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Socrates and student protest in post-apartheid South Africa – Part Two

Abstract

During recent years, various South African universities have fallen victim to student protest. The degree of violence involved in, as well as the frequency and duration of such protest action have varied from university to university. This article focuses on student protest action at the University of KwaZulu-Natal between 2012 and 2014. It examines such protest action through the lens of Plato's text *Crito*, which describes the events leading up to the death of Socrates. The question at the core of this article is whether or not the opinions of the ancient Greeks – Socrates, in particular – on the issue of obedience to law are in any way useful to South African law students when considering this issue in the context of the society in which they live. The article is divided into two parts. Part One examines the attitudes of the ancient Greeks to the issue of obedience to law and highlights points of possible relevance to the politics of protest in post-apartheid South Africa. Part Two of the article examines student protests between 2012 and 2014 at the University of KwaZulu-Natal. It also analyses two competing narratives about the nature of law in post-apartheid South Africa, which may assist in explaining the intimidatory tone of much of the protest action examined.

Socrates en protesaksie deur universiteitstudente na die einde van apartheid

Gedurende die afgelope paar jaar is verskeie Suid-Afrikaanse universiteite deur studente-protesaksie geteister. Die graad van geweld hierby betrokke, asook die aantal en duur van sulke insidente, verskil van een universiteit na die ander. Hierdie artikel fokus op studente-protesaksie aan die Universiteit van KwaZulu-Natal tussen 2012 en 2014. Hierdie protesaksie word beskou deur die lens van Plato se beroemde teks *Crito*, wat die gebeure voor die dood van Socrates beskryf. Hierdie artikel se kernvraag is, of die benadering van die Griekse filosowe, veral Socrates, teenoor die vraag of die reg gehoorsaam behoort te word of nie, enigsins relevant is vir Suid-Afrikaanse regsstudente in die konteks van hul huidige samelewing. Die artikel is tweeledig. Deel Een bestudeer die denke van die Griekse filosowe teenoor die vraag of die reg gehoorsaam behoort te word of nie, en lig sekere punte uit wat relevant mag wees in die konteks van die Suid-Afrikaanse politiek na afloop van apartheid. Deel Twee bestudeer verskeie studente-protesaksies aan die Universiteit van KwaZulu-Natal tussen 2012 en 2014. Die outeur analiseer twee verskillende denkwyses oor die rol van die reg in Suid-Afrika na afloop van apartheid, wat mag help om die intimiderende toon van studente-protesaksie gedurende die afgelope paar jaar te verklaar.

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1. Introduction

The question of obedience to, and respect for law is of central importance to post-apartheid South Africa, where a culture of violent protest – characterised by a widespread disrespect for law – appears to have taken hold. As stated in Part One of this article, questions such as the following are particularly salient in South Africa at present: What is at stake when South African students disobey the law by engaging in violence and intimidation during strikes? How vulnerable is South Africa's constitutional legal order at this time in its history? Do ancient Greek thinkers such as Socrates really have anything of value to teach us, or is ancient Greek thought outdated and irrelevant?

Part One of this article examined certain views of the ancient Greeks – those of Socrates, in particular – on the question of obedience to law. It was shown that Socrates believed his primary moral commitment was obedience to the laws of the gods. Just behind this primary moral commitment, however, Socrates believed that he had a strong moral duty to obey the laws of Athens. In fact, so strong was his conviction that he had to obey the laws of his 'polis' that he was prepared to sacrifice his life rather than disobey these laws. He appears to have understood that the laws of Athens were fragile and that it would be a disaster for all in the 'polis' – were those laws to crumble. Part One examined the various arguments put forward by Socrates in favour of obedience to, and respect for the laws of the state – in particular, a state which protects its people and guarantees important individual rights and freedoms.

Part Two of this article turns to a discussion of specific student protests at the University of KwaZulu-Natal between 2012 and 2014, in order to reveal something of their general nature and tone. Furthermore, two competing narratives about the nature of law in post-apartheid South Africa are examined, which may help explain the general contempt for law that seems to characterise a great deal of protest action in South Africa at present. The article concludes by assessing the relevance of ancient Greek thinking to present-day South Africa on the issue of obedience to law.

2. Student protests between 2012 and 2014 at the University of KwaZulu-Natal

In order to situate the discussion set out earlier in the context of present-day South Africa, I shall turn now to a brief examination of student protest actions that have taken place during recent years at the University of KwaZulu-Natal. The particular protest actions examined – those that took place between 2012 and 2014 on the various campuses of the University – constitute only a very tiny part of the protest actions that have taken place and continue to take place in post-apartheid South Africa.

It is useful to begin with a brief overview of the regulatory environment within which student protest actions at the University of KwaZulu-Natal

take place. An examination of the 'Rules for Students 2015' – applicable to students registered at the University of KwaZulu-Natal during 2015 – reveals that the university recognises the rights of students to express their opinions and to participate in lawful protest action.¹ Rule One starts off by aligning itself with the broad constitutional rights of all South Africans to freedom of conscience, opinion and expression, and confirms “the need for there to be a free exchange of views amongst members of the University community”.² It then asserts “the right of each member of the University community, and of properly invited visitors, to express their views on the platforms of the University provided such views are not supportive of violence or of the infringement of the dignity and fundamental individual rights of others”.³

Rule Two focuses on violence and intimidation. This rule makes it clear that “[u]nder no circumstances will any form of violence or threats of intimidation be tolerated” within the University community, and goes on to provide that:

[v]iolence, threats of violence and intimidation are particularly repulsive within a University community committed to reasoned debate, and behaviour by any individual within the University community which either causes or threatens to cause harm to another individual or damage to property is unacceptable.⁴

Rule Three further emphasises the general thrust of Rule Two, providing that “because of the sensitivities involved in the present circumstances, acts which are clearly designed to be provocative and thus likely to cause acrimony or violent conflict will not be tolerated”.⁵ The Rules then set out a detailed procedure which students must follow to resolve any grievances they may have. This involves escalating the grievance through various levels within the University’s chain of command – culminating in an appeal to the ‘Office of the Ombud’, which is independent from the University and which serves as a “point of last resort” when “all formal University channels have been exhausted”.⁶ If the grievance cannot be

1 See Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

2 See Rule One of Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

3 See Rule One of Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

4 See Rule Two of Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

5 See Rule Three of Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

6 See Step Four ‘Outline of measures to be taken in resolving grievances’, in Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_

resolved by the 'Office of the Ombud', the possibility of protest action still remains open. The grievance procedure provides that it is only after all other avenues to resolve a particular grievance have been exhausted that "legal protest action" may be embarked upon.⁷ The Rules make it quite clear that, for a protest action to be 'legal', all "proper protocols should be followed (as outlined in the Regulations for Staff and Student Gatherings, Demonstrations, Marches or Rallies) for embarking on a legal protest action".⁸ The protocols to be followed are set out in a section of the Rules entitled "Regulation of Gatherings Act", which starts with the following key paragraph:

The University respects and upholds the right of any individual within the University community to participate in gatherings, processions and demonstrations on any campus of the University. However, such right must be exercised subject to the rights of other members of the University community and the public at large. This applies to both participants and non-participants in any gathering, procession, etc. Further, the holding of any such gathering, procession, etc. must be in compliance with the law.⁹

The Rules then spell out certain provisions of the Regulation of Gatherings Act 205 of 1993, which are applicable to gatherings, processions and demonstrations on any campus of the University. Among these is the provision that "all participants shall refrain from uttering any words that are likely to encourage violence or incite racial or ethnic hatred", as well as the provision that "no-one may be armed while participating in any gathering".¹⁰

Unfortunately, student protests during recent years at the University of KwaZulu-Natal have been characterised by a general disregard of the rules and procedures discussed above. Protesting students often engage in conduct that is threatening and intimidatory. From time to time, such conduct becomes violent. Year after year, the same pattern is repeated. Protesting students move across a particular campus of the University, going from one lecture venue to the next, with very little being done to stop their progress. They chant revolutionary songs and disrupt lectures by forcing non-protesting students and lecturers to vacate lecture venues. There is widespread use of threats and intimidation. Lectures have

Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

7 See Step Five 'Outline of measures to be taken in resolving grievances', in Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

8 See Step Five 'Outline of measures to be taken in resolving grievances', in Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

9 See Regulation of Gatherings Act, in Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

10 See subparagraphs (f) and (g) of Regulation of Gatherings Act, in Rules for Students 2015 at http://legalservices.ukzn.ac.za/Libraries/General_Docs/SDR_Rule_Book_2014.sflb.ashx (accessed on 21 February 2015).

to be cancelled and campus facilities such as libraries and computer laboratories closed. The protests invariably create an atmosphere of fear on the campus involved. The following recent statement by a postgraduate student conveys a sense of the disruption caused by such protests:

It is not uncommon for students to be bullied out of lecture rooms, sworn at and intimidated if they choose not to join the protest; nor is it anything out of the ordinary for windows to be broken, furniture to be set alight, or for students packed into lecture theatres to be overwhelmed by the presence of teargas.¹¹

What follows is a chronological examination of various student protests that occurred on various campuses of the University of KwaZulu-Natal between 2012 and 2014.

During the first semester of 2012, at the start of the academic year, student protests broke out at the University of KwaZulu-Natal. In court papers by lawyers acting for the university, it was alleged that, on 9 February, a bus transporting students on the Westville campus was stopped and non-protesting students were pulled out of the vehicle. Lectures were disrupted, causing non-protesting students to evacuate the building they were in. A group of protesting students gathered and began to *toyí-toyi*.¹² Stones and bricks were thrown at the police and damage was caused to police vehicles and university property.¹³ On 10 February, it was alleged that protesting students on the Westville campus again interrupted lectures.¹⁴ On 14 February, further violence erupted on the Westville campus. Protesting students forced non-protesting students to leave their lecture venues and demanded that the non-protesting students join the protest. The protesting students marched around the campus with knobkerries, sticks and batons. Washing machines and other appliances were thrown from verandahs, tyres and rubbish bins were set alight, and vehicles entering the campus were stoned.¹⁵ Protesting students also broke windows at the offices of the Risk Management Services, as well as

11 S Ganesh, UKZN strikes: Violence cannot be our only tool, 15 September 2014, <http://www.thedailyvox.co.za/ukzn-strikes-violence-cannot-be-our-only-tool/> (accessed on 28 March 2015).

12 The *toyí-toyi* is a type of rhythmic dance performed in a crowd together with revolutionary chanting, which was widely used as a form of protest during the struggle against apartheid.

13 A Kubheka, Students arrested, 16 February 2012, *Independent Online*, <http://www.iol.co.za/dailynews/news/students-arrested-1.1235722?ot=inmsa.ArticlePrintPageLayout.ot>. (accessed on 28 March 2015).

14 N Mbadi, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Student protest action: Westville Campus, 10 February 2012, <http://www.ukzn.ac.za/docs/media-releases/student-protest-action-2012.docx?sfvrsn=2> (accessed on 28 March 2015).

15 M Memela & N Nair, Violence rocks varsity, 15 February 2012, *The Times*, <http://www.timeslive.co.za/local/2012/02/15/violence-rocks-varsity> (accessed on 28 March 2015).

the windows of two vehicles belonging to the Risk Management Services.¹⁶ They barricaded roads with burning tyres and rocks, prevented vehicles from entering or leaving the Westville campus, and threw stones at the police.¹⁷ A number of people were injured during this violent protest action and five students were arrested, including the president of the Students' Representative Council – who was alleged to have assaulted a lecturer.¹⁸ The alleged assault was said to have occurred when the president of the SRC waved a fire hose at students in a lecture venue. The lecturer was said to have intervened and was allegedly struck on the wrist by the fire hose.¹⁹ The other four students were arrested on charges of malicious damage to property.²⁰ During the protest action, the University made a number of urgent applications to the High Court, including an application for an interdict barring the president of the Students' Representative Council at the Westville campus from entering any of the University of KwaZulu-Natal's campuses.²¹ During this same period, statements were allegedly posted on the Facebook page of the University, threatening violence against White and Indian students – but the University denied that the protest action on the Westville campus had anything to do with race, gender or social class.²² As to the reasons for the protest action, it was reported that the Students' Representative Council had demanded that funding be made available for over 1000 students and that another building be leased to provide further accommodation for students.²³ The protests resulted in the academic programme of the University being suspended for two

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- 16 L Jansen, UKZN students arrested in protest blitz, *Independent Online*, 16 February 2012, <http://www.iol.co.za/news/crime-courts/ukzn-students-arrested-in-protest-blitz-1.1235519> (accessed on 28 March 2015).
 - 17 South African Broadcasting Corporation (SABC), Four UKZN students in court following protest, *SABC News*, 15 February 2012, <http://www.sabc.co.za/news/a/8ca838804a2b9b0a96afd62bcc6349b6/Four-UKZN-students-in-court-following-protest-20121502> (accessed on 28 March 2015).
 - 18 South African Broadcasting Corporation (SABC), UKZN lectures resume after student protests', *SABC News*, 16 February, <http://www.sabc.co.za/news/a/e8bc19004a2fb2878950efc23b2317b7/UKZN-lectures-resume-after-student-protests-20120216>, accessed 28 March 2015.
 - 19 A Kubheka, Students arrested, 16 February 2012, *Independent Online*, <http://www.iol.co.za/dailynews/news/students-arrested-1.1235722?ot=inmsa.ArticlePrintPageLayout.ot>. (accessed on 28 March 2015).
 - 20 South African Press Association (SAPA), UKZN students' case postponed, 17 February 2012, <http://www.iol.co.za/news/crime-courts/ukzn-students-case-postponed-1.1236397> (accessed on 28 March 2015).
 - 21 T Broughton, UKZN protest "ringleader" barred, 20 February 2012, <http://www.iol.co.za/news/crime-courts/ukzn-protest-ringleader-barred-1.1237784> (accessed on 28 March 2015).
 - 22 L Jansen, UKZN students arrested in protest blitz, *Independent Online*, 16 February 2012, <http://www.iol.co.za/news/crime-courts/ukzn-students-arrested-in-protest-blitz-1.1235519> (accessed on 28 March 2015).
 - 23 L Jansen, UKZN students arrested in protest blitz, *Independent Online*, 16 February 2012, <http://www.iol.co.za/news/crime-courts/ukzn-students-arrested-in-protest-blitz-1.1235519> (accessed on 28 March 2015).

days – 14 and 15 February.²⁴ The protest came to an end on 20 February, when the University's management and student representatives reached an agreement.

During the second semester of 2012, there were further student protests at the University of KwaZulu-Natal. On 21 August, students at the Howard College and Pietermaritzburg Campuses began protesting against a range of issues related to student residences – a lack of security, which allegedly resulted in a rape and an armed robbery at one of the residences; poor living conditions; inadequate maintenance, and poor management of cafeteria services.²⁵ It was reported that protesting students disrupted lectures; intimidated non-protesting students and staff; damaged University property, and burnt tyres. The police used stun grenades to disperse the protesting students. Five students were arrested and charged with public violence.²⁶ Protestors on the Pietermaritzburg campus entered lecture venues and forced non-protesting students and lecturers to leave. They also entered a hall where a test was being written, tipping over desks, throwing chairs, breaking light bulbs, and tearing test scripts. This resulted in the non-protesting students fleeing out of fear of being attacked by the protestors.²⁷ On 22 and 23 August 2012, violent protest action occurred on the Howard College campus, with lectures being disrupted and a number of individuals being arrested for participating in the violence. Rubbish bins and tables were overturned across the campus.²⁸ For the safety of students and staff, lectures were suspended until 27 August 2012.²⁹ When lectures

24 K Premhid, SASCO's violent protest at UKZN, 21 February 2012, <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=281366&n=Detail&pid=71619> (accessed on 28 March 2015).

25 South African Press Association (SAPA), Students bring UKZN to standstill, *News24*, 22 August 2012, <http://www.news24.com/SouthAfrica/News/Students-bring-UKZN-to-standstill-20120822> (accessed on 29 March 2015); South African Press Association (SAPA), Protests close KZN campus, *News24*, 23 August 2012, <http://www.news24.com/SouthAfrica/News/Protests-close-KZN-campus-20120823> (accessed on 29 March 2015).

26 South African Press Association (SAPA), Students bring UKZN to standstill, *News24*, 22 August 2012, <http://www.news24.com/SouthAfrica/News/Students-bring-UKZN-to-standstill-20120822> (accessed on 29 March 2015).

27 S Regchand & B Wolhuter, Violent unrest hits UKZN campuses, 22 August 2012, *The Mercury*, <http://www.iol.co.za/mercury/violent-unrest-hits-ukzn-campuses-1.1367913> (accessed on 29 March 2015).

28 South African Press Association (SAPA), Protests close KZN campus, *News24*, 23 August 2012, <http://www.news24.com/SouthAfrica/News/Protests-close-KZN-campus-20120823> (accessed on 29 March 2015); N Mbali, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Media statement: Student Protest Action - Howard College Campus, 22 August 2012, <http://www.ukzn.ac.za/media-publications-reports/media-release/page/3/> (accessed on 29 March 2015).

29 N Mbali, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Student protest action update: Howard College Campus, 23 August 2012, <http://www.ukzn.ac.za/docs/media-releases/student-protest-action-update-howard-college-campus-23-august-2012> (accessed on 29 March 2015).

resumed on 27 August 2012, protest action continued on the Howard College Campus, disrupting the academic programme.³⁰

Student protests continued during the first semester of 2013. On 25 February, a small group of students attempted to disrupt lectures at the Howard College and Pietermaritzburg campuses. The South African Police Services were called to monitor the situation. It was alleged that the protesting students had not informed the University of their grievances before embarking on this protest action.³¹ The following month, the University was again hit by student protests, which brought the University to a standstill. This protest was sparked by problems relating to student accommodation. Problems arose when certain students, who were being provided with private accommodation paid for by the University, had to be relocated after the landlord allegedly failed to pay the water and electricity bills. Arrangements were made to relocate the students to two hotels in the city of Durban, while alternative permanent accommodation was being sought. One of the hotels allegedly reneged on the agreement to accommodate the students, who then found themselves on the street. University staff remained with the students throughout the night and meals were provided to them.³² It was alleged that certain of the hotels to which students were relocated were unsafe; that students had been forced to live without water or electricity, and that some rooms were very overcrowded, with as many as four to six students per room. As a result of these issues, protest action broke out at the Howard College Campus on 11 March, with lectures being disrupted. The University then obtained an interdict from the High Court prohibiting unlawful protest action. On 13 March, protesting students continued to disrupt lectures. One student was seriously injured after being hit on the head with a brick.³³ One non-protesting student, who was attending a lecture, claimed that protesting students had entered the lecture venue making as much noise as possible. The protesting students had hit the desks, kicked the doors and drummed with sticks. Another non-protesting student claimed that the protestors had barged into her lecture and had thrown rocks, board dusters and bottles at those present

30 N Mbadi, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Student protest action update: Howard College Campus, 27 August 2012, <http://www.ukzn.ac.za/media-publications-reports/media-release/page/3/> (accessed on 29 March 2015).

31 N Mbadi, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Student protest action: Howard College Campus, 28 February 2013, <http://www.ukzn.ac.za/docs/media-releases/student-protest-action-howard-college-campus-28-february-2013.pdf?sfvrsn=2> (accessed on 29 March 2015).

32 N Mbadi, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Media response: Student accommodation, 11 March 2013, <http://www.ukzn.ac.za/docs/media-releases/media-response-student-accommodation-11-march-2013.pdf?sfvrsn=2> (accessed on 29 March 2015).

33 South African Press Association (SAPA), Student injured in KZN university protest, *City Press*, 14 March 2013, <http://www.citypress.co.za/news/student-injured-in-kzn-university-protest/> (accessed on 29 March 2015).

in the lecture venue.³⁴ The protest action continued in the ensuing days. On 18 March, lectures on the Howard College Campus were disrupted; it was reported that certain protestors had armed themselves with sticks, stones and hammers. The University advised non-protesting students to stay away from areas where the protesting students were gathered.³⁵ Four students were arrested for contravening the High Court interdict. Protesting students marched around the Howard College campus calling on non-protesting students to leave their lectures. Protesting students waved sticks, planks and poles, chanted loudly, and performed the *toyitoyi* until the non-protesting students complied and left their lecture venues.³⁶ On 20 March, a broad range of students – both former protestors and non-protestors – engaged in a peaceful silent protest, sitting together on campus and refusing to attend lectures for the day. To defuse the issue, the University brought the academic programme to a close one week early.³⁷ On 24 April, lectures were disrupted at the Edgewood Campus when approximately 300 students engaged in protest action. Police used a water cannon to disperse the protesting students, resulting in two students being injured.³⁸

Student protests erupted again during the first semester of 2014. The issues that sparked the protests included the allocation of funds from the National Students Financial Scheme; the lack of sufficient residence accommodation for students, and the registration cut-off date. On 10 February, lectures at the Westville and Edgewood campuses were disrupted, and police arrested four students. The management of the University claimed to be unaware of the reasons for the protests, since the protesting students had not raised their concerns through the correct channels.³⁹ It was reported that the Westville Campus had been brought

34 K Lancaster, Protests bring UKZN to a halt, 14 March 2013, *The Mercury*, <http://www.iol.co.za/news/crime-courts/protests-bring-ukzn-to-a-halt-1.1486368> (accessed on 29 March 2015).

35 N Mbadi, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Student protest action: Accommodation, 18 March 2013, <http://www.ukzn.ac.za/docs/media-releases/student-protest-action-accommodation-18-march-2013.pdf?sfvrsn=2> (accessed on 29 March 2015).

36 K Lancaster, UKZN students arrested for illegal protest, 19 March 2013, *The Mercury*, <http://www.iol.co.za/news/crime-courts/ukzn-students-arrested-for-illegal-protest-1.1488876> (accessed on 29 March 2015).

37 S Nyana and S Mlambo, Protest closes UKZN early, 21 March 2013, *Daily News*, <http://www.iol.co.za/dailynews/news/protest-closes-ukzn-early-1.1489801> (accessed on 29 March 2015).

38 South African Press Association (SAPA), Students protest at UKZN campus, 24 April 2013, <http://www.iol.co.za/news/south-africa/kwazulu-natal/students-protest-at-ukzn-campus-1.1505849> (accessed on 29 March 2015).

39 L Seshoka, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Media statement – Student protests at the Westville and Edgewood Campuses, 10 February 2014, <http://www.ukzn.ac.za/docs/media-releases/student-protests-at-the-westville-and-edgewood-campuses-.pdf?sfvrsn=2> (accessed on 29 March 2015).

to a standstill by 'masked protestors armed with sticks and bricks'.⁴⁰ Students burnt tyres, pushed over rubbish bins, threw bricks, and damaged University property.⁴¹ On 11 February, approximately 150 students engaged in protest action on the Edgewood Campus. The police dispersed them, and three students were arrested.⁴² During the evening, on the Westville campus, a motor vehicle was vandalised and the windows of a building smashed. On 12 February, students at the Westville Campus set a fridge on fire and, on the Edgewood Campus, protesting students threw stones at the police.⁴³ On 13 February, three students were arrested on the Westville campus, while six students were arrested on the Howard College Campus. On 17 February, 70 students were arrested for allegedly damaging classrooms on the Edgewood Campus.⁴⁴ On 20 February, 26 protesting students were arrested on the Howard College Campus and charged with public violence.⁴⁵ The protesting students damaged two motor vehicles belonging to staff members and the police used teargas and rubber bullets to disperse the crowd. Approximately 100 students at the Medical Campus participated in a peaceful protest.⁴⁶ On 21 February, three students were arrested and charged with public violence at the Westville Campus, where protesting students set fire to rubbish bins and threw stones at police officers. The police had to use rubber bullets to disperse the students.⁴⁷

40 S Mlambo, Edgewood students clash with police, 12 February 2014, *The Daily News*, <http://www.iol.co.za/news/crime-courts/edgewood-students-clash-with-police-1.1646037> (accessed on 29 March 2015).

41 S Mlambo, Edgewood students clash with police, 12 February 2014, *The Daily News*, <http://www.iol.co.za/news/crime-courts/edgewood-students-clash-with-police-1.1646037> (accessed on 29 March 2015).

42 L Seshoka, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Media statement – Lectures continue at UKZN, 11 February 2014, <http://www.ukzn.ac.za/media-publications-reports/media-release>, (accessed on 29 March 2015).

43 S Mlambo, Edgewood students clash with police, 12 February 2014, *The Daily News*, <http://www.iol.co.za/news/crime-courts/edgewood-students-clash-with-police-1.1646037> (accessed on 29 March 2015).

44 South African Press Association (SAPA), 70 KZN students held for violence, *City Press*, 18 February 2014, <http://www.citypress.co.za/news/70-kzn-students-held-violence/> (accessed on 29 March 2015).

45 South African Press Association (SAPA), UKZN students arrested for public violence, *News24*, 22 February 2014, <http://www.news24.com/SouthAfrica/News/UKZN-students-arrested-for-public-violence-20140221> (accessed on 29 March 2015).

46 South African Press Association (SAPA), Protesting UKZN students arrested, *Independent Online*, 20 February 2014, <http://www.iol.co.za/news/south-africa/kwazulu-natal/protesting-ukzn-students-arrested-1.1650398> (accessed on 29 March 2015); South African Broadcasting Corporation (SABC), No arrests made in UKZN student protest, *SABC News*, 20 February 2014, <http://www.sabc.co.za/news/a/a189950042ffd8b8b8e2bf895990ad13/No-arrests-made-in-UKZN-student-protest-20142002> (accessed on 29 March 2015).

47 South African Press Association (SAPA), UKZN students arrested for public violence, *News24*, 22 February 2014, <http://www.news24.com/SouthAfrica/News/UKZN-students-arrested-for-public-violence-20140221> (accessed on 29 March 2015).

Student protests continued during the second semester of 2014. The reasons for the protests included problems with financial aid; the draft loans and bursary policy, and funding for postgraduate students.⁴⁸ The protest action began on 27 August on the Westville Campus. Approximately 200 students marched through the campus, and there were reports of lectures being disrupted. Police were called onto the campus.⁴⁹ On 2 September, it was reported that thousands of students had embarked on protest action, calling for bursaries and the cancellation of the University's plans to increase fees. Protesting students on the Westville Campus disrupted lectures, threw garbage in the roads leading to the campus, burnt tyres, and threw stones at security guards and buildings.⁵⁰ It was also reported that a number of vehicles were stoned and some facilities set alight.⁵¹ The police used a water cannon and rubber bullets against the protesting students.⁵² On the Edgewood Campus, approximately 60 protesting students attempted to block the entrance to the campus, but were dispersed by security guards.⁵³ On 3 September, a group of approximately 400 protesting students disrupted lectures and intimidated students at the Howard College Campus. On 4 September, the academic programme was suspended for all campuses, after an escalation in violence. Three people from the Westville Campus were injured, following a clash between police and protesting students. One of the injured was a police officer who was hit by a stone thrown by one

- 48 South African Press Association (SAPA), UKZN suspends lectures after cop, students hurt in violent protests, *City Press*, 4 September 2014, <http://www.citypress.co.za/news/ukzn-suspends-lectures-cop-students-hurt-violent-protests/> (accessed on 29 March 2015).
- 49 South African Press Association (SAPA), Students protest at University of KwaZulu-Natal, 27 August 2014, <http://www.timeslive.co.za/local/2014/08/27/students-protest-at-university-of-kwazulu-natal> (accessed on 29 March 2015).
- 50 N Mkhize, Thousands of students in KwaZulu-Natal protest against fee hikes, 2 September 2014, <http://www.bdlive.co.za/national/education/2014/09/02/thousands-of-students-in-kwazulu-natal-protest-against-fee-hikes> (accessed on 29 March 2015); South African Press Association (SAPA), UKZN suspends lectures after cop, students hurt in violent protests, *City Press*, 4 September 2014, <http://www.citypress.co.za/news/ukzn-suspends-lectures-cop-students-hurt-violent-protests/> (accessed on 29 March 2015).
- 51 L Seshoka, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Communiqué from the executive director: corporate relations, 2 September 2014, <https://www.facebook.com/ukznirhc/posts/737131132988993> (accessed on 29 March 2015).
- 52 N Mkhize, Thousands of students in KwaZulu-Natal protest against fee hikes, 2 September 2014, <http://www.bdlive.co.za/national/education/2014/09/02/thousands-of-students-in-kwazulu-natal-protest-against-fee-hikes> (accessed on 29 March 2015); South African Press Association (SAPA), UKZN suspends lectures after cop, students hurt in violent protests, *City Press*, 4 September 2014, <http://www.citypress.co.za/news/ukzn-suspends-lectures-cop-students-hurt-violent-protests/> (accessed on 29 March 2015).
- 53 L Seshoka, Executive Director: Corporate Relations Division, University of KwaZulu-Natal, Communiqué from the executive director: corporate relations, 2 September 2014, <https://www.facebook.com/ukznirhc/posts/737131132988993> (accessed on 29 March 2015).

of the protesting students. A University spokesperson described these events as “serious violent protests”.⁵⁴ The protesting students made the Westville Campus inaccessible to non-protesting students and staff. Protesting students set fire to University furniture and threw stones at cars. The academic programme on all campuses was suspended for two days.⁵⁵ On 7 September, protesting students at the Westville Campus set fire to furniture on the lawns near their student residence.⁵⁶ The protest action finally came to an end on 9 September, which allowed the academic programme to continue as normal.

Although not falling within the period (2012-2014), which this article set out to examine, it may be noted that, as this article was being written during the first semester of 2015, violent student protests broke out, once again, at the University of KwaZulu-Natal. The same pattern as that established during previous years appeared to repeat itself. On 12 February, it was reported that the Pietermaritzburg Campus had closed, due to violent student protest. Running battles had broken out between protesting students and police; property and motor vehicles were damaged, and one student was injured.⁵⁷ Student protests also took place on the Westville and Edgewood campuses. A staff member was reported to have been injured on the Westville Campus when stones and rocks were thrown at a building on the campus. A student taking photographs of the protestors suffered an epileptic seizure after being attacked and had to be rushed to hospital. On 13 February, it was reported that all the University’s campuses had been shut down in the midst of violent student protests. There was damage to property; roads were blocked, and four students were injured. All lectures and teaching activities were suspended for one week until 23 February. The above chronological examination of various instances of student protest action on the different campuses of the University of KwaZulu-Natal provides some sense of the nature and extent of these protests during recent years. In order to get a better sense of the ‘tone’ of such protests, however, particularly from the perspective of non-protesting students, it is necessary to examine briefly various reports from students who experienced the protests first-hand. During the first semester of 2012, for example, a student on the Westville campus described how the entrance to the University had been blocked by protestors, who were throwing

54 South African Press Association (SAPA), UKZN suspends lectures after cop, students hurt in violent protests, *City Press*, 4 September 2014, <http://www.citypress.co.za/news/ukzn-suspends-lectures-cop-students-hurt-violent-protests/> (accessed on 29 March 2015).

55 K Nxedlana, Police resources wasted in UKZN protest, *East Coast Radio*, 5 September 2014, <http://www.ecr.co.za/post/police-resources-wasted-in-ukzn-protest/> (accessed on 29 March 2015).

56 T Subramoney, Lectures resume at UKZN campuses, *ECR*, 8 September 2014, <http://www.ecr.co.za/post/lectures-resume-at-ukzn-campuses/> (accessed on 29 March 2015).

57 South African Broadcasting Corporation (SABC), UKZN’s Pietermaritzburg campus remains closed, 12 February 2015, *SABC News*, <http://bit.ly/1SbiCX4> (accessed on 29 March 2015).

stones at cars and people who were trying to get in. The student stated: "It was scary, they were singing and chanting and had a crazed look in their eyes."⁵⁸ Another student expressed anger at the violence used by the protestors, describing how the protestors had broken new windows in the cafeteria and had used pepper spray on lecturers and students to chase them from lecture venues. The student explained that pepper spray was used against non-protesting students, despite the fact that these students were complying with the demands of the protesting students.⁵⁹ During the second semester of 2012, a female student on the Pietermaritzburg campus described how scared she was when protesting students entered the lecture venue in which she was listening to a lecture. The protestors ordered the students in the venue to leave, but some students hid under the desks. The protestors then began throwing objects at the non-protesting students and dragged them out of the venue. Another Pietermaritzburg student described how protestors threatened non-protesting students, warning the non-protesting students that, if any of them dared to attend lectures, they would be "beaten up".⁶⁰ Another student explained that the protestors "walked in and started dancing on top of the desk. They were all chanting and I got pretty scared."⁶¹ Yet another student stated: "They came into a lecture, shouting, and chased everyone out. One had a wooden pole. I was so scared as they all started chanting at the same time."⁶² During the first semester of 2014, a first-year female student at the Westville Campus described how two masked protestors carrying sticks had entered the campus cafeteria in which she was sitting and shouted loudly for everyone to get out. This caused all the non-protesting students in the cafeteria to start running away. Although the protestors did not attack anyone, the student said that it was a frightening experience. Two first-year female science students explained that they were waiting in a lecture venue for the lecture to begin when masked men flung bricks into the venue and ordered them to leave. One of the students said that she felt as if she was being robbed of her education.⁶³

What emerges clearly from the above is that student protest action during recent years at the University of KwaZulu-Natal has been characterised by intimidation and violence. Those involved in the protests seem to have scant regard for the law. Rather than lawful protest within the framework of a constitutional democracy, the actions of protesting students seem

58 *The Natal Witness*, http://www.witness.co.za/?showcontent&global%5B_id%5D=76758 (accessed on 15 February 2012).

59 *The Natal Witness*, http://www.witness.co.za/?showcontent&global%5B_id%5D=76758 (accessed on 15 February 2012).

60 S Peters and M Mdlala, Protests rock UKZN, 22 August 2012, *Daily News*.

61 See http://www.witness.co.za/index.php?showcontent&global%5B_id%5D=86403 (accessed on 22 August 2012).

62 See http://www.witness.co.za/index.php?showcontent&global%5B_id%5D=86403 (accessed on 22 August 2012).

63 L Anthony and S Mlambo, Campus chaos, 10February 2014, *Daily News*, <http://www.iol.co.za/dailynews/news/campus-chaos-1.1644604> (accessed on 29 March 2015).

more akin to the actions of combatants in a type of low-intensity 'peoples' war'. Those who do not support the 'struggle' are, in effect, identified and targeted as 'the enemy', as are the University authorities and the law itself.

In the next section, I shall advance part of a possible explanation for the aggressive tone of a great deal of student protest in post-apartheid South Africa.

3. A clash of narratives about the nature of law

Having discussed certain views of the ancient Greeks – Socrates, in particular – on the question of obedience to law, as well as having examined certain strands in the recent history of student protest at the University of KwaZulu-Natal, the question to be addressed in the conclusion is whether or not the views of the ancient Greeks have anything of relevance to impart to South African students who wish to embark on protest action in the future. Before proceeding to outline certain tentative responses to this question, however, it is useful to sketch briefly part of a possible explanation for the deep distrust with which many South Africans – including student protestors – seem to view the law.

It is submitted that the post-apartheid period in South Africa has been characterised by a clash of at least two competing narratives about the nature of law. On the one hand, there is a neo-Marxist narrative, deeply embedded in the history of the ruling political party – the African National Congress (ANC) – reflecting its origins as a liberation movement. This is a narrative of revolutionary struggle against brutal class oppression, in which law is understood – in the final analysis – as a mechanism that protects and preserves the *status quo*. The capitalist system, which constitutes the *status quo*, is defined as a social structure characterised by inequality and oppression, in which a rapacious and predatory (mainly White) bourgeoisie ruthlessly dominates and exploits a (mainly Black) proletariat. On the other hand, there is a liberal narrative, which is foundational to the constitutional and democratic model of government adopted by South Africa after the demise of apartheid in 1994. This narrative adopts a much more benign view of law – one in which the primary role of law is to constrain state power, placing the inalienable human rights of each individual beyond both the reach of the state and the power of the majority, and ensuring that every citizen is treated with equal concern and respect. The former narrative, to cite a few examples, flows through the works of the early social contract thinker Jean Jacques Rousseau; then on to Karl Marx and Friedrich Engels; followed by neo-Marxist thinkers such as Antonio Gramsci, Evgeny Pashukanis and Karl Renner; and then, in recent times, on to the many followers of the Critical Legal Studies movement such as Peter Gabel and Paul Harris. The latter narrative, once again to cite a few examples, is to be found in the works of the early English social contract philosophers Thomas Hobbes and John Locke; then in the ideas of American revolutionary thinkers such as Thomas Jefferson and James Madison; followed by the seminal concepts put forward by the English

liberal philosopher John Stuart Mill; and finally in the thinking of modern legal philosophers, such as Ronald Dworkin, who have championed liberal constitutional democracy.

I shall turn first to the revolutionary neo-Marxist type narrative, which often characterises discourse within many political parties and movements on the left of the South African political spectrum, including the ruling ANC party and its 'alliance partners', the Congress of South African Trade Unions and the South African Communist Party. Ironically, many protests within post-apartheid South Africa have been directed against policies and programmes put in place by the ruling party, which is generally viewed as the party of liberation. However, despite the fact that two decades have passed since the demise of apartheid, the 'language' of protest – its iconography, its 'look and feel', its sounds and rhythms – seems to have remained the same as that adopted during the struggle period. During this period, protest action was a form of warfare against a brutal racist dictatorship. With the anti-apartheid struggle being a war against a system of *legalised* racial oppression, it is no wonder that the apartheid laws were perceived as being 'the enemy' that had to be destroyed. It may be argued, perhaps, that the view of law and authority as 'the enemy' remains deeply entrenched within the collective psyche of a large section of the South African population.

This suspicion of law has a strong ideological component. Neo-Marxist thinkers regard the law as playing an important part in the maintenance of the capitalist system. They regard law as an instrument, which, in the final analysis, tends to maintain the *status quo*. They argue that the law is shaped, predominantly, by bourgeois ideology. Law within an exploitative capitalist system is, in fact, an integral part of that system. As Marx himself stated:

Society is not founded upon the law; this is a legal fiction. On the contrary, the law must be founded upon society, it must express the common interests and needs of a society – as distinct from the caprice of individuals – which arise from the material mode of production prevailing at the given time. This Code Napoléon, which I am holding in my hand, has not created modern bourgeois society. On the contrary, bourgeois society, which emerged in the eighteenth century and developed further in the nineteenth, merely finds its legal expression in this Code. As soon as it ceases to fit the social conditions, it becomes simply a bundle of paper.⁶⁴

Social control by means of law, as opposed to outright violence, is attractive to the bourgeoisie, since the appearance of law – its 'form' – makes it seem as if everyone, from the richest to the poorest, is being treated equally. This appearance of fairness and equality is helpful in putting a damper on working-class discontent. This was particularly important in the early days of capitalism, as the feudal system broke down and mobs of 'peasants'

64 Marx 1849, <https://www.marxists.org/archive/marx/works/1849/02/25.htm> (accessed on 8 October 2015).

moved into the growing towns and cities, where they were to become 'workers'. Furthermore, law is intertwined with the institutions of private property, which are crucial to the continued existence of capitalism. The capitalist state expresses itself through legal forms such as the 'rule of law', which many neo-Marxist thinkers regard as a disguise for middle-class oppression of the working class. According to this line of thinking, the South African *Constitution* seems, on the surface, to guarantee freedom and equality for all, but it is merely a smokescreen for large-scale economic exploitation of the working class, which continues unabated.⁶⁵ The subtle mechanisms, which are seen to be at play, are well illustrated in the following quotation:

Marxists accept that the modern State including its legal system is notable for its considerable degree of independence from the control of the dominant class. The owners of the means of production do not overtly manipulate the politicians in democratic societies, but permit a degree of struggle within the state itself. Compared to earlier social formations the absence of personal control by the dominant class is remarkable. Yet Marxists deny that the State is completely autonomous, claiming that ultimately the dominant class determines the direction of political initiatives and ensures that the legal system serves to perpetuate the mode of production. The democratic process disguises the presence of class domination behind the mask of formal equality of access to power. ... [T]he appearance of autonomy conceals deep structural constraints upon the powers of the State apparatus which ensures that it faithfully pursues the interests of the ruling class.⁶⁶

The Critical Legal Studies (CLS) movement, which arose in the United States of America in the mid 1970s at the same time that the struggle against apartheid was gaining momentum in South Africa, played an important role in popularising the neo-Marxist view of law. CLS thinkers were instrumental in cementing a deeply suspicious view of law among radical thinkers at the time. The following critique of "liberal rights discourse" is typical of the suspicion with which these thinkers approached law within liberal capitalist societies:

It may be necessary to use the rights argument in the course of political struggle, in order to make gains. But the thing to be understood is the extent to which it is enervating to use it. It's a diversion from

65 It is not only South African neo-Marxist thinkers who are suspicious of the role played by liberal constitutions. Note, for example, the following quotation by the well-known radical American historian Howard Zinn (1995:98-99): "The Constitution, then, illustrates the complexity of the American system: that it serves the interest of a wealthy élite, but also does enough for small property owners, for middle-income mechanics and farmers, to build a broad base of support. The slightly prosperous people who make up this base of support are buffers against the black, the Indians, the very poor whites. They enable the élite to keep control with a minimum of coercion, a maximum of law – all made palatable by the fanfare of patriotism and unity."

66 Collins 1982:48-49.

true political language, political modes of communication about the nature of reality and what it is that people are trying to achieve, and it *can* contribute – although it doesn't necessarily contribute – to the vitiation of the energy of the movement when people think they have won, but in fact what has happened is that they have had a temporary victory with potential for using it for leverage to gain more power, *not* an absolute abstract gain in social progress, which can then be manipulated within the ideological framework that the right was granted from, so as to repacify the organisation that led to the bringing of the case in the first place.⁶⁷

It was not only in the United States of America that CLS thinking proved to be popular. It seems clear that the CLS movement exerted, and continues to exert a degree of influence within radical thinking about law in the South African context. The following is a good example of post-apartheid radical thinking about the role of law in South Africa:

[Human rights] are visualized as formal and universal (i.e. ahistorical and a-contextual), and therefore not subject to debate or contestation because of the fact that they are deemed to be scientifically, technically or naturally derived. These rights, even though fought for and achieved through popular struggles throughout society, are supposed to be 'delivered' and 'guaranteed' by the state. They are taken out of popular control and placed in a juridical realm, where their fundamentally political character is removed from sight so that they become the subject of technical resolution by the judicial system ... The people are forced, if they wish to have their rights addressed and defended, to do so primarily within the confines of, or in relation to the state institutions of the juridical.⁶⁸

67 Gabel & Kennedy 1984:33. Note, also, the following typical CLS sentiments expressed by Peter Gabel and Paul Harris (1982/1983:374): "Like religion in previous historical periods, the law becomes an object of belief which shapes popular consciousness toward a passive acquiescence or obedience to the status quo. And yet precisely because the hierarchies of the legal system are sustained only by people's belief in them, legal conflicts of every type can become opportunities to crack the façade of legitimacy that these hierarchies project. The State's strategy of legitimation dictates a counter-strategy of delegitimation, or what Gramsci called 'counter-hegemonic struggle'. The idea here is to find a way of working in the legal arena that consistently challenges the State's control over the way that we are to both feel and think about the nature of social reality."

68 Neocosmos 2006:66-67. For another good example of post-apartheid radical thinking about the role of law in South Africa, note the following observations by Ashwin Desai (2000:5): "The rhetoric of human rights hindered as much as it helped. There was a constitution that enshrined a multitude of rights. But these were rights over the multitude; facilitating governance, enshrining property, observing process, and always subject to financial limitation. Confusion, corruption and mendacity set in. Words were twisted, synonyms became antonyms, liberation did battle with emancipation, empowerment with equality. The most progressive constitution in the world – forged, (so the story went), in the most heroic national struggle in the world – inhibited the formulation of 'socialist' demands, to a point where the most sophisticated socialists themselves would not touch the label."

It is beyond the scope of this article to track in any further detail this 'radical' line of thinking about the role of law in South Africa, and the particular suspicion with which the *Constitution* is viewed. It is worth noting, however, that there is a growing perception within the country that the *Constitution* and judiciary are "under attack" from powerful political forces.⁶⁹ This article does not mean to suggest that a particular approach to the study of law – such as that put forward by the Critical Studies Movement – is to blame for the intimidatory tone of a great deal of protest action in South Africa at present. Rather, this article seeks to highlight the radical milieu prevalent within many South African protest movements – a general ideological orientation suspicious of law and authority, which developed during a long history of struggle against a brutal dictatorship.

Having pointed to part of a possible explanation – at an ideological level at least – for the aggressive tone of a great deal of student protest in post-apartheid South Africa, I shall now briefly discuss the more positive narrative about law, mentioned in the introduction to this section. This is the liberal narrative in which law – as it exists within a liberal constitutional democracy at least – is viewed as the guardian of the individual rights and freedoms that distinguish those who live in the 'free world' from those who live in areas under the control of authoritarian or totalitarian regimes.

This brief examination of the liberal narrative on the role of law may begin, perhaps, with reference to the seminal work of Thomas Hobbes, one of the first so-called 'social contract' theorists.⁷⁰ The crucial change brought about by this important philosopher in his work *Leviathan* was the move away from absolutist thinking, in the form of belief in the "divine right of kings", to the idea of political authority based ultimately on consent, in the form of a hypothetical social contract.⁷¹ Once Hobbes had taken this crucial step, the foundations of modern western liberal thinking on the nature of law were put firmly in place by John Locke, a true 'founding

69 See, for example, the following extract drawn from a recent report in a prominent South African newspaper: "The South African judiciary will meet with President Jacob Zuma to discuss the recent attacks on it, Chief Justice Mogoeng Mogoeng told a media briefing on Wednesday ... 'We will meet with the head of state to address repeated and unfounded criticism [of the judiciary],' Mogoeng announced at the briefing at a hotel at the OR Tambo airport on Wednesday. This followed an extraordinary judicial heads of court meeting ... The criticism 'has the potential to delegitimise the courts ... [the law] should not be undermined' he said ... The comments were made following attacks by senior ANC leaders and its alliance partners on the judiciary ... A general disdain for the judiciary by some ANC members was heightened after the party was criticised for allowing Sudanese president Omar al-Bashir to leave the country. The International Criminal Court (ICC) had indicted Bashir, who was attending an African Union summit in South Africa, over war crimes and crimes against humanity. But government said it was just respecting its African obligations." Victoria John, Chief Justice Hammers "Gratuitous criticism", *Mail & Guardian*, 8 July 2015, <http://mg.co.za/article/2015-07-08-chief-justice-hammers-gratuitous-criticism> (accessed on 16 July 2015).

70 Thomas Hobbes – 5 April 1588 to 4 December 1679.

71 Thomas Hobbes' famous work *Leviathan* was first published in 1651.

father' of liberal constitutional democratic thought.⁷² Locke advances the foundational idea that all human beings are born free and equal, as well as the idea that all human beings possess certain 'inalienable' rights. These rights are 'inalienable', since they derive from a state of nature – some would say that they are 'God given' – and attach to each human being, because of the simple fact that each human being is human. Among the 'inalienable rights' possessed by each human being are the rights to life, liberty and property. For Locke, the fundamental role of government – and the true basis of law – within a free society, is the protection of these 'inalienable rights'. It may also be said that, for Locke, legitimate government is government by consent (in accordance with the theory of social contract) and that legitimate government is limited government (since government may never infringe on peoples' 'inalienable rights'). He believes firmly that, if a government becomes abusive of peoples' 'inalienable rights', those people have a right to revolution. And it is precisely this thinking that inspires American revolutionary thinkers such as Thomas Jefferson and James Madison – almost a century later. The following famous passage from the American Declaration of Independence, published on 4 July 1776, which was mainly drafted by Jefferson and obviously inspired by Locke, clearly spells out the generally positive orientation of liberal thinkers towards fundamental, inalienable rights enshrined in law:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, –That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.⁷³

After a gruelling and bloody revolutionary war, the ideas implicit in the Declaration of Independence were incorporated into the first constitution of the newly independent United States of America. In the famous court case of *Marbury v Madison*, the new constitution was unambiguously acknowledged as the supreme law, and the principle of judicial review was established.⁷⁴ Henceforth, it was clear that even laws passed by a democratically elected legislature could be struck down if they were unconstitutional. Law in the form of the constitution had been elevated to a position of unequivocal dominance and respect, where it remains in the thinking of liberal scholars to this day. After the emergence of the United States of America constitutional model, the liberal narrative shifts to John

72 John Locke – 29 August 1632 to 28 October 1704. Locke's most famous work, perhaps, was *Two treatises of government* – first published in 1689 in defence of the so-called 'Glorious Revolution', which had taken place in England in 1688, against the absolutist Stuart monarchy.

73 Thomas Jefferson – American Declaration of Independence – 4 July 1776.

74 *Marbury v Madison* 5 U.S. 137 (1803).

Stuart Mill, the well-known utilitarian philosopher.⁷⁵ Mill establishes the limits of law within liberal constitutional democratic thinking. He carves out a space – a sacrosanct ‘zone of freedom’ – within which each individual may exercise his/her private morality and which is beyond the reach of law. As the champion of autonomy and freedom of the individual, he points out:

The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it.⁷⁶

In his famous ‘harm principle’, Mill effectively limits the power and scope of law – in its liberal conception – by asserting that:

[T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection ... [T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right ... The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.⁷⁷

With these basic building blocks of the liberal conception of law and its historical evolution in place, this discussion may conclude with a brief reference to a more current liberal legal philosopher. The champion of this narrative in the latter 20th and early 21st century was, undoubtedly, Ronald Dworkin. For Dworkin, the main purpose of law is to constrain state power and to protect the individual. The focus of law in a true constitutional democracy is to ensure that each individual in that democracy is treated with equal concern and respect. Dworkin’s theory of ‘law as integrity’ regards law as a type of plumb line or yardstick or moral compass, designed to keep a society true to its deepest commitments and values. Those who administer the law – the members of the judiciary and the legal system as a whole – form part of the ‘moral backbone’ of the society in question. For Dworkin, law – in its proper sense – lies at the very heart of any truly ‘free’ society. It is only within such a society – under the rule of law in the liberal democratic sense outlined earlier, or, as Dworkin would put it, which is part of ‘Law’s Empire’ – that it is possible for every citizen to live with ‘dignity’ in the proper sense of the word. Dworkin’s basic

75 John Stuart Mill – 20 May 1806 to 8 May 1873.

76 Mill 1859:23, <http://www.gutenberg.org/files/34901/34901-h/34901-h.htm> (accessed on 28 March 2015).

77 Mill 1859:18, <http://www.gutenberg.org/files/34901/34901-h/34901-h.htm> (accessed on 28 March 2015).

optimism about the role of law within a liberal constitutional democracy shines through in the following quotation:

It is in the nature of legal interpretation – not just but particularly constitutional interpretation – to aim at happy endings. There is no alternative, except aiming at unhappy ones, because once the pure form of originalism is rejected there is no such thing as neutral accuracy. Telling it how it is means, up to a point, telling it how it should be ... [P]olitical and intellectual responsibility, as well as cheerfulness, argue for optimism. The Constitution is America's moral sail, and we must hold to the courage of the conviction that fills it, the conviction that we can all be equal citizens of a moral republic. That is a noble faith, and only optimism can redeem it.⁷⁸

Despite many nuances which cannot be addressed in a short article such as this, there is clearly a significant disjunction between the 'radical' and 'liberal' narratives outlined earlier on the nature of law and its proper role. For those South Africans inclined more towards the latter of the two narratives, it should be of concern that many students – future leaders and opinion formers – seem oblivious to the latter and blindly accept the former of the two narratives. After all, how long can the principles of constitutional democracy survive in South Africa with the law under constant attack as the 'enemy of the people'?

4. Conclusion

Safely ensconced within Western liberal constitutional democracies, with long histories of respect for the rule of law, many may view the refusal of Socrates to disobey the laws of Athens – even if it meant his own death – as pig-headed or arrogant to the point of stupidity. In younger more fragile democratic countries such as South Africa, however, the issue faced by Socrates presents itself in a somewhat different light. There is an added vulnerability to the legal system in young democracies, particularly democracies in which the people have had to fight a revolutionary war in order to achieve a constitutional democratic order. The democratic city-state of Athens was similarly vulnerable. Having performed military service on behalf of Athens, Socrates must have known what it meant to 'stand in the line' as part of a hoplite phalanx, charged with the defence of the city. For the ancient Athenians, being part of their democracy meant that each male citizen had to take his place in the line of warriors that stood between their enemies and their deepest values.⁷⁹ It was not simply a physical entity that was being defended, but the city as 'polis', a people united behind, and representative of a set of democratic values. If one man dropped his

78 Dworkin 1997:38.

79 Of course, women and slaves were not considered to be 'citizens'. Note, however, that the point being made, in this instance, is not that Athenian democracy was perfect or even admirable, but that it was vulnerable. It required the physical strength and courage of each able-bodied citizen to defend it.

shield, all were in danger. Obedience to law was literally a matter of life or death.

It may be argued, perhaps, that South Africans in post-apartheid South Africa are in a somewhat similar position to the ancient Athenians of Greece's 'golden age'. Our liberal constitutional democracy is hard won and fragile. We could so easily slip back into authoritarianism or even totalitarianism. In these circumstances, it is submitted that respect for law is important. Civil disobedience should be reserved for situations in which there is no doubt that the law has become evil. It should not be a default position to be adopted whenever we feel aggrieved. Liberal democracy is not perfect.⁸⁰ Injustices and grievances will undoubtedly arise. But so long as we can say that, by and large, we still live in a free country – in the liberal constitutional democratic sense – we need to think twice before flaunting the law.

Strong arguments may be advanced that, even twenty years after the demise of apartheid, South Africa is still characterised by vast economic inequalities and oppression based on race, class and gender. This may lead some to the conclusion that the law ought to be placed in the cross hairs revolutionary protest movements. While appreciating the compelling nature of such arguments, that is not the overall conclusion of this article. It is submitted that there are real dangers involved in too quickly resorting to civil disobedience. It is, after all, our liberal constitutional democracy which at least attempts to provide us with the 'safe space' – an 'Agora' such as that in which Socrates asked his 'uncomfortable' questions – within which a large measure of open discussion is possible. If we lose this, we are truly lost. We need to adopt something of Socrates' respect for the law. We must not revere it at all costs, since Socrates makes it clear that his primary duty of obedience is to the gods and to his conscience. But not far behind is his duty of obedience to the laws of Athens. If we are lucky enough to live in a democracy, particularly a liberal constitutional democracy, which enshrines and protects our basic human rights and freedoms – as is the case in South Africa at present – we need to think long and hard before engaging in deliberate acts of civil disobedience.

80 John Fitzgerald Kennedy's words on 26 June 1963 at the Brandenburg Gate in West Berlin are relevant in this instance: "Freedom has many difficulties and democracy is not perfect. But we have never had to put a wall up to keep our people in – to prevent them from leaving us." This formed part of Kennedy's famous *Ich Bin Ein Berliner* speech, in opposition to the Berlin Wall dividing East (Soviet-controlled) from West (American/British/French-controlled) Berlin.

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