

AUS ALLER WELT

Klaus D. Beiter

Academic/Scientific Freedom? Or “New” Freedom (Neoliberalism)?

REBUILDING MORAL UNIVERSITIES IN THE LIGHT OF THE RIGHTS TO EDUCATION AND SCIENCE OF INTERNATIONAL LAW¹

Abstract

Universities have left the path of virtue. Scientific or academic freedom, rooted in human rights to education and science, has come under pressure in many countries, including many democracies. This is significantly a consequence of the pursuit of neoliberal higher education and research policies. This article juxtaposes these two approaches, seeking to explain the differences between the neoliberal approach and the human rights approach to universities. It is argued that rebuilding “moral” – which essentially means free – universities needs to proceed on the basis of the rights to education and science of international law, moreover, in a way that fully appreciates and reflects the significance of these rights for universities.

Universitäten sind vom Pfad der Tugend abgekommen. Die Wissenschaftsfreiheit oder akademische Freiheit, die in den Menschenrechten auf Bildung und Wissenschaft begründet ist, ist in vielen Ländern, auch vielen Demokratien, unter Druck geraten. Dies ist in erheblichem Maße Folge der Umsetzung neoliberaler Hochschul- und Forschungspolitik. Dieser Aufsatz stellt diese beiden Ansätze einander gegenüber und versucht, die Unterschiede zwischen neoliberaler und Menschenrechtsansatz im universitären Bereich herauszuarbeiten und zu erläutern. Kernthese dabei ist es, dass eine Wiederbegründung „ethisch agierender“, freier Universitäten auf der Grundlage der völkerrechtlichen Menschenrechte auf Bildung und Wissenschaft erfolgen muss, und zwar auf eine Art und Weise, welche die volle Tragweite dieser Rechte für Universitäten erkennt und widerspiegelt.

1. Introduction

Universities have undergone a paradigmatic change in the last thirty or forty years. In the age of neoliberalism, higher education and research have been commercialised,

¹ This article is based on Beiter 2023.

universities corporatised – globally, also in South Africa. Neoliberalism is antithetical to human rights. Yet, its prevalence in universities is never queried in the light of accepted human rights protected by international law (or equivalent Constitutional rights). Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 on the right to education, including higher education, seeks to safeguard opportunities for a full development of students’ personality and protects a right to (progressively) free higher education. These criteria posit, or are narrowly related to, academic freedom as a normative demand of higher education. A commercialised higher education system, that is primarily the arm of national economic policy, is one that a priori limits academic freedom. Such a system cannot foster democratic citizenship. Article 15(1)(b) of the Covenant grants every citizen the right to enjoy the benefits of scientific progress and its applications. “Publish or perish” ideology, patents and copyright, profit-seeking scholarly publishing, the abolition of self-governance and collegiality in universities, artificial underfunding of, and hypercompetition in, science, and auditing rituals – by limiting scientific freedom – are slowing down scientific progress, thereby undermining citizens’ right to science. The “global knowledge economy,” for which it is nowadays claimed higher education must prepare students, and research that produces “impact,” are neoliberal constructs that place restrictions on freedom of teaching, learning, and research. Neoliberal policies in universities are driven globally – significantly through the university ranking game – by the governments of many states of the global North and organisations such as the Organisation for Economic Co-operation and Development (OECD), violating rights to higher education and science both in the global North and the global South. This article seeks, on the one hand, to speak truth to power – to exclaim that the emperor is naked (even this basic realisation seems largely absent) – and, on the other, to outline the demands of the human rights approach. Especially in South Africa, where the decolonisation of universities is high on the agenda – neoliberal ideology epitomising colonial thinking – the human rights approach to universities needs to be installed. While the discussion generally relates to developments in the free world, the analysis often refers to the South African example (or better “non-example”).

2. The Human Rights Approach to Universities: Academic/Scientific Freedom and Rights to Education and Science

Article 13 of the ICESCR protects the right to education. Paragraph 1 sets out the aims of education. The most important aim (CESCR 1999: para. 4) is that education

– also higher education – must be directed at “the full development of the human personality.” It should be quite clear that a higher education system that – through its emphasis of “graduate employability” as the overarching higher educational goal (OECD 1979, 1998, 2008) and a concomitant demotion of the humanities (Bérubé/Ruth 2015, Donoghue 2008, Nussbaum 2015) – is essentially directed at contributing to economic growth cannot achieve the full development of the student’s personality (Beiter et al. 2016a: 680-681, Tomaševski 2000: paras. 67-68). As Theodor Adorno reminds us: “There is no right life in the wrong one” (Adorno 1951: 59). Systems shape people! Once higher education, in its self-conception, becomes a function of the market, it can, by definition, not also produce critical, socially responsible, and democratically committed citizens.

Article 13(2)(c) requires higher education to be made equally accessible to all. Access is to be guaranteed on the basis of “capacity.” The earlier Universal Declaration of Human Rights of 1948 had, in an equivalent provision, still referred to “merit” as the decisive access criterion (UDHR 1948: Art. 26(1)). Merit is, however, backward-looking. It favours existing elites (Sandel 2020). Having read Michael Sandel’s *The Tyranny of Merit*, one will appreciate the importance of the forward-looking criterion of “capacity,” which seeks to give a chance to those who, due to socio-economic disadvantage, have been unable, but, in principle, are able, to excel, to be admitted (Beiter 2006: 97). At the same time, it needs to be emphasised that a proper reading of Article 13(2)(c) indicates that *only* those with capacity should be accepted into universities. Article 13(2)(c) should function as a shield against what Julian Nida-Rümelin (2014) calls “academisation absurdity.” Interestingly, OECD states with lower levels of university graduates, and more participants in technical and vocational education and training (TVET), have lower youth unemployment rates (ibid.: 219). Nida-Rümelin explains that the massification and overburdening of universities stifles their research function (ibid.: 217-218) – as it were, it renders academic freedom in the form of freedom of research dysfunctional. Finally, Article 13(2)(c) requires the progressive introduction of free higher education. Clearly, increasing, or not taking any measures to reduce, fees constitutes a *prima facie* violation of Article 13(2)(c) (Beiter 2006: 387-388, 458, 523, 650-651). Not having in place a fair system of bursaries, for as long as fees remain a reality, likewise constitutes a *prima facie* violation (ibid.: 532-533). Fees are an obstacle to access. Moreover, according to Socrates, asking money in exchange for wisdom corrupts the relationship between teacher and student (Socrates 1994: Bk. 1, Ch. 6, para. 13). In higher education, fees are the pivot around which students have been recreated as consumers of higher education as a mere commodity.

The U.N. Committee on Economic, Social and Cultural Rights (CESCR), the independent expert body supervising implementation of the ICESCR, has, in its General Comment No. 13 on the right to education, held that Article 13, though not expressly mentioning this, protects academic freedom (CESCR 1999: para. 38). Full enjoyment of the right to higher education, as it were, depends on academic freedom (ibid.). Where students become customers of higher education, teachers technocratic dispensers of only economically useful knowledge, and market ideology defines the curriculum, higher education is depleted of “much of its purpose and substance” (Tomaševski 2000: para. 67), the full scope of students’ freedom of learning and teachers’ freedom of teaching is restricted, and the right to higher education is accordingly not guaranteed. A market-based approach to higher education is, therefore, to be contrasted with, and conflicts with, a human rights-based approach to higher education (Kotzmann 2018).

Article 15(1)(b) of the ICESCR protects the right of everyone “to enjoy the benefits of scientific progress and its applications,” also called the REBSPA or the right to science. This provision creates an obligation for states parties to ensure the existence of a functional system of science that can produce benefits for citizens. Science here always includes the social sciences and the humanities (Eide 2001: 295, UNESCO Recomm. 2017: para. 1(a)). Care must be taken not to interpret benefits in too instrumental a fashion. Benefits of science are not only technologies (e.g., medicines or vaccines), but also enhanced enlightenment, the ability *à la* Amartya Sen to make free choices in life (Sen 1999), and the capacity for democracy (CESCR 2020: paras. 6-8). Article 15(1)(b) – and this is very important – must be understood in the light of Article 15(3). This protects “the freedom indispensable for scientific research.” Hence, academic or scientific freedom is (also) a component of the right to science. *Academic* freedom, it may be noted in this regard, is an enhanced form of the broader *scientific* freedom and applies in universities only (Barendt 2010: 38, 54-55, Beiter 2019: 241-246). As seen above, academic freedom has a strong locus in the right to education (Beiter et al. 2016c). The construct of the right to science, in which academic or scientific freedom is embedded, is attractive, because it makes it very clear that this freedom is not an anachronism from a bygone era of privilege and unaccountability. It is more of a duty than a right. German Constitutional theory speaks of academic or scientific freedom as a right in favour of third parties (“*drittnütziges Grundrecht*”) (Schiedermaier 1984: 219 ff.). A crucial purpose of academic or scientific freedom is that it makes the discovery of the truth (Barendt 2010: 53-63, Dworkin 1996: 185-189), that is, scientific progress, possible, from which third parties,

citizens, can then benefit. As it were, academic or scientific freedom enables the right to science.

Article 15(1)(b) had for a long time been forgotten about. While the Covenant was already drafted in the 1950s and 60s, it was only quite recently that scholars, UNESCO, and the CESCR started focusing on this provision. The CESCR released its General Comment No. 25 on the right to science in 2020 (CESCR 2020). In an article published in 2019 in the *Israel Law Review*, this author had sought to influence the drafting of the General Comment. The author had been in contact with the member of the Committee preparing the draft Comment. He had sought to emphasise that, certainly in the university sphere, academic freedom, not science regulation, is the best guarantor of scientific progress. Hence, if one desires long-term scientific advance, one should regulate less rather than more. In science, due to the fact that science follows its “own laws” (*“Eigengesetzlichkeit der Wissenschaft”*) (*University Judgment* 1973: para. 128), overregulation tends to prevent the very progress that one may hope to achieve through regulation (Beiter 2019). A final reading of the General Comment reveals, however, that scientists’ freedom claims are referred to only rather briefly (see specifically CESCR 2020: paras. 13, 43, 46, 50), and do not permeate the substance of the document. Section 4 will say more on this.

In the article, the author had also developed a potential leitmotif for the science sector – that of “adequacy for science.” This is constructed on the basis of the German law concept of *“Wissenschaftsadäquanz,”* which notably seeks to guarantee that decisions in the sphere of science which are collective in nature, and related institutional governance arrangements, promote the best interest of science – and hence uphold academic or scientific freedom (*Hamburg Higher Education Law Case* 2010: para. 91). Further developed,

[t]he term signifies that [all] structures, arrangements and decisions in the field of science must be such as will be “in the best interest of science and scholarship” – rather than, for example, that of political, economic or social usefulness or expedience. The term connotes respect for the intrinsic requirements of science. It connotes the according of a central role to scientists themselves in organising science, appreciating that they, by reason of their training and experience, understand the needs of science “best” (Beiter 2019: 238).

To state it slightly differently, the question must rather be, what does science require to function properly? It should rather not be, which concrete questions do we wish science to solve? – because, if this is the decisive question, we are moving away from free and disinterested science towards “impact” agenda science. The impact approach (in terms of which science must be “useful”) stands in the way of groundbreaking

discovery needed to advance humanity (Flexner 1939). Groundbreaking discovery happens if conditions for science are adequate, and planning remains at a minimum (Merton/Barber 2004: 191-192). As Albert Einstein supposedly said (there is no proof of this), if we knew what it is we (as researchers) are doing, we would not call it research, would we? As for the United Kingdom, the extent to which “impact” has come to dominate the allocation of public research funding has been noted with dismay (Moriarty 2011: 72) (see, e.g., the U.K.’s Research Excellence Framework (REF)). However, “impact” also plays an ever-greater role in, for example, competitive funding disbursed by the South African National Research Foundation (NRF).

3. The Fate of Academic Freedom in the Neoliberal University of Excellence

In 2016, Beiter, Karran and Appiagyei-Atua developed a score card, using 37 human rights indicators, many based on UNESCO’s Recommendation concerning the Status of Higher-Education Teaching Personnel of 1997, to measure the strength of protection of academic freedom in the laws of European states (Beiter et al. 2016a, 2016b, Karran et al. 2017). The Recommendation contains the foundational definition of “academic freedom” in international (soft) law. While this definition includes freedom of teaching and freedom in carrying out research, it also covers other rights of academics that are particularly prone to being violated in universities today: “freedom to express freely their opinion about the institution or system in which they work,” “freedom from institutional censorship,” and “freedom to participate in professional or representative academic bodies” (UNESCO Recomm. 1997: para. 27). Beiter et al., in their 2016 analysis, looked at the protection of such (individual) academic freedom, but also at the protection of important functional safeguard mechanisms of academic freedom, namely university autonomy, self-governance, and tenure/job security. The authors ranked states according to their performance. They found the overall level of protection of academic freedom in Europe to be quite low, the average score being 53%. Countries fared particularly poorly in the categories self-governance and tenure/job security. As the authors point out elsewhere, these aspects of academic freedom typically fall prey to commercialisation in universities (Beiter et al. 2023: 268-271, 292-294, 297-298).

What one may note is that the U.K. was the second worst performer in our analysis. This is of some significance here, for the following reason. The U.K. has an unwritten constitution. This does not protect academic freedom as a fundamental right (Barendt 2010: 74-75). Academic freedom has always been a matter of practical

convention, rather than the law, in the U.K. (ibid.: 73-74). The absence of constitutional protection for academic freedom has meant that the U.K. could, over the last 30 or 40 years, implement some of the most far-reaching neoliberal reforms in Europe, and beyond, in its university sector, without this raising any constitutional concerns (Beiter et al. 2023: 301 ff., Karran et al. 2022: 570). Ironically, however, many other European countries subsequently started copying the British model naively, without ever questioning its compatibility with their own constitutions, which in most cases do protect academic or scientific freedom (Beiter et al. 2023: 301 ff.).

The same phenomenon may be observed, as it were, in an even stronger measure, for South Africa. For historical reasons, South Africa's universities are based on the British example. Under Apartheid, which ended in 1994, this had meant surprisingly high levels of academic freedom in practice (Wolhuter et al. 2011: 108), notably in the "English" universities (King 1979: 489). However, like the U.K., South Africa then introduced neoliberal reforms in higher education and research, *inter alia* by adopting the Higher Education Act of 1997, which effectively abolishes self-governance in universities. The Act creates governing councils, the majority of whose members in practice are not employed as *active* academics by, or students of, universities, and it does not reserve clear powers to senates (Higher Education Act 1997: ch. 4). Councils have become involved in universities' daily affairs, have usurped powers in relation to academic issues, and apply a corporate mind-set to university governance (Hornsby 2015). Vice-chancellors/rectors and faculty deans are (often external) appointees (i.e., they are unelected), recruited for their management rather than academic expertise. Like many European countries, South Africa simply copied, and still copies, (at any rate, the spirit of) the English reforms, even though the Constitution contains a right to "further education" (Section 29(1)(b)) (which includes university education), and a right to "academic freedom and freedom of scientific research" (Section 16(1)(d)). The Constitutional Court has only once addressed the right to further education (*Moko Case 2020*), and never the right to academic or scientific freedom. This reveals the absence of any appreciation in South Africa of the fact that higher education and research are matters of human rights. Regarding both, government and universities are lacking a moral, a human rights compass. Despite the Constitution renouncing parliamentary sovereignty in 1994, the age of Constitutional supremacy has not yet arrived in the university sector. This is also true insofar as questions of access and fees in higher education, and respect for language rights in universities, are concerned (see Sections 5 and 6). In terms of our scorecard on academic freedom, South Africa would likely rank in the upper 30s or lower 40s of performance.

Interestingly, academic job satisfaction in South Africa, when compared with that in another 17 countries, is the second lowest (51,6%), only the U.K. faring worse (48,6%) (Shin/Cummings 2014: 387). If academic job satisfaction is, as seems plausible, indicative of the strength of protection of academic freedom, these figures would corroborate our theory that, the higher the degree of subscribing to the U.K. model of the market-oriented and managerial university, the lower the strength of protection of academic freedom (Beiter et al. 2023: 301 ff.). The corporate university of neoliberalism does not contribute to job satisfaction. It is authoritarian and undermines rigorous criticality. With South Africa in mind, Jacklin and Vale pose a number of questions, which may, however, be asked for all countries that “religiously” believe in markets:

[W]hy did the ... academy shift from critique to subservience? Why have common sense explanations of the social world ... replaced searching questions? Why are conversations on social issues ... controlled by technology, management, and ... the idea of markets? Why has serious thought in ... [democracies] become an indecent activity? (Jacklin/Vale 2009).

The Wellcome Study of 2020, in which 4.300 researchers from 87 countries participated, showed that 75 % of academic staff believe that creativity in science is stifled by the current impact agenda (Wellcome Study 2020: 9). One may pose the rhetorical question, what is the effect of such a research environment on the progress of science to which citizens are said to have a right? In another survey of academic staff in Europe, more than 20 % of academics admit to having committed self-censorship because of their academic views (Karran/Beiter 2020: 135-136). In European democracies, such self-censorship will also flow from pressures to satisfy impact requirements or meet externally imposed learning outcomes.

Many books have since addressed the paradigm shift from the “university of culture” to the “university of excellence.” Bill Readings, at the end of the 1990s, used this terminology to highlight that the university of excellence really is a corporation (Readings 1996: 21 ff., 62 ff.). One may wonder why universities, in their advertising slogans, proclaim to be striving for “excellence.” In the abstract – that is, in the absence of any articulated consensus on what “excellence” in the university context means – “excellence” is, as Cambridge professor Stefan Collini points out, an empty phrase. Its mere purpose in the university context today is to indicate that a university is buying into the neoliberal narrative of audits, rankings, and competition (Collini 2017: ch. 2.1.). Co-operation, however, rather than competition, alongside individual autonomy, is one of the most important sources of efficiency in intellectual creativity (Collini 2012: ch. 7.1.).

Now, one may ask oneself what it means to refer to neoliberal reforms in, or to speak of the commercialisation of, higher education and research. Beiter et al. analyse how exactly commercialisation affects academic freedom (see Beiter et al. 2023: Sect. 4, and the many sources there), and thus also the rights to higher education and science. There are perhaps three components to commercialisation. *Firstly*, higher education and research become private goods. Instead of all student and staff endeavour focusing on a holistic search for the truth benefiting the common good, paid for by the state, transactionalism takes over. The state artificially reduces funding; the shortfall must, on a competitive basis, come from various other sources now, students paying fees for, i.e., buying, an education package, governments, non-governmental organisations, and private companies ordering contract research to be paid for from universities to advance a self-interested cause, companies taking out intellectual property licences on university inventions, capito-philanthropists donating money, but wanting “something” in return for their funding at some future point. *Secondly*, there is the reliance on a business analogy in the management of staff and institutions. Line management replaces the principle of collegiality (that of joint decision-making on academic and related matters) postulated by UNESCO (UNESCO Recomm. 1997: para. 32). Performance management (output control) is implemented, and performance audited (rather than evaluated), “good” performance a precondition for bonuses, promotion, continued public funding, and so on. Risk management seeks to avoid the risk of no return on investment (therefore directing funds away from fundamental research or degrees offered in the humanities). *Thirdly* and finally, higher education and research are instrumentalised towards the overarching goal of national economic growth. This supersedes goals of nurturing civil responsibility in students and pursuing research that tries to find answers to the fundamental questions of humanity.

Human Rights vs. Neoliberalism: Two Diametrically Opposed Paradigms	
Human Rights	Neoliberalism
<i>Homo humanum</i> (<i>homo politicus</i> , <i>homo donator</i>)	<i>Homo oeconomicus</i>
Individual possessed of human dignity	Individual as economic actor to be “responsibilised”
Higher education as a <i>public</i> good	Higher education as a <i>private</i> good
Research as a <i>public</i> good	Research as a <i>private</i> good
Scientific advance	“Useful” research, profit motive, economic growth
Democratic citizenship (students)	Self-investment, profit motive, economic growth
Adequate funding of universities	Artificial underfunding

Human Rights vs. Neoliberalism: Two Diametrically Opposed Paradigms	
Non-performance-based, untied block funding by the state	Competitive funding from various public and private actors
Individual autonomy/inherent reward structure of science (curiosity, reputation)	Incentives (fees, researcher ratings, article subsidy, performance bonuses, competitive research grants, etc.)
Co-operation	Competition
The university as a critical institution	The university as an entrepreneurial entity

Table 1

The above table juxtaposes crucial elements of the two diametrically opposed paradigms one is concerned with here: human rights and neoliberalism. The *homo humanum*, the person with dignity, the *homo politicus*, the person seeking to address and resolve societal issues by democratically engaging in political debate, or the *homo donator*, the person with a propensity to give or share (knowledge), is the guiding human image of the human rights approach. The guiding human image of neoliberalism is *homo oeconomicus*, the individual to be “responsibilicised” through economic incentives and disincentives, to make (the “right”) choice about life (Peters 2016: 301), to optimally invest in themselves (Brown 2015: 80). Neoliberalism must not be confused with liberalism. Michel Foucault reminds us that *homo oeconomicus* is remarkably unfree because they are controlled through incentives/disincentives, which take away personal autonomy (Foucault 2008: 270). Hence, fees responsabilicise students to opt for degrees that they, through hard work, consider “manageable” to complete, and which will secure them a sufficiently high earning capacity, to render their investment worthwhile. Fees responsabilicise underfunded universities to offer degrees that, by satisfying market needs, can attract fee-paying students. Fees are thus an “auto-selection” mechanism (Gary-Bobo/Trannoy 2005: 201). Being an educated citizen, of itself, is an irrelevant consideration in this formula (Brown 2015: 120). Similarly, researchers are to be responsabilicised through researcher ratings, article subsidy, performance bonuses, competitive research grants, and so on, so as to conduct science in accordance with governments’ plans for innovation and technology. These incentives interfere with what Einstein called the scientist’s intuition or “*Einfuehlung*” for what should be researched to achieve scientific advance (Einstein 1932: 10). They interfere with the inherent reward structure of science, according to which recognition for priority is the primary reward in science, ensuring that “idle curiosity” can serendipitously lead to remarkable scientific insights (Merton 1973a: 276, 1973b). Dasgupta and David (1994) point out that maximum freedom is required for university researchers, seeing that academics are only paid modest salaries. Otherwise, they could just as well work

in the private R&D (research and development) sector, where they have reduced academic freedom, but get paid higher salaries. In the European Union (E.U.), for example, only 31,9% of researchers work in universities; 56,3% work in business enterprises; and 11% in the government sector (Eurostat, R&D Personnel 2022). If one wishes to maintain a sphere of fundamental/basic research that can serve as a source for downstream R&D, and so as to sustain the economic structure of science, the most crucial aspect universities can offer to researchers is academic freedom (Dasgupta/David 1994). In deeply Christian South Africa, the neoliberal university has been appealing to governmental and university managers of science because neoliberalism really is a form of authoritarian Protestantism or Calvinism (Bourdieu 2005: 11), just with money rather than God at its epicentre. It seeks to discipline having recourse to similar threats of heaven and hell as these religious faiths.

4. Academic/Scientific Freedom and the Sphere of Research

When is a research system, in its arrangements for university research, “adequate” (see the concept of “science adequacy” proposed earlier) so that it can benefit citizens and fulfil their right to science? In particular, what does the research process constitutionally require, to function properly? Except for plainly stating that academic or scientific freedom should be respected, official documents, such as UNESCO’s Recommendation on Science and Scientific Researchers of 2017 or General Comment No. 25, do not address this question. However, research does not summarily yield results or benefits, whatever the research environment.

The following are components of a science adequate research environment. Arjun Appadurai says that there cannot really be a systematic means for discovering the unknown. Hence, “what you do not know might be so profoundly unsystematic that systematically getting to it is logically impossible” (Appadurai 2006: 169). There is thus a need for reduced planning in science (Merton/Barber 2004: 191-192). There is a need for reduced bureaucracy in science. Max Perutz, who received the Nobel Prize in Chemistry in 1962, underlined that creativity in science could not be organised – “hierarchical organisation, inflexible, bureaucratic rules, and mountains of futile paperwork” would kill it (Perutz 2003: ix).

Another important component is the principle of the “open communication” of data and findings. This has its basis in academic or scientific freedom (UNESCO Recomm. 1997: pmbl. rec. 8, UNESCO Recomm. 2017: pmbl. rec. 4(c)). It serves

the purposes of research validation, reputation-building by researchers (facilitating the inherent reward structure of science), constructing yet new knowledge, and ensuring access to research findings for scientists, students, and society at large (Merton 1973a: 273-275, 277-278, 1973b, Ziman 2003: 33-36, 40-44, UNESCO Recomm. 1997: pmbl. rec. 8, UNESCO Recomm. 2017: pmbl. rec. 4(c)). In the digital age, this principle calls for open access (OA) to data and findings, i.e., content that is available online, and accessible and reusable for everyone free of charge and without undue restrictions, immediately or as quickly as possible (UNESCO Recomm. 2021: paras. 6, 7, 8). To satisfy the requirements of the right to science, OA must benefit scientists *and* ordinary members of the public. This makes sense also insofar as the public pays for university research. UNESCO's recent Recommendation on Open Science of 2021 does not go sufficiently far as to demand "genuine" OA (Beiter 2022). As for scholarly publications, largely deferring to existing intellectual property rights protection, the Recommendation provides for (gold) OA *publishing* – which remains expensive for researchers and institutions, as the retention by authors of their copyright is to be paid for and costs them, or their institutions, on average, a thousand US dollars (Solomon/Björk 2012: 1485); and it provides for (green) OA *archiving* of a pre- or post-print of a publicly funded publication in an OA subject or institutional repository. Green OA, therefore, does not entail access to the actual version of record of a published text. Use or reuse here is also subject to existing copyright limitations and exceptions, which, in most legal system of the world, do not adequately cater for research purposes, such as text and data mining (Flynn et al. 2022). Quite apart from that, only 28 percent of all scholarly publications are currently open access (Piwowar et al. 2018: 16). Simultaneously, subscription rates for toll access publications are ever increasing (OA, Elec. Frontier Found.).

Open communication is an aspect of what Robert Merton described as the common ownership of science. He says, "[p]roperty rights in science are whittled down to a bare minimum by the rationale of the scientific ethic. The scientist's claim to 'his' intellectual 'property' is limited to that of recognition and esteem..." (Merton 1973a: 273). These "moral rights" accruing to the creator are important, however, to the functionality of science (Merton 1973b). In the neoliberal era, one can witness how universities are "grabbing" (and commercialising) scientists' IP rights. As for copyright, the ownership of a scholarly work always belongs to the author, never the institution (Caso 2020: 28). This is a requirement of academic or scientific freedom. Academic/scientific freedom is violated where the institution can control circulation or censor texts (AAUP 1999). Regarding patents, some form of public domain

strategy should ensure immediate and wide access to inventions financed by the public (Kenney/Patton 2009).

A further component of a science adequate research environment is a “slow science” culture (Slow Science Academy 2010). Governmental and institutional research evaluation today rewards high numbers of (short) publications in so-called high-impact journals. This constitutes the basis of the destructive fast-pace “publish or perish” (PoP) approach to science (Moosa 2018). While PoP increases productivity, it leads to a decrease in creativity (Lee/Walsh 2022: 1064-1065, 1075-1076, observing this for research management more generally). Global scientific output grows by 8-9 percent every year (Bornmann/Mutz 2015: 2218). Pacchioni speaks of “an overproduction of truth” (Pacchioni 2018). Papers are “forgotten” ever faster, just a few years after publication, as output grows (Della Briotta Parolo et al. 2015: 742). More than 80 percent of published papers, in some fields, do not receive a single citation (Meho 2007: 32, Williams 2014). In certain fields of science, up to 90 percent of papers detail research that is irreproducible (Moosa 2018: 71-73). Evidence shows that innovative activity has been slowing, most likely because of PoP (Park et al. 2023: 138, 143-144). It has been demonstrated how excessive publication has obstructed scientific progress in the context of Covid19 research (Heller 2020). PoP, and research management more generally, exhausts scientists mentally, academics being transformed into a research proletariat, “constitutionally incapable of critical imagination” (Boden/Epstein 2006: 234). PoP seems to benefit only the scholarly publishing industry. In a context where 62 percent of academic journals (thus figures from 2006) are commercially owned or published (Morrison 2009: 37), and just five global publishers publish more than half of all papers (Larivière et al. 2015: 3-4) – publishers, with a move to less costly desk-top publishing (Van Noorden 2013: 428), making profits of up to 40 percent (Morrison 2009: ch. 3) – it is apparent that PoP sustains a system by which scarce public resources for research are siphoned off to a scholarly publishing industry that adds ever less value to the research process (Reichman/Okediji 2012: 1426, 1461). The proper approach in science would be to drastically cut back publications (Altbach/De Wit 2018).

In South Africa, the government pays a subsidy to the university for which an academic works, for each article published by that academic in any journal listed as “accredited” (Research Outputs Policy 2015). “Accredited” means that the journal is considered “proper,” as it has been indexed by one or more selected private science companies, such as Clarivate (IBSS, Web of Science) or Elsevier (Scopus), in terms of their respective quality criteria. This subsidy constitutes a large sum of the money out of which researchers must pay the research activities they undertake (projects, confer-

ences, collaborations, etc.). Never tested before the courts, the policy must be considered unconstitutional under Section 16(1)(d) of the Constitution, protecting academic and scientific freedom. Firstly, academics “should be free to publish the results of research and scholarship in books, journals and databases *of their own choice*” (UNESCO Recomm. 1997: para. 12, emphasis added). Secondly, to concentrate evaluation powers, as here, in the hands of private actors constitutes a “blatant contradiction [of] the spirit of public science” (Caso 2020: 29). Thirdly, the stated lists exclude highly acclaimed journals that never applied for “indexing,” but include dubious, even predatory ones, the policy thus constituting a push towards mediocrity (Beiter 2019: 267-268). The policy may thus also mean that those with excellent publications lack sufficient research funds. Fourthly, the policy, as the government itself recently admitted, leads to researchers gaming the system, for example, by salami slicing research findings for publication (DHET Communique 2023). Fifthly, the policy is spurring PoP, with all its negative consequences for science, as described above.

Yet another key feature of a science adequate research system is that it must provide for self-regulation by the scientific fraternity. While framework legislation needs to formally take all fundamental decisions regarding the science system in terms of values, structures, and bodies, the detailed sets of rules that fill the system with life need to be produced by the scientific fraternity itself (Beiter 2019: 259–261). As has been stated, “[i]t is this self-regulation by the scientific fraternity which becomes the idea of freedom of science” (Schulte 2006: 114, 125, transl. K.B.). The rationale behind this design is the appreciation that scientists, by virtue of their training and experience, understand the needs of science best – and will crucially ensure that science remains free and “disinterested.”

Human Rights vs. Neoliberalism: The Sphere of Research	
Human Rights	Neoliberalism
Autonomous laws (“ <i>Eigengesetzlichkeit</i> ”) of science	Detailed science planning
Disinterested research	The impact agenda
Inherent sense of ethical behaviour in research	Enforced ethics discipline
Slow science	Productivism
Academics hold copyright, public domain strategies for patents	Universities “grab” copyright/patents
Genuine open access	Copyright monopoly of commercial publishers
Risk crucial to science	Risk management (risk avoidance)

Table 2

“Disinterestedness” then is also the final component of a science adequate research environment in universities to be mentioned here. Together with common ownership, universalism, originality, and scepticism, it is a characteristic of “academic science.” “Academic science” needs to be distinguished from “industrial science.” “Industrial science” is proprietary, local, commissioned, expert, and authoritarian (Ziman 2003: 78-79). “Disinterestedness” is to be contrasted with the “authoritarianism” of industrial science. The principal, here, will postulate what the research is to accomplish, its political, economic, or social utility. Merton famously asserted “disinterestedness” as one of the crucial aspects in “the normative structure of science” in 1942 (Merton 1973a: 275-277). It ensures that serendipity can yield fundamental scientific insights. These, in turn, might lead to useful applications. This is, however, a process that happens only much further “downstream.” The problem is that industrial science has significantly come to govern the domain of academic science (Ziman 2003: 77-79). “Scientific curiosity, disinterestedness and creativity are all adversely affected by the ... impact agenda” (Moriarty 2011: 64).

The CESCR’s General Comment No. 25 formulates goals for science. While “peace” and “human rights” are noble goals (CESCR 2020: para. 6), the formulation of goals for science reflects conceptions of “instrumental” or “useful” (Beiter 2019), “ideologisable” (Smith 2020), or “illiberal” (Kinzelbach forthcoming) science. The “industrialisation” of academic science in the pursuit of “impact” (Moriarty 2011, Nelson 2004, Ziman 2003: 77-79), its “bureaucratisation” (new public management) in the endeavour of enhancing “productivity” (Lee/Walsh 2022, Power 1999: 94-104, Ziman 2003: 79-82), and current neoliberal economic goals (Nowotny et al. 2005, Rider et al. 2013, Slaughter/Leslie 1997), can be (and are often) justified as contributing to realising “human rights.” UNESCO’s 2017 Science Recommendation, as also General Comment No. 25, could be argued to reflect a rather instrumental conception of science (Beiter 2019: 269-285, 2022: 140-162). Neither carves out a special role for science in universities, a space where science can flourish unfettered by external norms. Neither accords prominence to academic or scientific freedom as the overarching value of science.

5. Academic/Scientific Freedom and the Sphere of Teaching and Learning

Reference has been made to the obligation of states parties under Articles 13(2)(c) of the ICESCR to make higher education progressively free. Katarina Tomaševski, as the first and most outspoken U.N. Special Rapporteur on the Right to Education so far, commented as follows on her official visit to the U.K., in 2002:

My mission to the United Kingdom revealed that the government openly breached the ICESCR by introducing fees in university education. It was a sobering experience to learn how few people knew about the Covenant, how easy it was for the government to do the opposite of what it required, and how rapidly the fees became accepted as a fact of life (Tomaševski 2005: 229).

While some commentators consider progressively free higher education not obligatory under the Covenant insofar as equal access can be realised in other ways (Riedel/Söllner 2006), many others do consider the obligation mandatory (Beiter 2006: 387-388, 458, 523, 650-651, Kotzmann 2018: 43-46, Söllner 2007). This also seems to be the position of the CESCR (Beiter 2006: 594). The obligation under Article 13(2)(e) to establish a fellowship system, in many ways, needs to be understood as being directed at assisting students cope with fees for as long as fees could not yet be abolished completely (ibid.: 532-533). It should also be appreciated that study finance that is available, but entails a repayable debt, empirically deters lower- and even middle-class prospective students from pursuing higher education (Callender/Mason 2017). Various countries offer free (or very low cost) higher education: Austria, Finland, France, Germany, Norway, Spain, Sweden, Turkey, Uruguay, etc. One might easily object that those countries can afford to do so. In an interesting study focusing on OECD countries, however, Garritzmann shows that, whether countries have free university education or not, really is a political, and not an economic, decision. He demonstrates that “the partisan composition of government, particularly the sequence and duration of parties in office [since 1945] is the key factor in understanding higher education [funding] policies” (Garritzmann 2016: 303). One might yet object that countries such as South Africa – universities here charging fees – are really poor. However, the CESCR meanwhile does expect states parties, under Article 2(1) of the Covenant – this provision obliging states parties to realise Covenant rights to “the maximum of [their] available resources” – to renounce *laissez-faire* taxation policies (Uprimny et al. 2019: 636-637). Even so, in South Africa, 350 million Euros are lost annually in taxes through multinational companies engaging in profit shifting (Wier/Reynolds 2018). Article 2(1) would similarly require halting the loss of revenue through corruption (Uprimny et al. 2019: 633-634). Yet, the South African government is responsible for 15 billion Euros in public funds being lost annually to corruption (Merten 2019). Certainly, some of this money could be used towards improving finance for, and reducing fees in, higher education.

The topic of fees in universities is so significant in the present context because fees, ideologically, constitute the premise of a neoliberal university system in which the student is conceived of as a customer (and the teacher the sales agent) of a corporate education product. “As a result of financial exchange, students consider themselves to

have purchased, and therefore entitled to possess, a particular product (a degree)” (Williams 2013: 6). A survey undertaken in English universities found fee responsibility to be positively associated with consumer orientation, such orientation increasing as fees increase (Bunce et al. 2017: 1970-1971). Interestingly, a consumerist orientation leads to higher grade goals, a lower learner identity, and lower academic performance (ibid.: 1971). A U.S. study similarly finds that a student holding consumerist perceptions “is likely to hold attitudes and to engage in behaviors that are not conducive to success as a student” (Gillespie Finney/Finney 2010: 286). Another study undertaken in the U.K. demonstrates that, once students adopt instrumentalist attitudes, it is the “end result” of learning (degree outcome, desirable grades) that counts. Intrinsic values such as acquired knowledge and academic citizenship are given less value (Tomlinson 2014: 38). The role of teachers also changes. While students become passive (“certain degree of apathy and indifference” (ibid.)), teachers, to secure consumer satisfaction, need to assume an entertainment role (Wong/Chiu 2019: 229). Moreover, whereas it is a centuries-old truth that empowering learning is based on “the educational power of discomfort” (Popescu 2023), teachers now need to engage in “defensive” teaching so as not to offend paying customers (Furedi 2011: 3). A lower learner identity, lower academic performance, a credentialist attitude towards university education, and a diminished role of teachers, clearly limit the extent to which freedom of teaching and learning can be enjoyed as part of the right to education.

If the role of students and teachers in the new design of higher education changes, so does its content. Consumer-oriented students thus value being “more employable” and holding enhanced chances of getting a “decent job” following graduation (Tomlinson 2014: 38). Universities’ principal function in the field of higher education becomes that of ensuring graduate employability – the production of human capital for the labour market. Barnett accordingly explains that, whereas the university as a *critical* institution would need to facilitate criticality in relation to subject matter, the self (critical self-reflection), and the world (critical action),

universities are now returning to their mediaeval inheritance when they were much more a training for a profession... [T]hey are built around a technical interest in the world... The action that they encourage can be said to be critical, but its critical component is arrested at the instrumental level (Barnett 1997: 79).

Important structural elements of this economic vision of the curriculum are national qualifications frameworks, modularised study content, and prescribed learning outcomes. These are all externally imposed criteria that seek to standardise the higher

education product, facilitating tradability thereof, notably also across borders, and they are clearly directed at satisfying national and international labour markets (Brøgger 2019: 96-115). The European Bologna process, of which it has been said that its prime flavour is economic (Brøgger 2019: 96-115, Cort 2010, Garben 2010), is the blueprint for these reforms, which are also being copied in South Africa. These reforms deplete higher education of much of its broader purposes. They entail a move away from disinterested enquiry in the field of teaching too (Jessop 2018: 104). The professional judgement of teachers, of what should be taught, and how assessment should take place, is now being replaced by externally imposed formal criteria (Young 2003: 225).

Human Rights vs. Neoliberalism: The Sphere of Teaching and Learning	
Human Rights	Neoliberalism
Progressively free higher education	Fees (and study loans)
Students as citizens	Students as customers
The educational power of discomfort (role of teachers)	Consumer satisfaction
"Full development of the human personality" of students	Self-investment, enhanced earning capacity
Criticality as regards subject matter, the self, and the world	Criticality solely as regards subject matter
Critical capacity and civic, democratic responsibility	Graduate employability, production of human capital
Diversified forms of post-secondary and higher education	Vocationalisation of university education
Full teacher and student autonomy	Qualifications frameworks, modularisation, learning outcomes
Technology complements teachers' analogue competences	Technology defines the parameters, and governs the administration and delivery, of teaching
Internationalisation to benefit individual enrichment and institutional co-operation	Internationalisation to enhance graduate employability and facilitate the conquering of foreign higher education markets

Table 3

Various factors accelerate the commercialisation of higher education, increasing the pressure on academic or scientific freedom and the right to education. Digitisation is one of them. As digital products are the domain of private companies, and are let rather than sold, digitisation enables private firms to exercise a perpetual powerful influence over universities. Naomi Klein observes that Covid has been "the moment" for the tech giants in spheres of the public sector, such as education (Klein 2020).

Digital platforms make it possible to closely monitor the teaching and assessment activities of staff, but also to monitor students, this readily leading to forms of surveillance, intimidation, or self-censorship (Williamson/Hogan 2021: 59, 61). Furthermore, digital learning platforms, by their very nature, inhibit the autonomous judgement of teachers and students as they keep users in a single environment with standardised functions (ibid.: 58). Significantly, digitisation facilitates the cross-border offering of, and trade in, higher education products or services.

A factor facilitating commercialisation across borders is, of course, trade liberalisation under the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) of 1994. The GATS has been described as a "game changer" for education, transforming education "as largely a nationally-located and governed public service, into a globally regulated tradeable economic commodity" (Verger/Robinson 2012: 104). Whereas "the internationalisation of higher education" originally signified creating the opportunity for students, teachers, and researchers to broaden their intellectual and cultural horizons by studying or working abroad, and for universities in different parts of the world to co-operate in mutually beneficial ways, "the internationalisation of higher education" has a neoliberal meaning today. Internationalisation really is aimed at enhancing the positional advantage of the travelled individual on the (global) labour market and at enabling universities to conquer foreign higher education markets (Bamberger et al. 2019: 4-6). The centrality of the commercial objective in internationalisation, and the reality that internationalisation also extends to exchanges with autocratic states, leads to a peculiar mix of ideological and commercial infringements of academic or scientific freedom, locally and abroad (Beiter et al. 2023: 299, Prelec et al. 2022).

6. Human Rights vs. Neoliberalism: Core Values

The environment of expectations on the part of students created by the "student as customer" notion has led to an inflation of grades globally (Gunn/Kapade 2018, Oleinik 2009: 162). It has been shown that grade inflation in the U.S. coincides exactly with the start of the "student as customer" era in the 1980s (Rojstaczer/Healy 2012: 16-17). Some might argue that grade inflation does not really matter, for as long as the relation between different students' marks is correct. However, it is submitted that it *does* make a big difference if one tells C students that they are A (and not C) students. When C students leave university, they will ask, "What do I owe the world?" When A students leave university, they ask: "What does the world owe to me?" This attitude, quite common among contemporary elites, is the very basis of the unsustain-

ability crisis the world experiences today. Universities today proclaim to be teaching courses and advancing research, and managing their campuses in accordance with principles, that promote the U.N.'s sustainable development goals (SDGs). Yet again, mindful of Adorno's words, quoted earlier, that there is no right life in the wrong one, sustainability cannot be promoted within a university whose essential commitment is to an overarching market logic, that is, within a university with a *raison d'être* that, through and through, contradicts the goal of sustainability (by way of analogy, see Chomsky et al. 2015/16).

Human Rights vs. Neoliberalism: Core Values	
Human Rights	Neoliberalism
Sustainable development	(Unbridled) capitalism
Universities "true to their own self"	University rankings
"Plain-packaged" universities or genuine institutional pride	The university as a brand, reputation management
Decoloniality	Coloniality
Multilingualism	English-only
Trust	Institutionalised distrust (control)

Table 4

There is enormous pressure on universities today to participate in global university rankings. A well-known Johannesburg university recently featured an opinion piece on its website, arguing that it, the university, held academic freedom in high esteem, as was apparent from the fact that the university had improved its position in global rankings (Seale 2022). This argument is strange. Rankings, such as those produced by Quacquarelli Symonds (QS), Times Higher Education (THE), or Shanghai Ranking Consultancy, as a look at their websites confirms, do not measure whether academics enjoy academic freedom in universities. They also do not measure if self-governance and collegiality are safeguarded. They do not rely on genuine peer review processes, but on opinion polls and metrics, such as article citations. The fact that articles have many citations does not mean that their actual content has impact. Citations often merely copy citations (Cope/Kalantzis 2009: 46). Rankings measure "student satisfaction," when we know that true learning lies in causing educational discomfort. They do not measure to what extent equity of access, the abolition of fees, or multilingualism, has been implemented in universities. Moreover, they are often prepared by private companies seeking a profit, and pursuing their very own agendas. Academic staff are also usually not asked if they wish their institutions to participate in these rankings.

Rankings are a market-driven method of global university governance ultimately framed within a colonial mindset. A look at the scholarly literature helps one understand the rationale of university rankings. Hence, rankings stem from the belief that “markets ... should determine the curriculum, the teaching, and the research of universities” (Robinson 2013: 70). It is important to appreciate that rankings are inherently inimical to academic or scientific freedom. This is so because they are “a key technology in ‘total accountability systems,’ ... that order whole countries, institutions and individuals through competition to achieve the measures by which they are graded and ranked” (Wright 2012: 98). Rankings demonstrate that “what really counts is reputation management,” university branding, and not critical reflection on the world (*ibid.*: 99). Rankings are, moreover, “an imperial project (that is, a project embodying the interests of the globally strongest states)” (Pusser/Marginson 2013: 562). One may thus observe how countries not belonging to the Western bloc have transformed their universities in the Western image, participating in university rankings, copying qualifications frameworks, and replicating science evaluation systems (Deem et al. 2008, Lo 2011). Good positions in rankings facilitate, and reflect “successes” in, universities’ internationalisation endeavours. As such, they assume a key role in internationalisation, internationalisation turning co-operation into a competition for students, researchers, and funding (De Wit 2019: 3), leading to a “reputation race,” whereby one institution’s strength is achieved through the weakening of another’s (Van der Wende 2007: 279), confirming global inequality, as 75 % of mobility is vertical (Kehm/Teichler 2007: 262), and imposing “the norms of the Anglo-American science university” on higher education overseas (Morley et al. 2014: 462).

There exist some 17.000 universities worldwide (Hazelkorn 2008: 194). In Shakespeare’s *Hamlet*, Polonius advises his son Laertes that, whilst at university: “to thine own self be true” (Shakespeare 2003: Act 1, Scene 3). All that universities need – but also must – be, is, “true to their own self.” They must be “critical institutions or they are nothing” (Stuart Hall, quoted in Giroux 2014: ch. 5). They must be committed to a genuine search for the truth. They must be accessible to local or national communities, and focus on *their* knowledge needs. Universities can be good without being global players. Most graduates do not participate in the “global knowledge economy.” Leading global companies recruit a mere top half percentile of university students (Brown et al. 2011: 94). Research by African academics researching African soil will hardly ever be published in international academic journals, and yet it is crucial (Mahroum 2016). All 17.000 universities could be good. Obviously, it is futile for all of them wanting to be among the top 100 or even top 500. From a Mertonian perspective, university branding

is a decisive first step away from virtue. “Plain-packaged” universities (“plain-packaging” referring notably to the way tobacco products must now be “de-branded” for public health reasons), or, at most, universities that emphasise certain academic traditions or characteristic scholarly approaches, will be best suited to contribute to what is ultimately just “*one science*” that is to benefit all. One should, therefore, agree with South African higher education expert Jonathan Jansen, when he congratulates South African Rhodes University in Makhanda, formerly Grahamstown, “for rejecting the rankings systems for universities. It’s a farce. Other SA universities should follow suit” (Jansen 2023).

This may be the right juncture to emphasise an important point. The neoliberal higher education and research policies that are now also followed in many countries of the global South, in many respects, are the product of subtle, or not so subtle, pressures to replicate the way universities have been “recreated” under neoliberalism in the global North. The U.K., as explained, is a country of origin of the market-oriented or managerial university (Lenzen 2015: 30-32). It has also been indicated that the entrepreneurial university is significantly an ideological product of OECD thinking (Section 2), the OECD representing the world’s most powerful economies. If the present discussion seeks to demonstrate the importance of the rights to education and science of international law for the protection of freedom in universities, then one should add that these rights also have a certain extraterritorial dimension. States are bound, in appropriate circumstances, to observe these rights beyond borders. The expert Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights of 2011, widely endorsed today, make this point clear. Hence, states are obliged to contribute to creating an international enabling environment conducive to the universal fulfilment of economic, social, and cultural rights, naturally including the rights to education and science (Maastricht Principles 2011: Principle 29). The exertion of ideological pressure on the global South to participate in university rankings amounts to a failure to comply with this obligation. It should also be remembered that states, as members of international organisations, such as the OECD, World Bank, WTO, or E.U., remain bound by their international human rights obligations when acting within these organisations (ibid.: Principle 15), thus also when formulating higher education or research policies that have international repercussions. States are, moreover, required to regulate the conduct of “their” (non-state or semi-state) actors, including universities, operating abroad (ibid.: Principle 24).

Another aspect of a human rights approach to universities, and of decoloniality especially insofar as many countries of the global South are concerned, are multilingual universities. The neoliberal university is “language-poor,” as linguistic diversity is

considered an impediment to global competitiveness (and trade). It teaches or conducts research (increasingly) in English (only), the language of the “global knowledge economy.” The Organisation for Security and Co-operation in Europe’s (OSCE) Hague Recommendations Regarding the Education Rights of National Minorities of 1996, purporting to be a consolidation of international legal obligations relating to the education rights of national minorities, postulate that, in tertiary education, there should be access to teaching in minority languages in accordance with need and student numbers (Hague Recoms. 1996: Recomm. 17). This should mostly be provided not in parallel, but within existing educational structures (ibid.). Neither teaching in the state language nor in the minority language only is in accordance with international law – an appropriate mix of languages is required (OSCE 1996: 14). If the language model of the Hague Recommendations has essentially been devised for minorities, its logic of multilingualism, it is submitted, must apply more generally, also to majorities, and even in monolingual societies. In its Guidelines on Language and Education of 2003, UNESCO emphasises the importance of bilingual/multilingual education at all levels of education, to promote social equality and linguistically diverse societies (UNESCO Guidelines 2003: Principle II).

Although English is only the sixth largest of the eleven official spoken languages in South Africa, universities teach almost exclusively in English. The offer in Afrikaans has been significantly reduced since 1994. No noteworthy teaching takes place in any of the indigenous African languages. Also research is published essentially in English. Orman laments the lack of socio-linguistic enlightenment in South Africa. He says that the idea that “native languages should also be developed for use beyond their traditional, low-order domains has not taken hold” (Orman 2008: 105). In judgements of the Constitutional Court, one can occasionally find such enlightenment in the separate judgements of Albie Sachs (*Gauteng School Education Bill Case* 1996) and Johan Froneman (*AfriForum Case* 2017, *Gelyke Kanse Case* 2019). The latter two cases specifically concerned language rights in universities. The Court, as a whole, however, has preferred to focus on narrow conceptions of equity rather than open the avenue for truly multilingual universities (see notably the *AfriForum Case* 2017). Multilingual universities play an important role from an academic or scientific freedom perspective. Hence, knowledge – or truth – is often not constructed in the abstract, but within the parameters of context provided by language. Manthalu and Waghid point out that

[t]he absence of African languages in higher education as mediums of instruction and of conducting and disseminating research undermines the possibility of meaningful African appropriation of knowledge. Knowledge appropriation is achievable when problems, concepts and frameworks of thought are vernacularised. Vernacularisation refers to linguistic processes through which universalist claims are “contested and contextualised, invoked and revoked, posted and positioned” (Manthalu/Wagbid 2019: 30).

To those who argue that “plain” English universities make things “so much easier,” one may reply: firstly, we could also all just eat at McDonald’s and survive! Secondly, “English-only” is “okay,” if one is content with the fact that this means endorsing the Anglo-American university model, emphasising competition, markets, and a Western lifestyle.

7. Academic/Scientific Freedom and University Governance

Human rights require fully independent universities. UNESCO terms this institutional autonomy (UNESCO Recomm. 1997: paras. 17-21). The prime purpose of institutional autonomy is to safeguard academic freedom (Barendt 2010: 67-69, Beiter et al. 2016c: 133-134, UNESCO Recomm. 1997: paras. 17-18). Unfortunately, under neoliberalism, that term has been abused to only mean that technical autonomy required by universities to be fully functional operators in the market. Strategic autonomy has been taken away from universities – universities cannot independently decide on what their mission is to be, what they are there for (Beiter et al. 2023: 292, Matei/Iwinska 2018: 355-356). As it were, that has been predetermined by government: to meet the needs of the market and promote economic growth. Governments do not openly interfere with universities; more perniciously, they “steer from a distance,” essentially through audits. If audits do not reflect the numbers in output the government desires (graduates, doctorates, articles, patents, etc.), it will simply not award public funding.

Human Rights vs. Neoliberalism: The Sphere of University Governance	
Human Rights	Neoliberalism
Comprehensive, including strategic, independence	Technical autonomy (governmental steering from a distance)
Self-governance	Executive management
Powerful senates	Powerful university councils, including many external members
Office bearers elected by and within, and accountable to, the academic community	Appointments of external management experts, and academics of sorts “from within,” as office bearers

Human Rights vs. Neoliberalism: The Sphere of University Governance	
Decentralisation (autonomous organisational units)	Centralisation (dependent organisational units)
Collegiality	Line management
Evaluation/peer review	Audits and metrics
Input control (selection, socialisation of staff)	Output control (performance management)
Self-regulation by the scientific fraternity	New public management (NPM), bureaucracy, micro-management, managerialism
Academics as scientists	Academics as production factors/human capital
Ultimately tenure for academic staff	Fixed-term or easily terminable permanent employment contracts

Table 5

Turning to self-governance and collegiality, both these are requirements under UNESCO's Recommendation of 1997 (UNESCO Recomm. 1997: paras. 31-32). Yet, they are perhaps the supportive elements of academic freedom most severely affected by neoliberal reforms (Beiter et al. 2023: 268-271, 292-294). The rationale of both is to ensure that decisions relevant to organising science and scholarship, and action implementing these, are science adequate (Beiter et al. 2016c: 135-138). Self-governance requires decisions to be taken by (active) academics themselves (ibid.: 135-137). Collegiality seeks to prevent an accumulation of power in office bearers, for example, rectors or deans (ibid.: 137-138). Self-governance requires that academics must have the *determinant voice* in decisions on academic, but also many related matters, through senates and other institutional and faculty collegial bodies (Karran 2009: 175-176). Academics must be *well represented* on strategic decision-making bodies, such as university councils (Barendt 2010: 71). Rectors and deans must come from within their universities or faculties, be elected by the academic community, and be democratically accountable to them (Karran 2009: 176).

These days, however, senates and faculty collegial bodies have become quite powerless. Power now often vests in meddling university councils, comprising mostly appointed non-academic governors, including many outside members. Many rectors and deans are externally appointed and not directly accountable to academic staff. As for collegiality, this requires the "participation of all" in internal decision-making on academic and related matters (UNESCO Recomm. 1997: para. 32). Line management – *en vogue* today – must be seen to be its perversion. An interesting phenomenon one may observe these days is that many academics, often because they struggle to meet the quantitative targets set by management, "cross[] over to the managerial dark side" themselves (Taylor 2003: 75), where they then become involved in setting unrealistic

targets for, and obstruct the science of, academics still genuinely seeking to pursue scholarly work (Associate Deans 2023). Recent research demonstrates the extent to which self-governance has become eroded in Europe (Beiter et al. 2016a: 651-659, 2016b: 312-320, Karran et al. 2017: 218-223, Karran/Beiter 2020: 133-134). However, the discussion earlier has shown that this erosion is taking place in South Africa, too (Section 3).

Many would argue that self-governance and collegiality are not really efficient in the modern university. It needs to be appreciated, however, that efficient governance is not a requirement for science to function properly, in fact, it may be counterproductive. Efficient governance is an irrelevant category in academia. Birnbaum underlines that, if “we want to preserve truly academic institutions ... then shared governance is an essential precondition” (Birnbaum 2004: 20). Managerial (and other) inefficiencies may be efficient for science: “the presence of non-productive ‘slack’ or ‘redundant’ resources (practices, organisational forms, knowledge) within a system, whilst reducing overall efficiency, provides the variety or adaptive capacity needed to avoid ‘lock-in’ in the long-term” (Goddard/Vallance 2013: 41). In this sense then, “universities are now *less* efficient than they were twenty years ago,” because bureaucracy leaves little room for “two of the most important sources of efficiency in intellectual activity ... [namely] voluntary co-operation and individual autonomy” (Collini 2012: ch. 7.1.). It has been stated that academia is a “black box,” incomprehensible to outsiders. The moment outsiders seek to bring in order, they only undermine the system’s functionality (Krücken 2008: 354-356, Ziman 2003: 82).

If the installation of hierarchy is one central aspect of neoliberal university governance, then the conduct of repeated performance audits of universities and their staff is another. Qualitative evaluations are of subordinate significance. Instead, audits rely on quantified performance measures which institutions or staff must comply with, to receive funding, to be promoted, to receive bonuses, to avoid some form of sanction or another, and so on. Michael Power, in his wonderful book on *The Audit Society*, identifies two significant effects of audits. Firstly, there is the decoupling effect. Audits are rituals of verification. Once quantitative measures have been met, this produces comfort (that quality has been achieved), and confers organisational legitimacy. There is, however, no rational questioning of conduct or practices as such, or their genuine value. Consequently, there ensues a remoteness between the audit process and the activity measured (Power 1997: 95-97). Secondly, there is the colonising effect. The values underlying audits “penetrate deep into the core of organizational operations,” the audits requiring energy and resources and, over time, creating “new mentalities”

(ibid.: 97-98). One may observe how faculties' energies today are all consumed in the endeavour of meeting numbers. Any discourse about content and meaning disappears.

Additionally, audits frequently produce forms of dysfunction for the activity being measured, that is, they may lead to the exact opposite of what was intended (ibid.: 98). Hence, student evaluations are intended to motivate teachers to improve their teaching. Yet, a study found that 40 % of teachers admitted to awarding higher grades, than they thought students deserved, in order to fare better in teaching evaluations (Schneider 2013: 123). Met numbers on published articles, for instance, often mean that, to produce more articles, their quality may have had to be compromised. To get published, researchers may thus start engaging in “hying” their work, slicing up findings into multiple papers, simplifying conclusions, or hiding results that do not fit with the conclusions sought to be drawn (Lawrence 2007: R585).

Hierarchical organisation and audit culture make up what is called “new public management” (NPM) in science. Max Weber termed this “bureaucracy” in science, which he said, destroys the spirit or “*Geist*” of scholarship (Weber 1922: 527). The core value embodied by NPM is that of “institutionalized distrust.” A science adequate environment in universities, however, needs to be based on trust (Deem et al. 2007: 24-25, 67, 99). It is highly probable that output-related incentives in science “crowd out” intrinsically motivated curiosity required for scientific discovery (Osterloh/Frey 2015: 111). What then would be the alternative? “Input control” would greatly improve academic governance. The proper selection and socialisation of researchers makes repeated evaluations unnecessary (Osterloh/Frey 2014: 88-90). Additionally, academics need to be guaranteed substantial autonomy, the payment of adequate salaries (UNESCO Recomm. 1997: paras. 57, 58(a), (c)), and security of employment (ibid.: paras. 45, 46). UNESCO’s Recommendation of 1997 considers tenure or its functional equivalent “one of the major procedural safeguards of academic freedom” (ibid.: para. 45). Academics should ultimately be granted permanent employment contracts, not easily terminable on operational grounds (and certainly not terminable on ideological grounds). Again, recent research demonstrates the extent to which employment security in academia has deteriorated in Europe (Beiter et al. 2016a: 659-666, 2016b: 320-327, Karran et al. 2017: 223-226, Karran/Beiter 2020: 134).

8. Conclusion

The glamour is deceptive. The genuine state of universities is calamitous. Some say that modern universities are only marginally concerned with expanding knowledge.

In reality, they are “fundraising institutions” and “publication factories,” managed by CEOs, who are to implement new strategies “for achieving more and more excellence” (Binswanger 2014: 53). Others say that “[m]oney has systematically replaced thought as the key driver and *raison d’être* of the [higher education] institution’s official existence” (Docherty 2015: ix). The evidence demonstrates that scientific advance is slowing down (Park et al. 2023). More students and academic staff than ever before suffer from mental health problems (Gorczynski 2018). Given all this, it is surprising that good science is still being done by some, many teachers still consider higher education “a critical business” (Barnett 1997), and socially committed students often still do leave universities. This is not because students have continuously “invested” in their earning capacity, academic staff in their “rock star” status as researchers (Smyth 2017: 99-123), or universities in the production of human capital. Instead – academics risking being punished by the system for not properly “reading” the incentives science bureaucracy has devised for them – these positive outcomes are a result of the continued presence of what Keyan Tomaselli calls “para-academics”:

Para-academics create alternative, open access, learning-thinking-making-acting spaces. They don't worry about career paths. They take the Prefix "para" to illustrate how they work alongside, beside, next to and rub up against the all too proper location of the Academy. They make the work of higher education a little more irregular, a little more perverse, a little more improper. Para-academics just continue to do what they have always done: write, research, learn, think and facilitate that process for others (Tomaselli 2021: 122).

Research shows that many academics still do believe in the Mertonian norms (Anderson et al. 2010). Nevertheless, the question is for how long the current science system can still be sustained before finally breaking down, as the literature forecasts, it will, at some point (Rider et al. 2013). Moreover, the Earth’s resources are finite – and yet, universities, in all their endeavours, based on market values, essentially recreate the unsustainable capitalist system that is accelerating global collapse. Neoliberalism proclaims to be the “new” freedom. However, it is better associated with autocracy, the glorification of markets, and the rule of bureaucrats and metrics. The emperor, as I have said before, is naked (Beiter 2023). It is time to rebuild moral universities, in which freedom reigns supreme, in the light of the rights to education and science of international law, moreover, in a way that fully appreciates and reflects the significance of these rights for universities!

Literature

- Adorno, Theodor W. (1951): *Minima Moralia: Reflexionen aus dem beschädigten Leben*. Berlin/Frankfurt/M.: Suhrkamp.
- AfriForum Case (2017): *AfriForum v. University of the Free State* 2018 (2) SA 185 (CC) (29 December 2017).
- Altbach, Philip G./De Wit, Hans (2018): Too Much Academic Research Is Being Published. In: *University World News*, 7 September 2018, <https://www.universityworldnews.com/post.php?story=20180905095203579>
- American Association of University Professors (AAUP) (1999): Statement on Copyright, <https://www.aaup.org/report/statement-copyright>
- Anderson, Melissa S. et al. (2023): Extending the Mertonian Norms: Scientists' Subscription to Norms of Research. In: *Journal of Higher Education*, 81 (3), 366-393.
- Appadurai, Arjun (2006): The Right to Research. In: *Globalisation, Societies and Education*, 4 (2), 167-177.
- Associate Deans (2023): Tweet posted 15 February 2023, 15:51, @ass_deans
- Bamberger, Annette/Morris, Paul/Yemini, Miri (2019): Neoliberalism, Internationalisation and Higher Education: Connections, Contradictions and Alternatives. In: *Discourse: Studies in the Cultural Politics of Education*, 40 (2), 203-216.
- Barendt, Eric (2010): *Academic Freedom and the Law: A Comparative Study*. Oxford: Hart.
- Barnett, Ronald (1997): *Higher Education: A Critical Business*. Buckingham: Society for Research into Higher Education/Open University Press.
- Beiter, Klaus D. (2006): *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights*. Leiden/Boston: Martinus Nijhoff.
- Beiter, Klaus D. (2019): Where Have All the Scientific and Academic Freedoms Gone? And What Is "Adequate for Science"? – The Right to Enjoy the Benefits of Scientific Progress and Its Applications. In: *Israel Law Review*, 52 (2), 233-291.
- Beiter, Klaus D. (2022): Reforming Copyright or Toward Another Science? – A More Human Rights-Oriented Approach under the REBSPA in Constructing a "Right to Research" for Scholarly Publishing. In: *Brooklyn Journal of International Law*, 48 (1), 88-214.
- Beiter, Klaus D. (2023): "The Emperor Is Naked!" – Rebuilding Moral Universities in the Light of the Rights to Education and Science of International Law, Inaugural Lecture, North-West University, Potchefstroom, South Africa, 8 June 2023, <https://www.youtube.com/watch?v=mSR8j2hl4Xg>
- Beiter, Klaus D./Karran, Terence/Appiagyei-Atua, Kwadwo (2016a): "Measuring" the Erosion of Academic Freedom as an International Human Right: A Report on the Legal Protection of Academic Freedom in Europe. In: *Vanderbilt Journal of Transnational Law*, 49 (3), 597-691.
- Beiter, Klaus D./Karran, Terence/Appiagyei-Atua, Kwadwo (2016b): Academic Freedom and Its Protection in the Law of European States: Measuring an International Human Right. In: *European Journal of Comparative Law and Governance*, 3 (3), 254-345.
- Beiter, Klaus D./Karran, Terence/Appiagyei-Atua, Kwadwo (2016c): Yearning to Belong: Finding a "Home" for the Right to Academic Freedom in the U.N. Human Rights Covenants. In: *Intercultural Human Rights Law Review*, 11, 107-190.

- Beiter, Klaus D./Karran, Terence/Roynard, Denis (2023): The Commercial Attack on Universities: Academic Freedom – An Orphan under the European Human Rights Framework? In: Czech, Philip et al. (eds.): *European Yearbook on Human Rights 2023*. Cambridge/Brussels: Larcier-Intersentia, 261-314 [pagination correct at the present time of production].
- Bérubé, Michael/Ruth, Jennifer (2015): *The Humanities, Higher Education, and Academic Freedom: Three Necessary Arguments*. London: Palgrave Macmillan.
- Binswanger, Mathias (2014): Excellence by Nonsense: The Competition for Publications in Modern Science. In: Bartling, Sönke/Friesike, Sascha (eds.): *Opening Science: The Evolving Guide on How the Internet Is Changing Research, Collaboration and Scholarly Publishing*. Cham: Springer, 49-72.
- Birnbaum, Robert (2004): The End of Shared Governance: Looking Ahead or Looking Back. In: *New Directions for Higher Education*, [2004] (127), 5-22.
- Boden, Rebecca/Epstein, Debbie (2006): Managing the Research Imagination? Globalisation and Research in Higher Education. In: *Globalisation, Societies and Education*, 4 (2), 223-236.
- Bornmann, Lutz/Mutz, Rüdiger (2015): Growth Rates of Modern Science: A Bibliometric Analysis Based on the Number of Publications and Cited References. In: *Journal of the Association for Information Science and Technology*, 66 (11), 2215-2222.
- Bourdieu, Pierre (2005): *The Social Structures of the Economy*. Turner, Chris (transl.). Cambridge/Malden, MA: Polity Press.
- Brøgger, Katja (2019): *Governing through Standards: The Faceless Masters of Higher Education: The Bologna Process, the EU and the Open Method of Coordination*. Cham: Springer.
- Brown, Phillip/Lauder, Hugh/Ashton, David (2011): *The Global Auction: The Broken Promises of Education, Jobs and Incomes*. Oxford: OUP.
- Brown, Wendy (2015): *Undoing the Demos: Neoliberalism's Stealth Revolution*. New York, NY: Zone Books.
- Bunce, Louise/Baird, Amy/Jones, Siân E. (2017): The Student-as-Consumer Approach in Higher Education and Its Effects on Academic Performance. In: *Studies in Higher Education*, 42 (11), 1958-1978.
- Callender, Claire/Mason, Geoff (2017): Does Student Loan Debt Deter Higher Education Participation? New Evidence from England. In: *The ANNALS of the American Academy of Political and Social Science*, 671 (1), 20-48.
- Caso, Roberto (2020): The Academic Copyright in the Age of Commodification of Scientific Research. In: *SCientific REsearch and Information Technology*, 10 (Special Issue), 25-34.
- CESCR (U.N. Committee on Economic, Social and Cultural Rights) (1999): General Comment No. 13: The Right to Education (Art. 13 of the ICESCR), U.N. Doc. E/C.12/1999/10 (8 December 1999).
- CESCR (U.N. Committee on Economic, Social and Cultural Rights) (2020): General Comment No. 25: Science and Economic, Social and Cultural Rights (Art. 15(1)(b), (2), (3), and (4) of the ICESCR), U.N. Doc. E/C.12/GC/25 (30 April 2020).
- Chomsky, Noam/Pogge, Thomas/Klein, Naomi et al. (2015): Open Letter to the U.N., https://www.huffpost.com/entry/an-open-letter-to-the-uni_b_8197178
- Collini, Stefan (2012): *What Are Universities For?* London: Penguin Books.
- Collini, Stefan (2017): *Speaking of Universities*. London/New York, NY: Verso.
- Constitution of the Republic of South Africa Act, No. 108 of 1996.
- Cope, Bill/Kalantzis, Mary (2009): Signs of Epistemic Disruption: Transformations in the Knowledge System of the Academic Journal. In: Cope, Bill/Phillips, Angus (eds.): *The Future of the Academic Journal*. Oxford et al.: Chandos Publishing, 1st edition, 13-61.

- Cort, Pia (2010): Stating the Obvious: The European Qualifications Framework Is *Not* a Neutral Evidence-Based Policy Tool. In: *European Educational Research Journal*, 9 (3), 304-316.
- Dasgupta, Partha/David, Paul A. (1994): Toward a New Economics of Science. In: *Research Policy*, 23 (5), 487-521.
- De Wit, Hans (2019). Internationalization in Higher Education: A Critical Review. In: *Simon Fraser University Educational Review*, 12 (3), 9-17.
- Deem, Rosemary/Hillyard, Sam/Reed, Mike (2007): *Knowledge, Higher Education, and the New Managerialism: The Changing Management of UK Universities*. Oxford: OUP.
- Deem, Rosemary/Mok, Ka H./Lucas, Lisa (2008): Transforming Higher Education in Whose Image? Exploring the Concept of the “World-Class” University in Europe and Asia. In: *Higher Education Policy*, 21 (1), 83-97.
- Della Briotta Parolo, Pietro et al. (2015): Attention Decay in Science. In: *Journal of Informetrics*, 9 (4), 734-745.
- Department: Higher Education and Training (DHET), Republic of South Africa (2023): Research Outputs, Communiqué 1 of 2023, 14 August 2023.
- Docherty, Thomas (2015): *Universities at War*. Los Angeles et al: SAGE.
- Donoghue, Frank (2008): *The Last Professors: The Twilight of the Humanities in the Corporate University*. New York, NY: Fordham University Press.
- Dworkin, Ronald (1996): We Need a New Interpretation of Academic Freedom. In: Menand, Louis (ed.): *The Future of Academic Freedom*. Chicago: University of Chicago Press, 181-198.
- Eide, Asbjørn (2001): Cultural Rights as Individual Human Rights. In: Eide, Asbjørn/Krause, Catarina/Rosas, Allan (eds.): *Economic, Social and Cultural Rights: A Textbook*. Dordrecht and others: Martinus Nijhoff, 2nd revised edition, 289-301.
- Einstein, Albert (1932): Prologue. In: Planck, Max: *Where Is Science Going?* New York, NY: W.W. Norton, 7-12.
- Eurostat, Statistics Explained, R&D Personnel (2022) [Data extracted in November 2022], https://ec.europa.eu/eurostat/statistics-explained/index.php?title=R%26D_personnel&oldid=551400
- Fiiil-Flynn, Sean M. et al. (2022): Legal Reform to Enhance Global Text and Data Mining Research. *Science*, 2 December 2022, 378 (6623), 951-953.
- Flexner, Abraham (1939): The Usefulness of Useless Knowledge. In: *Harper's Magazine*, 179, June/November, 544-552.
- Foucault, Michel (2008): *The Birth of Biopolitics: Lectures at the Collège de France, 1978-79*. Burchell, Graham (transl.), Senellart, Michel (ed.). London: Palgrave Macmillan.
- Furedi, Frank (2011): Introduction to the Marketisation of Higher Education and the Student as Consumer. In: Molesworth, Mike/Scullion, Richard/Nixon, Elizabeth (eds.): *The Marketisation of Higher Education and the Student as Consumer*. London/New York, NY: Routledge.
- Garben, Sacha (2010): The Bologna Process and the Lisbon Strategy: Commercialisation of Higher Education through the Back Door? In: *Croatian Yearbook of European Law and Policy*, 6, 209-230.
- Garritzmann, Julian L. (2016): *The Political Economy of Higher Education Finance: The Politics of Tuition Fees and Subsidies in OECD Countries, 1945-2015*. London: Palgrave Macmillan.
- Gary-Bobo, Robert/Trannoy, Alain (2005): Faut-il augmenter les droits d'inscription à l'université? In: *Revue française d'économie*, 19 (3), 189-237.
- Gauteng School Education Bill Case (1996): *Gauteng Provincial Legislature In re: Gauteng School Education Bill of 1995* 1996 (3) SA 165 (CC) (4 April 1996).

- Gelyke Kanse Case* (2019): *Gelyke Kanse v. Chairperson of the Senate of the University of Stellenbosch* 2020 (1) SA 368 (CC) (10 October 2019).
- General Agreement on Trade in Services, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183 (entered into force 1 January 1995) (GATS).
- Gillespie Finney, Treena/Finney, R. Zachary (2010): Are Students Their Universities' Customers? An Exploratory Study. In: *Education and Training*, 52 (4), 276-291.
- Giroux, Henry A. (2014). *Neoliberalism's War on Higher Education*. Chicago, IL: Haymarket Books.
- Goddard, John/Vallance, Paul (2013): *The University and the City*. London/New York, NY: Routledge.
- Gorczyński, Paul (2018): More Academics and Students Have Mental Health Problems Than Ever Before. In: *The Conversation*, 22 February 2018, <https://theconversation.com/more-academics-and-students-have-mental-health-problems-than-ever-before-90339>
- Gunn, Andrew/Kapade, Priya (2018): The University Grade Inflation Debate Is Going Global. In: *University World News*, No. 507, 25 May 2018, <http://www.universityworldnews.com/article.php?story=20180523095429859>
- Hague Recommendations Regarding the Education Rights of National Minorities (1996): In: OSCE High Commissioner on National Minorities, The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note. The Hague: OSCE Office of the High Commissioner on National Minorities, 5-8.
- Hamburg Higher Education Law Case* (2010): BVerfGE 127, 87 – Hamburgisches Hochschulgesetz, 20 July 2010.
- Hazelkorn, Ellen (2008): Learning to Live with League Tables and Ranking: The Experience of Institutional Leaders. In: *Higher Education Policy*, 21 (2), 193-215.
- Heller, Lydia (2020): Forschung und Corona: Publikationsflut beeinflusst wissenschaftlichen Fortschritt, Deutschlandfunk Kultur (24 September 2020), <https://www.deutschlandfunkkultur.de/forschung-und-corona-publikationsflut-beeinflusst-100.html>
- Higher Education Act, No. 101 of 1997 (South Africa).
- Hornsby, David J. (2015): How South African Universities Are Governed Is the Biggest Challenge. In: *The Conversation*, 8 September 2015, <https://theconversation.com/how-south-african-universities-are-governed-is-the-biggest-challenge-47075>
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3 (entered into force 3 January 1976) (ICESCR).
- Jacklin, Heather/Vale, Peter (eds.) (2009): *Re-imagining the Social in South Africa: Critique, Theory and Post-Apartheid Society*. Scottsville: University of KwaZulu-Natal Press.
- Jansen, Jonathan (2023): Tweet posted 18 April 2023, 10:05, @JJ_Stellies
- Jessop, Bob (2018): On Academic Capitalism. In: *Critical Policy Studies*, 12 (1), 104-109.
- Kinzelbach, Katrin (forthcoming): The Origin and Meaning of Freedom in the Human Right to Science. Article on file with this author.
- Karran, Terence (2009): Academic Freedom in Europe: Time for a *Magna Charta*? In: *Higher Education Policy*, 22 (2), 163-189.
- Karran, Terence/Beiter, Klaus D. (2020): Academic Freedom in the European Union: Legalities and Realities. In: Bergan, Sjur/Gallagher, Tony/Harkavy, Ira (eds.): *Academic Freedom, Institutional Autonomy and the Future of Democracy*. Strasbourg: Council of Europe, 121-138.
- Karran, Terence/Beiter, Klaus D./Appiagyei-Atua, Kwadwo (2017): Measuring Academic Freedom in Europe: A Criterion Referenced Approach. In: *Policy Reviews in Higher Education*, 1 (2), 209-239.

- Karran, Terence/Beiter, Klaus D./Mallinson, Lucy (2022): Academic Freedom in Contemporary Britain: A Cause for Concern? *Higher Education Quarterly*, 76 (3), 563-579.
- Kehm, Barbara M./Teichler, Ullrich (2007): Research on Internationalisation in Higher Education. In: *Journal of Studies in International Education*, 11 (3/4), 260-273.
- Kenney, Martin/Patton, Donald (2009): Reconsidering the Bayh-Dole Act and the Current University Invention Ownership Model. In: *Research Policy*, 38 (9), 1407-1422.
- King, Edmund (1979): An Education Way Ahead for South Africa? In: *International Review of Education*, 25 (4), 481-500.
- Klein, Naomi (2020): How Big Tech Plans to Profit from the Pandemic. In: *The Guardian*, 13 May 2020, <https://www.theguardian.com/news/2020/may/13/naomi-klein-how-big-tech-plans-to-profit-from-coronavirus-pandemic>
- Kotzmann, Jane (2018): *The Human Rights-Based Approach to Higher Education: Why Human Rights Norms Should Guide Higher Education Law and Policy*. Oxford: OUP.
- Krücken, Georg (2008): Lässt sich Wissenschaft managen? In: *Wissenschaftsrecht*, 41 (4), 345-358.
- Larivière, Vincent/Haustein, Stefanie/Mongeon, Philippe (2015): The Oligopoly of Academic Publishers in the Digital Era. In: *PLoS One*, 10 (6), e0127502, 1-15.
- Lawrence, Peter A. (2007): The Mismeasurement of Science. In: *Current Biology*, 17 (5), R583-R585.
- Lee, You-Na/Walsh, John P. (2022): Rethinking Science as a Vocation: One Hundred Years of Bureaucratization of Academic Science. In: *Science, Technology, and Human Values*, 47 (5), 1057-1085.
- Lenzen, Dieter (2015): *University of the World: A Case for a World University System*. Cham: Springer.
- Lo, William Y. (2011), Soft Power, University Rankings and Knowledge Production: Distinctions between Hegemony and Self-Determination in Higher Education. In: *Comparative Education*, 47 (2), 209-222.
- Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011): In: De Schutter, Olivier et al. (2012): Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights. In: *Human Rights Quarterly*, 34 (4), 1084-1169.
- Mahroum, Sami (2016): "Publish or Perish": The New Brain Drain in Science, World Economic Forum, 8 November 2016, <https://www.weforum.org/agenda/2016/11/publish-or-perish-the-new-brain-drain-in-science>
- Manthalu, Chikumbutso H./Waghid, Yusef (2019): Decoloniality as a Viable Response to Educational Transformation in Africa. In: Manthalu, Chikumbutso H./Waghid, Yusef (eds.): *Education for Decoloniality and Decolonisation in Africa*. London: Palgrave Macmillan, 25-46.
- Matei, Liviu/Twinska, Julia (2018): Diverging Paths? Institutional Autonomy and Academic Freedom in the European Higher Education Area. In: Curaj, Adrian/Deca, Ligia/Pricopie, Remus (eds.): *European Higher Education Area: The Impact of Past and Future Policies*. Cham: Springer, 345-368.
- Meho, Lokman I. (2007): The Rise and Rise of Citation Analysis. In: *Physics World*, 20 (1), 32-36.
- Merten, Marianne (2019): State Capture Wipes Out Third of SA's R4.9-Trillion GDP – Never Mind Lost Trust, Confidence, Opportunity. In: *Daily Maverick*, 1 March 2010, <https://www.dailymaverick.co.za/article/2019-03-01-state-capture-wipes-out-third-of-sas-r4-9-trillion-gdp-never-mind-lost-trust-confidence-opportunity>
- Merton, Robert K. (1973a): The Normative Structure of Science (1942). In: Storer, Norman W. (ed.): *The Sociology of Science: Theoretical and Empirical Investigations*. Chicago, IL/London: University of Chicago Press, 267-278.

- Merton, Robert K. (1973b): *Priorities in Scientific Discovery (1957)*. In: Storer, Norman W. (ed.): *The Sociology of Science: Theoretical and Empirical Investigations*. Chicago, IL/London: University of Chicago Press, 286-324.
- Merton, Robert K./Barber, Elinor (2004): *The Travels and Adventures of Serendipity: A Study in Sociological Semantics and the Sociology of Science*. Princeton, NJ/Oxford: Princeton University Press.
- Moko Case (2020): *Moko v. Acting Principal of Malusi Secondary School 2021* (3) SA 323 (CC) (28 December 2020).
- Moosa, Imad A. (2018): *Publish or Perish: Perceived Benefits Versus Unintended Consequences*. Cheltenham/Northampton, MA: Edward Elgar.
- Moriarty, Philip (2011): *Science as a Public Good*. In: Holmwood, John (ed.): *A Manifesto for the Public University*. London/New York, NY: Bloomsbury, 56-73.
- Morley, Louise/Marginson, Simon/Blackmore, Jill (2014): *Education and Neoliberal Globalization*. In: *British Journal of Sociology of Education*, 35 (3), 457-468.
- Morrison, Heather (2009): *Scholarly Communication for Librarians*. Oxford et al.: Chandos Publishing.
- Nelson, Richard R. (2004): *The Market Economy, and the Scientific Commons*. In: *Research Policy*, 33 (3), 455-471.
- Nida-Rümelin, Julian (2014): *Zur Krise beruflicher und akademischer Bildung*. Bonn: Bundeszentrale für politische Bildung.
- Nowotny, Helga et al. (eds.) (2005): *The Public Nature of Science under Assault: Politics, Markets, Science and the Law*. Berlin/Heidelberg: Springer.
- Nussbaum, Martha C. (2010): *Not for Profit: Why Democracy Needs the Humanities*. Princeton, NJ/Oxford: Princeton University Press.
- OECD (1979): *Future Educational Policies in the Changing Social and Economic Context*. Paris: OECD.
- OECD (1998): *Redefining Tertiary Education*. Paris: OECD.
- OECD (2008): *Tertiary Education for the Knowledge Society*. Paris: OECD.
- Oleinik, Anton (2009): *Does Education Corrupt? Theories of Grade Inflation*. In: *Educational Research Review*, 4 (2), 156-164.
- Open Access (OA), Electronic Frontier Foundation, <https://www.eff.org/issues/open-access>
- Orman, Jon (2008): *Language Policy and Nation-Building in Post-Apartheid South Africa*. Cham: Springer.
- OSCE High Commissioner on National Minorities (1996): *The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note*. The Hague: OSCE Office of the High Commissioner on National Minorities.
- Osterloh, Margit/Frey, Bruno S. (2014): *Academic Rankings between the "Republic of Science" and "New Public Management"*. In: Lanteri, Alessandro/Vromen, Jack (eds.): *The Economics of Economists: Institutional Setting, Individual Incentives, and Future Prospects*. Cambridge: CUP, 77-103.
- Osterloh, Margit/Frey, Bruno S. (2015): *Ranking Games*. In: *Evaluation Review*, 39 (1), 102-129.
- Pacchioni, Gianfranco (2018): *The Overproduction of Truth: Passion, Competition, and Integrity in Modern Science*. Oxford: OUP.
- Park, Michael/Leahey, Erin/Funk, Russell J. (2023): *Papers and Patents Are Becoming Less Disruptive over Time*. In: *Nature*, 5 January 2023, 613, 138-160.
- Perutz, Max (2003): *I Wish I Had Made You Angry Earlier: Essays on Science, Scientists and Humanity*. New York, NY: Cold Spring Harbour Laboratory Press.

- Peters, Michael A. (2016): Education, Neoliberalism, and Human Capital: *Homo Economicus* as “Entrepreneur of Himself.” In: Springer, Simon/Birch, Kean/MacLeavy, Julie (eds.): *The Handbook of Neoliberalism*. New York, NY/London: Routledge, 297-307.
- Piwovar, Heather et al. (2018): The State of OA: A Large-Scale Analysis of the Prevalence and Impact of Open Access Articles. In: *PeerJ*, 6:e4375, DOI: 10.7717/peerj.4375, 1-23.
- Popescu, Irina (2016): The Educational Power of Discomfort. In: *The Chronicle of Higher Education*, 17 April 2016, <https://www.chronicle.com/article/the-educational-power-of-discomfort>
- Power, Michael (1999): *The Audit Society: Rituals of Verification*. Oxford: OUP.
- Prelec, Tena et al. (2022): Is Academic Freedom at Risk from Internationalisation? Results from a 2020 Survey of UK Social Scientists. In: *The International Journal of Human Rights*, 26 (10), 1698-1722.
- Pusser, Brian/Marginson, Simon (2013): University Rankings in Critical Perspective. In: *Journal of Higher Education*, 84 (4), 544-568.
- Readings, Bill (1997): *The University in Ruins*. Cambridge, MA/London: Harvard University Press.
- Reichman, Jerome H./Okediji, Ruth L. (2012): When Copyright Law and Science Collide: Empowering Digitally Integrated Research Methods on a Global Scale. In: *Minnesota Law Review*, 96 (4), 1362-1480.
- Research Outputs Policy (2015): Republic of South Africa, Government Notice No. 188, Government Gazette, Vol. 597, No. 38552, 11 March 2015.
- Rider, Sharon/Hasselberg, Ylva/Waluszewski, Alexandra (eds.) (2013): *Transformations in Research, Higher Education and the Academic Market: The Breakdown of Scientific Thought*. Dordrecht et al.: Springer.
- Riedel, Eibe/Söllner, Sven (2006): Studiengebühren im Lichte des UN-Sozialpakts. In: *JuristenZeitung*, 61 (6), 270-277.
- Robinson, David (2013): The Mismeasure of Higher Education? The Corrosive Effect of University Rankings. In: *Ethics in Science and Environmental Politics*, 13 (2), 65-71.
- Rojstaczer, Stuart/Healy, Christopher (2012): Where A Is Ordinary: The Evolution of American College and University Grading, 1940-2009. In: *Teachers College Record*, 114 (7), 1-23.
- Sandel, Michael J. (2020): *The Tyranny of Merit: What's Become of the Common Good?* London: Penguin.
- Schiedermaier, Hartmut (1984): Die deutsche Universitätsreform im Jahre 1983. In: Zeidler, Wolfgang/ Maunz, Theodor/Roellecke, Gerd (Hg.): *Festschrift Hans-Joachim Faller*. München: C.H. Beck, 217-248.
- Schneider, Geoff (2013): Student Evaluations, Grade Inflation and Pluralistic Teaching: Moving from Customer Satisfaction to Student Learning and Critical Thinking. In: *Forum for Social Economics*, 42 (1), 122-135.
- Schulte, Martin (2006): Grund und Grenzen der Wissenschaftsfreiheit. In: *Veröffentlichungen der Vereinigung der deutschen Staatsrechtslehrer, Kultur und Wissenschaft*, Vol. 65. Berlin: De Gruyter, 110-145.
- Shakespeare, William (2003): *Hamlet*. The Annotated Shakespeare, Raffel, Burton (ed.). New Haven, CT/London: Yale University Press.
- Seale, Lebogang (2022): Academic Freedom Upheld at University of Johannesburg, Opinion Pieces, 23 December 2022, <https://www.uj.ac.za/news/academic-freedom-upheld-at-university-of-johannesburg>

- Sen, Amartya (1999): *Development as Freedom*. New York, NY: Alfred Knopf.
- Shin, Jung Cheol/Cummings, William K. (2014): Teaching and Research Across Higher Education Systems: Typology and Implications. In: Shin, Jung Cheol et al. (eds.): *Teaching and Research in Contemporary Higher Education: Systems, Activities and Rewards*. Dordrecht et al.: Springer, 381-394.
- Slaughter, Sheila/Leslie, Larry L. (1997): *Academic Capitalism: Politics, Policies, and the Entrepreneurial University*. Baltimore, MD: Johns Hopkins University Press.
- Slow Science Academy (2010): The Slow Science Manifesto, <http://slow-science.org>
- Smith, Tara (2020): Scientific Purpose and Human Rights: Evaluating General Comment No 25 in Light of Major Discussions in the *travaux préparatoires* of the Universal Declaration of Human Rights and International Covenant on Economic, Social, and Cultural Rights. In: *Nordic Journal of Human Rights*, 38 (3), 221-236.
- Smyth, John (2017): *The Toxic University: Zombie Leadership, Academic Rock Stars and Neoliberal Ideology*. London: Palgrave Macmillan.
- Socrates (1994): *Xenophon, Memorabilia*. Bonnette, Amy L. (transl.). Ithaca/London: Cornell University Press.
- Söllner, Sven (2007): *Studiengebühren und das Menschenrecht auf Bildung*. Stuttgart: Boorberg.
- Solomon, David J./Björk, Bo-Christer (2012): A Study of Open Access Journals Using Article Processing Charges. In: *Journal of the American Society for Information Science and Technology*, 63 (8), 1485-1495.
- Taylor, Paul (2003): Humboldt's Rift: Managerialism in Education and Complicit Intellectuals. In: *European Political Science*, 3 (1), 75-84.
- Tomaselli, Keyan G. (2021): *Contemporary Campus Life: Transformation, Manic Managerialism and Academientia*. Boulder, CO: Lynne Rienner.
- Tomaševski, Katarina (2000): Progress Report of the Special Rapporteur on the Right to Education, U.N. Doc. E/CN.4/2000/6 (1 February 2000).
- Tomaševski, Katarina (2005): Has the Right to Education a Future within the United Nations? A Behind-the-Scene Account by the Special Rapporteur on the Right to Education 1998-2004. In: *Human Rights Law Review*, 5 (2), 205-237.
- Tomlinson, Michael (2014): *Exploring the Impact of Policy Changes on Students' Attitudes and Approaches to Learning in Higher Education*. York: Higher Education Academy.
- UNESCO General Conference (1997): Recommendation concerning the Status of Higher-Education Teaching Personnel, Doc. 29 C/Res 11 (11 November 1997).
- UNESCO General Conference (2017): Recommendation on Science and Scientific Researchers, Doc. 39 C/Res 85 (13 November 2017).
- UNESCO General Conference (2021): Recommendation on Open Science, Doc. 41 C/Res 22 (23 November 2021).
- UNESCO Guidelines on Language and Education (2003): In: *Education in a Multilingual World*, UNESCO Position Paper. Paris: UNESCO, 28-33.
- Universal Declaration of Human Rights, U.N.G.A. Res. 217 (III) A (10 December 1948) (UDHR).
- University Judgment* (1973): BVerfGE 35, 79 – Hochschul-Urteil, 29 May 1973.
- Uprimny, Rodrigo/Chaparro Hernández, Sergio/Castro Araújo, Andrés (2019): Bridging the Gap: The Evolving Doctrine on ESCR and "Maximum Available Resources." In: Young, Katharine G. (ed.): *The Future of Economic and Social Rights*. Cambridge: CUP, 624-653.

- Van der Wende, Marijk (2007): Internationalization of Higher Education in the OECD Countries: Challenges and Opportunities for the Coming Decade. In: *Journal of Studies in International Education*, 11 (3/4), 274-289.
- Van Noorden, Richard (2013). The True Cost of Science Publishing. In: *Nature*, 28 March 2013, 495, 426-429.
- Verger, Antoni/Robertson, Susan L. (2012): The GATS Game-Changer: International Trade Regulation and the Constitution of a Global Education Marketplace. In: Robertson, Susan L. et al. (eds.): *Public Private Partnerships in Education: New Actors and Modes of Governance in a Globalizing World*. Cheltenham/Northampton, MA: Edward Elgar, 104-127.
- Weber, Max (1922): Wissenschaft als Beruf. In: *Gesammelte Aufsätze zur Wissenschaftslehre*. Tübingen: J.C.B. Mohr (Paul Siebeck), 524-555.
- Wellcome (2020): What Researchers Think About the Culture They Work In. London: Wellcome Trust.
- Wier, Ludvig/Reynolds, Hayley (2018): Big and “Unprofitable”: How 10 Per Cent of Multinational Firms Do 98 Per Cent of Profit Shifting, WIDER Working Paper 2018/111, <https://www.wider.unu.edu/sites/default/files/Publications/Working-paper/PDF/wp2018-111.pdf>
- Williams, Joanna (2013): *Consuming Higher Education: Why Learning Can't be Bought*. London et al.: Bloomsbury.
- Williams, Sierra (2023): Are 90% of Academic Papers Really Never Cited? Reviewing the Literature on Academic Citations, LSE Impact Blog (23 April 2014), <https://blogs.lse.ac.uk/impactofsocialsciences/2014/04/23/academic-papers-citation-rates-remler>
- Williamson, Ben/Hogan, Anna (2021): *Pandemic Privatisation in Higher Education: Edtech & University Reform*. Brussels: Education International.
- Wolhuter, Charl et al. (2011): South Africa: Recklessly Incapacitated by a Fifth Column – The Academic Profession Facing Institutional Governance. In: Locke, William/Cummings, William K./Fisher, Donald (eds.): *Changing Governance and Management in Higher Education: The Perspectives of the Academy*. Dordrecht et al.: Springer, 107-125.
- Wong, Billy/Chiu, Yuan-Li T. (2019): Let Me Entertain You: The Ambivalent Role of University Lecturers as Educators and Performers. In: *Educational Review*, 71 (2), 218-233.
- Wright, Susan (2012): Ranking Universities within a Globalised World of Competition States: To What Purpose, and With What Implications for Students? In: Andersen, Hanne L./Jacobsen, Jens C. (eds.), *Uddannelseskvalitet i en globaliseret verden*. Frederiksberg: Samfundslitteratur, 81-102.
- Young, Michael (2003): National Qualifications Frameworks as a Global Phenomenon: A Comparative Perspective. In: *Journal of Education and Work*, 16 (3), 223-237.
- Ziman, John (2003): *Real Science: What It Is, and What It Means*. Cambridge: CUP.

Dieser Beitrag ist digital auffindbar unter
DOI <https://doi.org/10.46499/2236.2946>

AUTOR*INNEN

Frank Albrecht ist Leiter des Referats Philipp Schwartz-Initiative und Wissenschaftsfreiheit der Alexander von Humboldt-Stiftung.

Jana F. Bauer ist promovierte wissenschaftliche Mitarbeiterin am Lehrstuhl für Arbeit und berufliche Rehabilitation an der Universität zu Köln. Bis zum Ende der Finanzierungsphase 2022 leitete sie inhaltlich das Projekt „PROMI – Promotion inklusive“.

Klaus D. Beiter, B.Iur. LL.B. (UNISA, Pretoria), Dr. iur. (LMU München) ist Professor of Law, North-West University in Potchefstroom (South Africa).

Sabine Berghahn ist Privatdozentin am Otto-Suhr-Institut für Politikwissenschaft der Freien Universität Berlin.

Christopher Bohlens ist Leiter der Abteilung Wissenschaft von Transparency International Deutschland e.V.

Angela Heucher ist promovierte Politikwissenschaftlerin und arbeitet als Senior Evaluatorin und Teamleiterin für das Deutsche Evaluierungsinstitut der Entwicklungszusammenarbeit (DEval).

Alexandra Kaiser ist promovierte wissenschaftliche Mitarbeiterin in dem BMBF-Projekt „Wissenschaftsfreiheit in der Volksrepublik China“ am Institut für Politische Wissenschaft der FAU Erlangen-Nürnberg.

Katrin Kinzelbach ist Professorin für Internationale Politik der Menschenrechte an der FAU Erlangen-Nürnberg.

Lars Lott ist Postdoctoral Researcher am Institut für Politische Wissenschaft, FAU Erlangen-Nürnberg, und Research Associate am V-Dem Institute, Universität Göteborg, Schweden.

Mathilde Niehaus ist Professorin an der Universität zu Köln. Seit 2002 hat sie den Lehrstuhl für Arbeit und berufliche Rehabilitation inne. Bis Projektende 2022 war sie Projektleiterin von „PROMI – Promotion inklusive“.

Jan Tobias Polak, promovierter Wirtschafts- und Sozialwissenschaftler, ist als Senior Evaluator für das Deutsche Evaluierungsinstitut der Entwicklungszusammenarbeit (DEval) tätig. Als Teamleiter ist er für die Evaluierung des BMZ-Menschenrechtskonzepts verantwortlich.

Karoline Rhein arbeitet am Lehrstuhl für Arbeit und berufliche Rehabilitation an der Universität zu Köln und war von 2021 bis 2022 wissenschaftliche Mitarbeiterin im Projekt „PROMI – Promotion inklusive“.

Marcellina Schmidt absolvierte ein Masterstudium in Development Management und ist als Fachevaluatorin der Evaluierungsabteilung III („Zivilgesellschaft, Menschenrechte“) des Deutschen Evaluierungsinstituts der Entwicklungszusammenarbeit (DEval) tätig.

Lea Smidt ist Politologin und Referentin in der Projektgruppe Datenlabor des Bundesministeriums für Wirtschaftliche Zusammenarbeit und Entwicklung (BMZ). Zuvor war sie als Evaluatorin in der Evaluierungsabteilung III („Zivilgesellschaft, Menschenrechte“) des DEval tätig.

Janika Spannagel ist Postdoktorandin an der Freien Universität Berlin im Exzellenzcluster „Contestations of the Liberal Script“ (SCRIPTS). Derzeit forscht sie als Visiting Scholar an der Universität Stanford zu Anfechtungen der Wissenschaftsfreiheit in den USA.

Lena Taube ist Soziologin und arbeitet als Evaluatorin in der Evaluierungsabteilung III („Zivilgesellschaft, Menschenrechte“) des Deutschen Evaluierungsinstituts der Entwicklungszusammenarbeit (DEval).