

Transformative Constitutionalism: What human is imagined in the 'Human Rights' contained in the South African Constitution

Call For Workshop Proposals

"We cannot give up writing stories about what it means to be human that displace those that are at the foundation of Empire. There is no order in the world that can exist or hold together, including an empire, without a founding story. Now the question for academia in the twenty-first century is, will you make space within it to be able to write a new foundation?" - Sylvia Wynter

In many ways, the South African transition from apartheid to democracy, and the creation of the 1996 Constitution, was an attempt to create a new foundation for the nation. To create a new South Africa premised on democratic principles, built on human dignity, equality and freedom. While at first lauded as the best Constitution in the world, partly for its transformative potential, in recent years the constitution has been called into question, particularly through decolonial critique. One of the major critiques levelled against the constitution is that it embodies western epistemology, and that a more African philosophical orientation is necessary.

In the contemporary moment we are grappling with the disagreements concerning the changes that have come, and/or the radical structural changes that have not yet been realised, by or through the Constitution. Some argue that the Constitution has not done enough, some argue that it is the government that needs to do more, and some argue for a new imagining of what a nation is to attend to post-colonial South African quandaries.

As will be recalled, the idea of the Constitution as a unifying document, with a premise of equality came under fire during the Rhodes Must Fall and the Fees Must Fall movements, with heavy critique of the fallacy of the idea of a "rainbow nation" that was popular during the 1990's and the early 2000's. These critiques are folded into what some call the new decolonial turn, and these critiques have remained in the wake of the Fall Movements, some of which are contained in the *South African Journal on Human Rights* 2018 special issue on *conquest, constitutionalism, and democratic contestations*.

Up to now, for the most part, transformative constitutionalism has mostly been engaged through legal scholarship, however in this workshop, and ultimately in the publication, transformative constitutionalism will be given a humanistic treatment. How do we think about transformative constitutionalism, that is to say the law, using humanistic interventions, particularly engaging critically with the idea of the *human* that is imagined in the human rights contained in the South African Constitution.

The recent decolonial critiques, of the Constitution and other entities, implicitly and explicitly, includes a challenge to the way the *human* is conceptualised in the post-1994 Constitution. Critical questions about humanistic ideas like dignity, ownership, freedom, self-expression, and equality, that are associated with the Constitution are being asked. Are some of the ways we have conceived the constitution tainted by hegemonic western categories of knowing about what it is and what it means to be human? Has the protection of human rights failed to disrupt historically entrenched power relations, and instead reinforced and legitimised inequalities in post-apartheid? Is it a fair question to ask, who has benefited most from human rights discourse and protection as outlined in the Constitution in post-1994 South Africa? In trying to answer these questions,

and others pertaining to the South African transition, in this workshop, we want to emphasise what Walter Mignolo called “epistemic disobedience” that was embodied by the scholarship of Sylvia Wynter.

The language of inclusion has been a staple in our discourse post the 1996 Constitution. In thinking about the inclusion ethos in South Africa, through this workshop, we can’t help but invoke Abdul JanMohamed (1984) who argues “historically, this anxiety to be included is far stronger than the need to stress the difference. The traditional narcissism of a dominant white culture—that is, the culture’s ability only to recognize man in its own image and its refusal to recognize the substantial validity of any alterity—puts enormous pressure on Blacks and other minorities to recreate themselves and their culture as approximate versions of the Western humanist tradition, as images that [white] “humanism” will recognize and understand.”

JanMohamed here and others elsewhere raise questions about the who or the what of the *human* are we talking about when we talk about Human Rights in South Africa? If human rights are mediated by power, what becomes of the *human* in human rights? In other words, what has become of the “conceptual other” that Sylvia Wynter talked about. How are we thinking about discarded people – the poor, the jobless, the landless, those often classified as “No Humans Involved” (Silvia Wynter)?

Lastly, transformative constitutionalism and the humanities have to consider the impact of the digital on transformation. Considering how digital humanities are changing traditional humanities, we have to wonder about technogenesis, that the human is, perhaps, always already a technology. Indeed, Katherine Hayles argues that humans and technology are coevolving. Therefore, the intervention about transformative constitutionalism has to include and take seriously technological development and what these developments mean for transformation.

Submission Details

The Transformative Constitutionalism platform from the Centre of Humanities research at the University of the Western Cape invites you to submit a **1 page** proposal responding to the workshop prompt to be included in the workshop. We encourage proposals that speak to law and the humanities, that aim for a highly interactive and collaborative workshop. The **submission deadline** for the 1 page proposal is **30 April 2022**.

The **workshop** will take place on **30 May 2022**, where the accepted proposals will be presented and discussed. The workshop will take place virtually.

After the workshop we will move towards publication of a special edition of a journal issue.

Please email all submissions to Lwando Scott: lscott@uwc.ac.za

All enquiries regarding the workshop, email: lscott@uwc.ac.za