath images of scientific neutrality. Pavlich surfaces this strand of sociology that remained subject to few explicit critiques and provides a brief genealogy of administrative sociology in context, focusing especially on the approach of Cronjé. He exposes several dangers in this strand of sociology whose logic is still evident.

Rene Eloff, in a smiliar vein, takes on a certain strand of philosophy that articulated a social metaphysics, which, to a greater or lesser degree, reflected the concerns of the Afrikaner nationalist movement that took shape during the first half of the twentieth century. He argues that in its more extreme manifestations this social philosophy explicitly supported and justified the politics of racial segregation and White supremacy that characterised the South African political landscape for most of the twentieth century. Eloff highlights that understanding the transformative potential and the political limits of law as a humanities discipline will require an interrogation of the relationship between philosophy and law.

Karin van Marle reflects on the relation between complicity and the legacy of South African jurisprudence and law. She tentatively considers continuances between the civil law tradition (Roman-Dutch common law) as well as present human rights and constitutional law, and raises notions on reconfiliation, frailty and complex writing as possible alternatives.

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