

Foreword

Punches of the invisible fist: Intra- and inter-personal relations in the neo-liberalised African university

‘There can be no independent thought – indeed no independence – without institutions to sustain independent research and produce relevant knowledge. *The key institution is the research university.*’

Mahmoud Mamdani, 2007

The editorial board of *Strathmore Law Journal* is pleased to present the fourth volume of our Journal. This issue is admittedly inordinately delayed. 2018/2019 was a rather difficult year for the Editorial Board, with staff turnover and a few challenges, including an unexpected and disappointing external one.

Joyful sorrows, happy problems

Thankfully, the staff turnover has been the stuff of happy thoughts. Our colleagues Jerusha Asin and Francis Kariuki spent their 2018 and 2019 immersed in doctoral studies. Their professional progress and academic commitment remain an inspiration to us. In fact, Francis Kariuki, this volume’s Issue Editor, has been awarded the degree of Doctor of Philosophy by the University of Witwatersrand. We congratulate him for this excellent achievement, completed in 3 years, and look forward to even more incisive scholarship from him.

Thankfully again, Strathmore University Press continued to attract interest from scholars and we received quite a healthy collection of excellent unsolicited typescripts for consideration for publication. In addition, the editors have been working on several in-house edited collections in diverse areas such as mining law, devolution and a festschrift. This backlog has fueled many a midnight oil lamp during these many months.

Good problems are, needless to say, good, but nonetheless, problematic. With fewer of us to go round the increased workload at the Editorial Board and at the faculty, administrative and substantive tasks per capita did increase, and this severely bogged us down. Delays have been inordinate and in this, we offer our most sincere and unreserved apologies.

As Volume 4 comes out in April 2020, we continue to work round the clock to shortly finalise Volume 5 as we begin the long and meticulous process of peer review of incoming pieces for future volumes. The task of documenting ‘African law and the law in Africa’ – a term we employed in our very first editorial in 2015 – happily remains unrelenting.

The African scholarly journal as vocation versus the invisible hand

As our Journal and the wider university press grow, we continue to live the exciting and challenging experience of homegrown academic publishing in Africa. The task of the Journal editor in Africa remains an almost sacred vocation, an obligation of a trans-generational nature, to erect institutions that will serve for the long term as repositories of Africa’s intellectual heritage. The sanctity of this task holds, despite being bedeviled by its own externalities and adverse political-economic environments. To the former, Jean d’Aspremont and Larissa van den Herik offer the following thoughts:

Nobody can dispute that academic publishing generates billions of tonnes of carbon dioxide by virtue of production, shipping or even online access, exacerbates the egos of authors, leads to overcommitment of all stakeholders – whether authors, reviewers, editors, or publishers – and contributes to the proliferation of legal thinking, which, in social sciences, can be extremely harmful for the discipline as a whole.¹

Our present reflection focuses on the latter, that is, the effects three decades of the neo-liberal ‘scholarly marketplace’² has wrought on the epistemic community, particularly the intra-personal and its inter-personal corollaries. In thinking through this, the question of context is central. In Africa, what bedevils us varies in hue and severity from other parts of the world. Yet, it remains indisputable that the scholarly journal serves as a research institution that,

¹ Jean d’Aspremont and Larissa van den Herik ‘The public good of academic publishing in international law’ 26 *Leiden Journal of International Law* (2013), 2.

² Mahmood Mamdani *Scholars in the marketplace: The dilemmas of neo-liberal reform at Makerere University, 1989-2005*, CODESRIA/Fountain 2007.

by selecting, ensuring (a given) quality, marrying their name and reputation to certain authors and themes, and disseminating scholarly works, [...] permit the information and opinions of sufficient quality to be disseminated and subsequently *validated* as [...] knowledge within a given community.³

This central validating role of the scholarly journal and of wider academic publishing touches the person and their community. It validates persons, along with their ideas. What happens then, when these persons and these ideas, have ceased, as official policy, to be a public good, and are constantly reminded, through subtle and not-so subtle policy signaling, as to their ephemeral, monetary and commoditised nature? Are persons changed by the political-economic ideology they are required to live in?⁴ Can intra-personal change fail to have inter-personal corollaries?⁵ In our reflections below, we will consider how community has necessarily been changed by the ‘brute force attack’ on our individual mindsets. But before, a quick word on history.

The neo-liberal reforms that Mahmoud Mamdani investigates in *Scholars in the marketplace* are set upon Makerere in 1992, making it the first public university of the region to experiment this model. It has been a good three decades of this thinking, and about two decades in Kenyan public universities. Senior university officials, administrative and faculty, have been formed in this period. Middle level scholars and administrators started their graduate studies during this experimentation and the students we teach and the youngest of teaching staff have literally grown up in this time.

Mamdani’s recalling is therefore of some importance for, over these last three decades or so, certain attitudes and ideologies have come to be taken for granted as normal, yet they are not nearly of enough antiquity to warrant normalcy. Recalling the youth of these changes is critical in reflecting on the

³ d’Aspremont and van den Herik ‘The public good of academic publishing in international law’, 2. [emphasis added].

⁴ Mamdani details the changes in personal values and work ethic that neo-liberal reforms wrought at Makerere. For instance, commercialisation was so pervasive that ‘staff were no longer willing to do anything that was not directly paid for’ Mamdani, *Scholars in the marketplace*, 70. Instructively, Murunga, himself a scholar working in a public university undergoing similar changes, highlights this same line in his review. See, Godwin R Murunga ‘Reviewed work: *Scholars in the marketplace: The dilemmas of neo-liberal reform at Makerere University, 1989-2005* by Mahmood Mamdani’ *African Sociological Review / Revue Africaine de Sociologie*, Vol. 11, No 2 (2007), 140.

⁵ ‘The cultural and political consequences of shareholder primacy have undermined our social cohesion.’ Sam Long, ‘The financialization of the American elite’ *American Affairs* Vol III No 3 (Fall 2019) 169-90.

phenomena of normalised and unsustainable self-interest witnessed in the average African epistemic community today.⁶

Yet, these reforms and the social organisation they create primarily draw their power from the moment in history they were born, ‘...that almost terminal moment in the affairs of humans’.⁷ This strongly asserted a finality to the political-economic claims that rode along with the momentous changes in our countries and the entire world at the time. These were veritable revolutionary times, epistemically speaking, where the changes – termed as reforms – discredited prior thinking to the point of erasure.⁸

But as it happens, history continues on, mostly since time has revealed the limits of free market driven globalisation,⁹ just as it earlier revealed the limits of legal radicalism in the other great East African university, Dar.¹⁰

‘... while historical and political events matter, thinking about how history and politics emerge *in the minds of people and societies* may matter more.’¹¹ We wager, one principle way history soldiers on is in its agents, us, and how the experiences of the last 2-3 decades have changed how we think of ourselves and our colleagues in the epistemic community. These changes are, we hold, conclusions that proceed by logic, from the premises of the ‘scholarly marketplace’. We elect to treat of three corollaries: the increasing returns on willingness to unethically produce academic works; the rising opportunity cost of mentorship; and the collapse of supply of competent peer reviewers.

The first corollary of this ‘scholarly marketplace’, we hold, is the increasing willingness of authors to employ less than ethical standards in the production of academic works. Academic publications are rightfully pegged as ‘KPIs’ (key performance indicators) for academic staff. Yet, without the necessary political-

⁶ A further word of clarification. It is easy to blame individuals, yet the problem is rather systemic. It seems more reasonable to consider that persons are reacting to the cut-throat competitive environment they have been thrust into.

⁷ In reference to Francis Fukuyama’s *End of history* thesis, Peter Vale, ‘Introduction: Of ships, be-draggled crews and the miscegenation of ideas: Interpreting intellectual traditions in South Africa’ in Peter Vale, Lawrence Hamilton, Estelle H Prinsloo (eds) *Intellectual traditions in South Africa: Ideas, individuals and institutions*, University of Kwazulu-Natal Press, 2014, 2.

⁸ Vale gives a poignant example of erasure in ‘official histories’: ‘These days, [Marxism] seems to be interpreted only by financial pundits for whom the understanding of Marxism’s role on contemporary debates seem to be confused with the collapse of state-centred communism, which somewhat fecklessly, is often called ‘Marxism’ or ‘socialism’. Vale, ‘Introduction’, 6.

⁹ Vale, ‘Introduction’, 2, 6, 9.

¹⁰ Issa Shivji (ed) *The limits of radicalism*, University of Dar es Salaam, 1986.

¹¹ Vale, ‘Introduction’, 3. [emphasis added]

economic basis to encourage exceptional original research, and with the need to make ends meet, the Journal editor in Africa is increasingly being turned into a detective. Their main task is now to first beware of the plagiarised paper, and to send firm, if not downright angry and unkind responses to such attempt at submission.

Inevitably, such a one sleeps lightly the night after approving for press the final layout, wondering into the darkened ceiling at what they could have missed, dreading what scandal and litany of self-righteous accusations would befall them were something mischievous missed.

This tendency, for submission of unethically produced ‘scholarship’, has also made the Journal editor’s commissioning work potentially dangerous. It is always incumbent on such an office-bearer to seek out brilliant pieces, commission works that speak to topics or events that are of topical interest to the intellectual life the Journal is committed to serve. Such commissioning is nepotistic and unhealthy if the Journal editor cannot dare invite new contacts to consider writing a piece, yet one is tempted to reach back at existing contacts whose integrity they can vouch. Growth of young or ignored scholarship will suffer greatly from this unintended consequence of the upsurge of unethically produced submissions to scholarly journals.

The happy Journal editor, immersed in their love for meticulous and tedious detail, is today also troubled by a more sinister and harder to speak of challenge. The age-old human weakness of jealousy, which our generation cannot jealously guard victimhood of, *may* have a fresh innovation, in that it may also come from one’s mentors. Positing, along with free market claims that competition is good and drives down prices as well as keeps ‘market’ players honest, it may be interesting to consider how scarcity of resources and edification of said claim can affect a culture of mentorship and apprenticeship in the scholarly marketplace.¹² What benefits accrue me to mentor the one who will take my place, in a profession where I hope to be serving well into my mid-seventies?

Has scholarly marketplace competition, while on its mission to drive down prices of a private good like higher education, also achieved a critical by-product, that of driving up the opportunity cost of keeping an apprentice? At times, at the university, we simply conclude that reducing quality of primary and second-

¹² Speaking in almost matter of factly manner, Peter Vale explains away the ‘deeply divisive’ system of the apartheid ‘intellectual scaffolding’ thus: ‘it literally encouraged the country’s citizens to understand their histories in different (and often *competing*) ways. Vale, ‘Introduction’, 2. [emphasis added].

ary education is bringing up students who struggle to conclude academic writing projects. And while some truth may vest in such a view, that similar trends, coupled with unethically produced scholarship, are reproducing poor scholarly ‘works’ in young and not-so-young scholars ought give cause for pause. What is raising the opportunity cost of academic mentorship? What devilry or perchance nexus of factors is increasing the personal benefit of keeping one’s apprentice down? To whom ought my generation look to for understudy, guidance, wisdom, if we compete for the same space our immediate elders occupy? Could it be that the sometimes baffling instances of academic fraud that come to light are not so easily dismissed as a few bad apples but could be the corollary of the political economy itself?

Thirdly, in the scholarly marketplace, the supply of competent peer reviewers to provide double blind critique dwindles. This is a particularly difficult proposition for the Journal editor.¹³ With significant teaching and administrative loads, most of those experts, teaching colleagues, hardly have time to do their own quota of demanded research (remember the KPIs), let alone review your work for free. The free of charge services of peer reviewers is noted by d’Aspremont and van den Herik, with the very critical addition, ‘quality evaluation thus depends on the sense of *responsibility and civility* of the members of the epistemic community....’¹⁴

Such responsibility and civility, comity and community, can *only* be called upon *ceteris paribus* certain fundamentals of socio-economic life. Neo-liberal reforms weaken workplace stability¹⁵ and this affects intra-personal and inter-personal stability. It is fascinating to note that, in their European hue, d’Aspremont and van den Herik view ‘proliferation of law journals [and] financing of research through state-supported foundation of peer-evaluated research projects’¹⁶ as

¹³ With varying hue, this seems to be a wider phenomenon. See Joseph Weiler, ‘Editorial: Peer review in crisis...’, 23 23 *European Journal of International Law* 2 (2012) 309; d’Aspremont and van den Herik ‘The public good of academic publishing in international law’, 5.

¹⁴ d’Aspremont and van den Herik ‘The public good of academic publishing in international law’, 5. [Emphasis added]. And this is in a context (Europe) where journals increasingly associate themselves with major for-profit publishers to cover secretariat overheads. Here, the scholarly journal still also has to cover secretariat overheads from within the neo-liberalised university facilities.

¹⁵ Mamdani, *Scholars in the marketplace*, chapters 2-4; Louis Uchitelle, ‘Job insecurity of workers is a big factor in Fed policy’ *New York Times* 27 February 1997.

¹⁶ d’Aspremont and van den Herik ‘The public good of academic publishing in international law’, 5-6. They foresee the need for ‘additional incitements’ for well-done reviews, or discard of anonymity. A number of reputable African law journals we know, present company included, in fact do name the peer reviewers in acknowledgement, safe in the knowledge that the author would still not know which one in the list reviewed their work, and that, regardless of their public acknowledgement as

responsible for killing individual civic responsibility; contextual hue.¹⁷

Some African universities now add review of scholarly work as part of research output, which is heartening, since one can neither keep going back to the same people they asked earlier (and Journals are periodicals), for fatigue and nepotism avoidance concerns, and nor can one pay for new reviewers, as such practice is itself of questionable ethic and the natural spring such financing should come lies at the earth-rainbow nexus. For the natural sciences, effects can be even more dire if there is, and indeed there is, a reduction of professionals, willing and able to conduct verification/replication studies.

Mamdani notes that the uptake by our public policy makers of the ‘conviction that higher education is more of a private than a public good’, ‘with the uncritical enthusiasm of a convert’ is so complete that ‘even when the [World] Bank began to re-think its romance with the market, [the] political leadership held on to the dogma with the tenacity of an ideologue’.¹⁸

After three decades of this conviction, are there any experienced administrators, financial planners, business cycle advisors, economists, accountants and human resources professionals who have insights into how and *why* competition ought to be managed in higher education?

What business cycle, what political philosophy and economic theory undergirds management of sound epistemic communities? We live in polities where public companies (parastatals) have so long been gone that the students we teach and young academics we work with have no lived experience of sound public management. Are there any left that know ‘how to finance a research university?’¹⁹

One shudders to think it is only through vocationalisation that the short-sighted neo-liberal model of financing and management of higher education can

appreciation, the peer reviewer would *still* identify the author of the work they reviewed when the journal issue is eventually published.

¹⁷ Another example of similar concerns of changing paradigms but varied contexts is this line, when d’Aspremont and van den Herik ponder over open access publishing. ‘As most authors and peer reviewers in this profession are paid by virtue of public funding, claims have been made that their scholarly output should be openly accessible and in the public domain.’ d’Aspremont and van den Herik ‘The public good of academic publishing in international law’, 6.

¹⁸ Mamdani *Scholars in the marketplace*. vii. This view, recalls similar wonderings by James Thuo Gathii in his ‘The neo-liberal turn in regional trade agreements’ 83(3) *Washington Law Review*, 2011, asserting that neoliberalism is no longer the import of the foreign international financial institution, but a belief held by local elites. Long calls this genuine belief in self-serving rhetoric, ‘borderline messiah complex’. Long, ‘The financialization of the American elite’.

¹⁹ Mamdani *Scholars in the marketplace*. xii.

function. And not to suggest that academic endeavour is necessarily loss-making but rather, an invitation to consider financing cycles and definitions of loss and profit, benefit and burden. By way of analogy, a degree programme is financially loss-making and burdensome to a student's family if only undertaken for one year. How long then should a university financier give an academic publisher to prove their financial soundness?²⁰

Mamdani counsels that we view the question in terms of *relationships* (between the market-state, private-public). He relates the vicious turf wars that erupted for control of financial and human resources unleashed by commercialisation. It may be time to meditate on what damage decades of such turf wars have wrought on the intra-personal, and inevitably, inter-personal (community) inhabitants of this newly minted private good. The obvious but seldom spoken of death of mentorship. The more spoken of increase of unethical production of scholarly works. The erection of for-pay 'journals' to fill the market demand created by legislative fiat (a well-functioning market, one would suppose). The overall work environment that struggles to place value (monetary? for what other type could there possibly be) on the tedious, inefficient, abstract, oft pedantic nature of scholarly production (I prefer 'meticulous').

It is not to the benevolence of the professor, to paraphrase one nondescript Smith, that we have doctoral candidates. Whither is the invisible hand, what Godwin Murunga calls an insidious market ethic,²¹ leading the African Journal editor? Mamdani warns us against 'subversion of a public institution for private purposes'.²² The private is personal, in the sense of individual self-preservation. Against this, the most primordial instinct in fauna, the public institution will not survive.

d'Aspremont and van den Herik argue that 'quality control and order – a[re] indispensable elements of the public good'.²³ These can only remain true if we still agree that some things *are* public goods, regardless of expedient political considerations, and that we, the persons, remain invested in the values of service to community, trans-generational duty and the common good. It is only

²⁰ In pondering financing, and here in the European context, d'Aspremont and van den Herik wonder, 'would emancipation from publishers actually lead to greater independence or rather to a mutated form of subjection to faculty funds and decision-making?' d'Aspremont and van den Herik 'The public good of academic publishing in international law', 5. To which their African counterpart would respond, 'faculty funds?'

²¹ Murunga 'Reviewed work: *Scholars in the marketplace*', 140.

²² Mamdani *Scholars in the marketplace*. viii.

²³ d'Aspremont and van den Herik 'The public good of academic publishing in international law', 4.

true if we *refuse* to be changed by the political-economic jungle we have been thrust into, if we respond with generous apprenticeship to selfish competition, with laughter and kindness to toxic work environments, with accompanying peer support to vicious take-down attitudes in peer review systems of promotion and validation.

Now consider that all we have hitherto discussed relates to privatised public universities. Private universities have now become a central feature of higher education in East Africa, having in fact stolen the shine from their well-established public predecessors. These do not only include private for profit universities but also those privately run by veritable charitable institutions, especially religious ones.

The above are mere musings. Hypotheticals. Mythical truths, maybe truthful myths. Stories based on actual events? Musings. Unscientific opinions that can at best be hypotheses for research. Or at worse, rantings of what in Kenya we colloquially call, *kizungu mingi catwalk*.²⁴ If one could just find a grant to finance such research, I would be most inclined to vote for the publication of its findings in an African scholarly journal, replete with meticulous (i.e. tedious, inefficient, abstract, oft pedantic) editorial processes that provide ‘quality control and order’.²⁵

A small update to SLASLEC

A small but important housekeeping matter comes up at this point. Our house style, the Strathmore Simplified Legal Citation style (SLASLEC), is making a small update. This relates to the order of names. Hitherto, the order was ‘Surname, initialised given name’. For instance, Mamdani M *Scholars in the marketplace* or Gathii JT ‘The neoliberal turn in regional trade agreements’... But this approach has been properly criticised, happily by some of our most brilliant students, for obscuring gender and reaffirming cultural prejudgements (let’s call the spade... prejudices!) on what constitutes surnames and given names. In fact, many African cultures did not have surnames proper.

As such, the order now changes. Authors are encouraged to write the names of their scholarly authorities in the order they appear in the publications they are

²⁴ This phrase is so intensely colloquial that its translation incudes copious amounts of interpretation. I will attempt thus. The saying refers to a disdain for complex language spoken by a conceited person.

²⁵ d’Aspremont and van den Herik ‘The public good of academic publishing in international law’, 4.

citing. For instance Mahmood Mamdani *Scholars in the marketplace...* or James Thuo Gathii 'The neo-liberal turn in regional trade agreements'.... The rest of the house style hold fast.

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