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ORIGINAL ARTICLE



Cartoon controversies: law student views about free speech and Zapiro's satirisation of South Africa's president

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ABSTRACT

Although the Constitutional Court has been a protector of freedom of expression, major controversies about speech illustrate deep divisions among South Africans. This article explores attitudes of law students at the University of the Witwatersrand to freedom of expression. The authors take the realist view that these students are future legal interpreters of the Constitution and their attitudes may well have an impact on future jurisprudence. They follow-up previous research which measured attitudes to political freedom of expression by asking students about their responses to a sample of Zapiro cartoons depicting President Zuma. After exploring the role of cartoons in a democracy, the article looks at new data obtained by questioning final year students about the same cartoons four years after the initial study. The new data substantially confirms earlier results which indicate that Wits students would not robustly support Zapiro's right to create his more controversial caricatures. This result reinforces the view that supporters of freedom of expression in South Africa may not be able to call upon consistent or robust elite and popular support in resisting banning or criminalisation of speech.

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1. Introduction

Cartoons by Zapiro have been a lightning conductor for controversy about freedom of expression in South Africa.¹ In V Bronstein, D Glaser and M Werbeloff

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¹ Disputes over Zapiro cartoons are just one of many highly publicised disputes about freedom of expression over the last decade. Before we started this project, there were charged disputes about the Media Appeals Tribunal. The ruling party (the African National Congress) had proposed that a state-appointed body be set up to hear complaints against the press. The Protection of State Information Bill 6 of 2000 which was intended to empower a very wide spectrum of state officials to classify documents and impose draconian punishments for breach of the legislation was also extremely controversial at the time (see V Bronstein, D Glaser & M Werbeloff 'Law Students and Freedom of Expression: An Empirical Case Study' (2012) 28 *South African Journal on Human Rights* 55, 56). In current South Africa, controversy about hate speech, especially in social media has led to a new draft bill being mooted to deal with hateful and harmful speech (see http://www.justice.gov.za/m_speeches/2016/20160330_HateCrimes.html). There have also been grave issues arising from the lack of independence of the South African Broadcasting Corporation which is the public broadcaster (see, eg G Nicholson 'Tipping point: Can Matthews' resignation save a sinking SABC?' *Daily Maverick* (28 June 2016) <http://www.dailymaverick.co.za/article/2016-06-28-tipping-point-can-matthews-resignation-save-a-sinking-sabc/#.V3TfIKMal08>). There are many civil society organisations which pursue freedom of expression issues and have comprehensive websites that deal with all these topics (see, eg the Freedom of Expression Institute at www.fxio.org.za and the right2know campaign at <http://www.r2k.org.za/>).

'Law Students and Freedom of Expression: An Empirical Case Study' published in 2012, we analysed two groups of South African law students' attitudes towards freedom of expression.² Part of this study looked at attitudes to controversial cartoons by Jonathan Shapiro who is known by the penname Zapiro. The study was conducted at the University of the Witwatersrand, Johannesburg, South Africa (Wits). The questionnaire was given to a group of first year students who started their law studies in 2010. In the same year, we presented the same questionnaire to students in a final year class. It had always been one of our objectives for this research project to be a longitudinal study. Thus, we chose to ask the same questions about freedom of expression to a final year class in 2013.

Although we were motivated by the belief that the views of students are interesting in their own right, we were primarily concerned with the impact that attitudes of future lawyers would have on the legal system over time. Students in South Africa have a history of activism, going back at least to the student uprisings of 1976–77. The recent #FeesMustFall demonstrations across South African campuses graphically illustrate the potency of students in South African politics.

Our focus on law students, in particular, was primarily based on the supposition that law graduates from Wits University are likely to be disproportionately represented in South Africa's legal elite, the more so in a new constitutional democracy where the judiciary serves as guardian of constitutional commitments to free expression. Some of the students in the sample might well become magistrates or judges which will give them a central role in helping to shape the freedom of expression terrain. Other students will become attorneys, advocates, prosecutors, state legal advisors, legal academics or politicians. We proceed from the legal realist assumption that all these roles create opportunities for these individuals to influence legal development.³ South African legal institutions are in their formative stage and this magnifies the influence that present generations of legal actors might have upon them.

We believe that the type of research in this article is highly relevant in the study of constitutional law. First, freedom of expression now occupies a canonical place in international as well as South African jurisprudence, in both of which it is celebrated as an affirmation of democratic principles and of individual freedom. Article 19(2) of the International Covenant on Civil and Political Rights states that 'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his

² Bronstein and others (note 1 above) 55–80.

³ The view that the political and other values of judges matter in adjudication is ubiquitous. It has, however, been explicitly defended by realist scholars and scholars now being called 'new legal realists'. See, eg T J Miles & C R Sunstein 'The New Legal Realism' (2008) 75 *The University of Chicago Law Review* 831. Legal realism is traditionally portrayed as a movement that rejects legal formalism or the idea that judges mechanically decide cases on the basis of law and logic in favour of the view that the personal, political and ideological commitments of judges shape legal decision-making, see M D A Freeman *Lloyd's Introduction to Jurisprudence* 6 ed (1994) 655–70. See also B Tamanaha 'The Distorting Slant of Quantitative Studies of Judging' (2008) *St. John's Legal Studies Research Paper* no 08-0159, 45.

C Albertyn & D Davis have traced the legacy of legal realism in South African jurisprudence. Although realism was an important pillar of John Dugard's 'The Judicial Process, Positivism and Civil Liberty' (1971) 88 *South African Law Journal* 181, very little 'apparent recourse to realist theory' followed in its wake (see C Albertyn & D Davis 'Legal Realism, Transformation and the Legacy of Dugard' (2010) 26 *South African Law Journal* 188.) Albertyn and Davis favour what they term a critical realist approach.

choice'.⁴ The South African Bill of Rights protects freedom of expression in section 16. Beyond such laws and provisions, legal theory should concern itself also with sociological and historical context, including the backgrounds and attitudes of law practitioners.

In an editorial in the *International Journal of Constitutional Law*, Ran Hirschl cautions against constitutional law scholarship that is insensitive to 'the social and political arena' and tends to yield 'thin ahistorical, overly doctrinal or formalistic accounts of the origins, nature and consequences of constitutional law'.⁵ He is concerned that 'a dozen 'celebrity' court rulings from South Africa, Germany, Canada and the European Court of Human Rights now form the unofficial canon of global constitutionalism'.⁶

A number of South African freedom of expression judgments which emerged from the early South African Constitutional Court are deservedly part of this canon. For example, in *South African National Defence Union v Minister of Defence*,⁷ O'Regan J sets out the basis of South African freedom of expression jurisprudence. She states:

Freedom of expression lies at the heart of a democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally. The Constitution recognises that individuals in our society need to be able to hear, form and express opinions and views freely on a wide range of matters ... [F]reedom of expression is one of a 'web of mutually supporting rights' in the Constitution ... These rights taken together protect the rights of individuals not only individually to form and express opinions, of whatever nature, but to establish associations and groups of like-minded people to foster and propagate such opinions. The rights implicitly recognise the importance, both for a democratic society and for individuals personally, of the ability to form and express opinions, whether individually or collectively, even where those views are controversial. The corollary of the freedom of expression and its related rights is tolerance by society of different views. Tolerance, of course, does not require approbation of a particular view. In essence, it requires the acceptance of the public airing of disagreements and the refusal to silence unpopular views.⁸

There are many judicial statements that are in a similar vein.⁹ In *Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International and Another*,¹⁰ Justice Moseneke confirmed that '[t]he constitutional guarantee of free expression is available to all under the sway of our Constitution, even where others may deem the expression unsavoury, unwholesome or degrading'.¹¹

⁴ Article 19 International Covenant on Civil and Political Rights, adopted by GA res 2200 (XXI) of 15 December 1966, entered into force 23 March 1976.

⁵ R Hirschl 'Editorial' (2013) 11(1) *J.Con* 1-12, 2.

⁶ *Ibid* 6.

⁷ [1999] ZACC 7; 1999 (4) SA 469 (CC); 1999 (6) BCLR 615 (CC).

⁸ *Ibid* paras 7-8.

⁹ See, eg *Holomisa v Argus Newspapers Ltd* 1996 (2) SA 588 (W) at 608G-609A and *National Media Ltd. and Others v Bogoshi* [1998] ZASCA 94; 1998 (4) SA 1196 (SCA); [1998] 4 All SA 347 (A) (29 September 1998) 1207J-1208C.

¹⁰ [2005] ZACC 7; 2006 (1) SA 144 (CC); 2005 (8) BCLR 743 (CC).

¹¹ *Ibid* para 55.

Although these judgments have created an ‘ideal platform for locking in’ this liberal democratic world-view,¹² the opposite impulse which diminishes free speech has consistently been present in democratic South Africa. In 2006, an extensive study of all the publicly available freedom of expression judgments, adjudications or rulings from the first 10 years of South African democracy showed that although freedom of expression had been rigorously protected by higher courts, there was a different picture in lower courts and tribunals. In lower fora, freedom of expression arguments were invariably losing out to dignity and equality.¹³ The study found that ‘[a]lthough there [was] symbolic deference to free speech, there [was] a growing quasi-legal tendency to erode its importance’.¹⁴

In our view what lawyers and future lawyers think about freedom of expression issues will impact upon the future of freedom of expression in South Africa. The attitudes of the highest court may be firmly established for the present but over time these rulings could be eroded. We agree with Albertyn and Davis who argue that when judges make decisions ‘[a]lthough the text places some constraints on interpretation, the values and principles of the Constitution, viewed through a judge’s particular political preferences, can give rise to divergent responses’.¹⁵

One of the most striking findings of the survey published in our earlier paper was that the students surveyed displayed strong antipathy to offensive speech between individuals. They abhorred general prejudice and racism, and it became apparent that many law students were ‘willing to entertain widespread bans against actually or putatively offensive citizen-on-citizen speech’.¹⁶ This could even be at the ‘cost of, say, suppressing debate about authoritarian or sexist features of traditional African authority, and often in preference to debating racists in public’.¹⁷ Our results showed that students in both cohorts gave fairly high support to general or abstract propositions in favour of freedom of expression. In theory, our students appeared to have high tolerance for speech which scrutinises or is critical of the government. However, our results showed that this support began to unravel when students were confronted with intense satirical criticism, in the form of three cartoons of South African President Jacob Zuma.

We asked the same questions that we had asked about freedom of expression in 2010 to a final year class in 2013.¹⁸ Although students proceed through the LLB law degree at Wits at different paces, that was the year in which the bulk of the 2010 first year students were scheduled to graduate. We were interested in determining to what extent law student views on freedom of expression changed over their period at Wits. Limitations in the extent of overlap between the two sets of respondents has prevented us from arriving at conclusive views about shifts

¹² Hirschl (note 5 above) 2.

¹³ V Bronstein ‘What You Can and Can’t Say in South Africa’ <http://da.wcc.co.za/docs/548/Censorshipvictoriabronstein_document.pdf> (2006).

¹⁴ *Ibid* 3.

¹⁵ Albertyn & Davis (note 3 above) 202.

¹⁶ Bronstein and others (note 1 above) 78.

¹⁷ *Ibid*.

¹⁸ One question was omitted: ‘It should be illegal to say that foreigners are taking our jobs’.

within this specific cohort.¹⁹ It is, however, striking how consistent the views of all three groups of students (the first and final years of 2010 and the final years of 2013) have been with each other. We have built up a very consistent picture of law student attitudes to freedom of expression at Wits. Like the two groups surveyed in 2010, the students in the 2013 final year cohort expressed deep antipathy to any type of offensive speech. The final years of 2013 also did not vigorously defend the right to publish the three cartoons which they were asked about in the questionnaire. There were no significant differences between the 2010 first years and the 2013 final years. We did, however, establish that the black students and the male students that we surveyed in the final year class of 2013 were somewhat less protective of freedom of expression than the final years of 2010.

It is obviously possible that student views will change as students enter the workplace and develop. The views of Wits law students may be very different from the views of other sectors of the legal establishment. This study does, however, provide a baseline and a comparator for other studies. It also indicates that pressure on freedom of expression values may not only emerge in the hurly-burly of politics. Strong and binding judicial statements may be whittled down over time.

Four of the questions asked during the survey aimed to establish students' attitudes to criticism of the government or political freedom of expression. Students were asked to respond to the statement: 'In order for a Society to be called democratic, complete freedom for anyone to criticise the government is essential'. They were also shown three cartoons by the controversial South African satirist Jonathan Shapiro, known as Zapiro, and presented with the following proposition in each case: 'This cartoon is disrespectful of the President and should not have been published'. Students answered on a Likert-type response scale of seven points ranging from 'strongly agree' to 'strongly disagree'.

¹⁹ As study participation was voluntary for ethical purposes, the researchers could but hope that the majority of the first year respondents would participate in their final year for follow-up. However, the overlap of the samples turned out to be limited with only 25 of the 166 respondents in the follow-up sample common to the 2010 first-year sample – a few students (12 or 7%) did not respond to the majority of questionnaire items and had to be excluded from the sample, and a further 45 students could not be identified as they did not supply their student numbers. Although it is possible that some of the 45 unidentified students may also have participated initially, the reliability of the longitudinal comparison is limited. These 45 unidentified students were, however, retained for the cross-sectional analyses.

The voluntary nature of student participation in the research necessitated that nonprobability availability sampling be used to select the participants, and therefore the samples cannot be claimed to be representative of their underlying student population groups. However, it is useful to check whether the demographics of the samples reflect those of their parent populations, as similar demographics would enhance the generalisability of the results.

In the case of the 154 participants in the 2013 final year sample, the 90 identifiable respondents were found to have similar age distributions to the underlying population of 340 students (28% under 23 years old, 64% aged 23–25 years and 8% older than 25 years in the sample, compared to 25%, 64% and 11% respectively in the population), and have the same representation of females (61%) with a slightly higher representation of Indian and whites (15% and 20% in the sample respectively, compared to 21% and 18% respectively in the population). English was the home language spoken as frequently in both the sample and the population (44%), and South Africans were highly represented in both (87% of the sample, 97% in the population). Finally, similar percentages received NSFAS funding (24% of the sample participants received NSFAS funding, compared to 27% in the population). In view of these similarities, the external validity of the study is considered fairly strong and thus we generalise our 2013 sample results to the target population of 2013 final year students. The comparability of the 170 first-year versus final-year students is questionable as several students chose to be anonymous in the follow-up study. In line with previous research, the researchers controlled for the variable of race by conducting analyses on black and white groups separately.

The mid-point of the scale was 'neither agree nor disagree'.²⁰ As in our previous analyses, we categorised the responses by aggregating the two response categories indicating weakest support for freedom of expression as 'anti', the three response categories in the middle of the continuum as 'ambivalent', and the two response categories indicating strongest support as 'pro'. In this article, we focus on the issue of political cartoons, both generally (at a theoretical and comparative level) and specifically in relation to South Africa. We specifically look at the satirical commentary by Zapiro of the alleged failings and foibles of South Africa's State President Jacob Zuma. Cartoons are of special interest to us because their wounding and vivid mode of criticism – indeed their outright 'disrespectfulness' – tests the scope and application of respondents' otherwise rather generally stated commitment to freedom of expression. The capacity of a society to 'tolerate' sharply satirical cartoons may be a measure of the depth and maturity of its commitment to free expression, political pluralism and democracy. In South Africa's case, the cartoons pose particular challenges, given the charged racial character of the country's politics and, in the case of the Zapiro cartoons, the fact that the cartoonist is a white person, albeit of left-wing or progressive background and a record of participation in anti-apartheid struggle.

2. Why use cartoons?

Cartoons provide a unique opportunity to probe political attitudes. They powerfully condense, simplify and distill political thoughts and opinions.²¹ In Peter Duus' view, 'it is in the condensation of a complex idea into one striking and memorable image that we find the appeal of a great cartoon'.²² The element of compression is one of the most salient aspects of cartoons.²³

The idea that political cartoonists are entitled to extensive freedom is axiomatic to liberal democratic thought. Tolerance of cartoonists is often seen as an index of the well-being of liberal democracy.²⁴ Cartoons are seen as a 'weapon' in a legitimate

²⁰ This was the same as the previous surveys, see Bronstein and others (note 1 above) 60. The mid-point of the scale was 'neither agree nor disagree'. The four questions were scattered among other questions in the questionnaire in order to avoid the problem of response set discussed in the previous paper at 61.

²¹ P Duus 'Presidential Address: Weapons of the Weak, Weapons of the Strong—The Development of the Japanese Political Cartoon' (2001) 60 *The Journal of Asian Studies* 965, 966; J Bain, N Chaban & S Kelly 'Crumbling Giant, Rising Dragon?: Chinese News Media Cartoon Reflections on the Eurozone Debt Crisis' (2012) 45 *Communication Politics and Culture* 217, 220; M J Jones & P Stanton 'Enron Cartoons: Accounting in the Spotlight' in K Kokubu, N N Sawabe & M Sakaue (eds). *Seventh Asia Pacific Interdisciplinary Research in Accounting Conference* (2013) 5–9. Sometimes cartoons express things through graphics that journalists would find difficult to express in words. H Arntsen 'Committing Journalism? A View of the Zimbabwean 2008 General Elections as Interpreted by Internet News Cartoons' (2010) 29 *Communicare: Journal for Communication Sciences in Southern Africa/Communicare: Tydskrif vir Kommunikasiewetenskappe in Suider-Afrika: Special Edition* 18, 38.

²² Duus (note 21 above) quoting Gombrich at 966.

²³ Cartoonists also need to 'know where they stand' (L S Caswell 'Drawing Swords: War in American Editorial Cartoons' (2004) 21 *American Journalism* 13, 17). In the context of wartime cartoons, Caswell argues that 'cartoons lacking ... motivation, passion and concern are weak and pointless' (at 17).

²⁴ R Phiddian 'Satire and the Limits of Literary Theories' (2013) 55 *Critical Quarterly* 44, 54. See J Kuhlmann 'Zimbabwean Diaspora Politics and the Power of Laughter: Humour as a Tool for Political Communication, Criticism and Protest'. (2012) 4 *Journal of African Media Studies* 295, 298. For a wonderful study of the role of cartoons in building democratic values in France during the period of the July Monarchy, see A W Forbes *The Satiric Decade: Satire and the Rise of Republicanism in France 1830–1840* (2010). At the same time she shows how satirical portrayal of women during the period worked to keep women in their place (at 257). She concludes that during the period '[s]atire had provided a public education in critical thinking and had asserted an expectation that public opinion would play a powerful role in politics. In so doing, satire had created citizens for the French republic' (at 261).

battle for 'public opinion'.²⁵ 'They are part of a democratic tradition that requires an informed electorate' with knowledge of both 'issues and candidates'.²⁶ Duus describes how political cartoonists consciously see themselves 'as guardians of the public good'.²⁷

With his indignant eye, the cartoonist would probe zones of darkness, corruption and incompetence. When the public – with the cartoonist's help – could see the whole of the polity, no official wrongdoing or stupidity would escape its gaze, and the collective citizenry might even be able to restrain the state from harmful actions.²⁸

This thinking is frequently echoed across liberal democracies. Sushmita Chatterjee describes how the Indian cartoonist RK Laxman uses the generic figure of the Indian 'common man' as a 'silent witness to all the failings and foibles of post-independence Indian politics'.²⁹ In her view, these cartoons which dwell on the shortcomings of India's modern democracy reflect the potential for the Indian democracy to be 'otherwise'.³⁰ She argues that 'by cartooning Indian democracy, Laxman brushes up its potential'.³¹

An important characteristic of political cartoons is their capacity to antagonise.³² Phiddian describes satire as 'an unmasking process, a deliberate withholding of sympathy from knaves and fools ...' He continues:

It is important to realise that the satirical is not particularly well attuned to the postmodern humanities ethic of sympathy to the Other. It is for better or worse an othering process. It caricatures and stigmatises its targets, shames them, encourages people to laugh at them.³³

In a similar vein, Chris Lamb writes 'when editorial cartoons are at their best, they're like switchblades – simple and to the point. They cut deeply and leave a scar'.³⁴ It is thus not surprising that '[d]ay in, day out, nothing else in the newspaper draws as many threats of litigation and bodily harm than a cartoon on a touchy topic'.³⁵

In response to anger about controversial images, *Arizona Republic* Cartoonist Stephen Benson has said that 'cartoonists have a role in democracy to catalyse debate'.³⁶ The Pulitzer Prize winning political cartoonist Doug Marlette views

²⁵ Duus (note 21 above) 966.

²⁶ Caswell (note 23 above) 15.

²⁷ Duus (note 21 above) 966.

²⁸ *Ibid.*

²⁹ S Chatterjee 'Cartooning Democracy: The Images of RK Laxman' (2007) 40 *PS: Political Science & Politics* 303, 303.

³⁰ *Ibid.* 306.

³¹ *Ibid.* Political cartoons also give a sense of the issues at stake in politics. See, eg D Corstange 'Drawing Dissent: Political Cartoons in Yemen' (2007) 40 *Political Science & Politics* 293.

³² K Dodds 'Steve Bell's Eye: Cartoons, Geopolitics and the Visualization of the War on Terror' (2007) 38 *Security Dialogue* 157, 158.

³³ Phiddian (note 24 above) 54.

³⁴ Ç Lamb 'The fixable Decline of Editorial Cartooning' (15 December 2004) in *Editorial Cartoons: The Impact and Issues of an Evolving Craft: Nieman Reports* (Winter 2004) <<http://niemanreports.org/issues/winter-2004/>> (hereafter referred to as *Nieman Reports* Winter 2004) 19. Lamb describes that in the wake of the terrorist attacks of 11 September 2001, 'those cartoonists who criticised the administration had their patriotism questioned, their lives threatened, and their livelihood jeopardised' (18).

³⁵ J Zakarian 'Editorial Page Editors and Cartoonists: A Difficult Alliance' in *Nieman Reports* Winter 2004 (note 34 above) 17.

³⁶ J L Connors 'Popular Culture in Political Cartoons: Analyzing Cartoonist Approaches' (2007) 40 *Political Science & Politics* 261, 262.

cartoons as ‘the acid test of [the United States Constitution’s] First Amendment’.³⁷ He continues: ‘they push the boundaries of free speech by the very qualities that have endangered them: Cartoons are hard to defend. They strain reason and logic. They can’t say ‘on the other hand’. And, for as long as cartoons exist, Americans can be assured that we still have the right and privilege to express controversial opinions and offend powerful interests’.³⁸

Although cartoonists in ‘liberal democratic cultures’ generally have freedom to publish cartoons that ‘ridicule or belittle political leadership’,³⁹ one should be cautious of oversimplifying the relationship between political liberalism, capitalism and political cartooning. The Nieman Reports of winter 2004 lament what the writers see as a decline in political cartooning in the United States. The authors attribute this to the fact that editors who are generally faced with falling circulation in the internet age are reluctant to publish cartoons which risk offending readers and advertisers.⁴⁰ This problem is aggravated in an environment where newspapers are controlled by media conglomerates. Staff cartoonists who traditionally developed their own identities and relationships with their readership are frequently dropped or not replaced by newspapers which prefer the choice, cost and convenience associated with the wide range of syndicated cartoons available every day.⁴¹

Despite these criticisms, satirical freedom is institutionalised in modern democracies. Daniel Hammett argues that political cartoons ‘function as a key indicator of the democratic health of a polity’.⁴² ‘Political humour ... is considered an essential resource for, and an indicator of, a democratic public culture as it exposes the limits of public speech and of tolerance for divergent political opinions’.⁴³ Cartoons provide an opportunity to ‘speak back’ to power.⁴⁴ The literature

³⁷ D Marlette ‘Freedom of Speech and the Editorial Cartoon’ in *Nieman Reports Winter 2004* (note 34 above) 23.

³⁸ *Ibid.*

³⁹ K Dodds ‘Popular Geopolitics and Cartoons: Representing Power Relations, Repetition and Resistance’ (2010) 2 *Critical African Studies* 113, 120. See, for example, the treatment of John Major and George Bush by Steve Bell in S Plumb ‘Politicians as Superheroes: The Subversion of Political Authority Using a Pop Cultural Icon in the Cartoons of Steve Bell’ (2004) 26 *Media, Culture & Society* 432.

⁴⁰ ‘That an editorial cartoonist’s very reason for being is to provoke helps explain why they are the first to go’ Marlette (note 37 above) 22; ‘The insidious unconsciousness of self-censorship can be discerned in the quality of editorial cartoons today. Increasingly in my profession, careerism seems to have replaced risk taking’. Marlette (note 37 above) 30. ‘When cartoonists do hand in strong cartoons, an editor is just as likely to kill it to avoid offending readers and losing advertisers’ J P Trostle ‘The evaporating Editorial Cartoonist’ in *Nieman Reports Winter 2004* (note 34 above) 9 quoting cartoonist Steve Benson. ‘When the competition was removed and the once-proud and principled newspaper fell into the hands of greedy chains, or clueless cereal manufacturers and the like, bottom line journalism was born. This heralded the beginning of the death of controversy. Controversy, that life force behind the political cartoon, is of course completely anathema to those nursing the books: when you are making 20 to 30 per cent on your investment annually, there is no point in making waves’. P Oliphant ‘Why Political Cartoons are Losing Their Influence’ in *Nieman Reports Winter 2004* (note 34 above) 25. See also I Danjoux ‘Reconsidering the Decline of the Editorial Cartoon’ (2007) 40 *Political Science & Politics* 245, 245.

⁴¹ Trostle (note 40 above) 8–11.

⁴² D Hammett ‘Political Cartoons, Post-colonialism and Critical African Studies’ (2010) 2 *Critical African Studies* 1, 2.

⁴³ Kuhlmann (note 24 above) 296.

⁴⁴ Dodds (note 32 above) 120 quoting Scott. Hammett (note 42 above) 4.

illustrates that this universal need has been expressed profusely through cartoons across time and cultures.⁴⁵

In a study of the vibrant world of African political cartooning, Lyombe Eko describes cartoons as ‘public totem poles on which ridicule and contempt for the political and military elite and their neo-colonial partners are carved’.⁴⁶ Although there is debate about the efficacy of cartoons in deposing authoritarianism, there is wide consensus that cartoons act as ‘an irregular weapon of resistance, as a tool of political engagement and subversion and as a means of navigating daily life in Africa’.⁴⁷ Eko shows how African cartooning thrived as a result of post-Cold war liberalisation in Africa ‘with a genre of irreverent, vitriolic and sometimes shocking comic art based on traditional African cosmology and mythology’.⁴⁸ He argues that cartoonists have ‘pushed and enlarged the envelope of free expression much further than the continent’s political leadership intended’.⁴⁹ Hence, cartoons have played a role in deepening civil liberty.

Tunç maintains that Turkish political cartoonists have had a huge impact on Turkey’s ‘odyssey’ to democracy.⁵⁰ While this article deals with South Africa’s post-1994 context, it is important to note the role that cartooning played in the struggle for South Africa’s own liberation from apartheid. There is no way to quantify this role, and it is unlikely to loom large in an account of apartheid’s demise. All the same, a range of print media participated to varying degrees in cultural resistance to apartheid, and satirical cartooning in turn formed a vivid element of both conventional and ‘alternative’ media commentary. Satirical cartooning lampooned powerful figures of the day, notwithstanding the climate of censorship and periodic bans. Zapiro himself cut his teeth in providing illustrative material for 1980s political formations such as the United Democratic Front and End Conscription Campaign.

⁴⁵ For a varied list of cartoonists who have faced the ire of political elites from Aristotle’s reports on the cartoonist Paulson in Ancient Greece to modern day Iran, see Danjoux (note 40 above) 246. Also see A Tunç ‘Pushing the Limits of Tolerance Functions of Political Cartoonists in the Democratization Process: The Case of Turkey’ (2002) 64 *International Communication Gazette* 47, 48–49. On cartoons in Late Republican China, see C Hung ‘The Fuming Image: Cartoons and Public Opinion in Late Republican China, 1945 to 1949’ (1994) 36 *Comparative Studies in Society and History* 122, 131–32. On cartoons currently available in China, see Bain and others (note 21 above) 217–40. On the universality and diversity of cartoons, see M Diamond ‘No Laughing Matter: Post-September 11 Political Cartoons in Arab/Muslim Newspapers’ (2002) 19 *Political Communication* 251; D R Hoffman & A D Howard ‘Representations of 9–11 in Editorial Cartoons’ (2007) 40 *Political Science & Politics* 271. Perceptions of editorial censorship are also relevant, see A Ashfaq & A B Hussein ‘Political Cartoonists versus Readers: Role of Political Cartoonists in Building Public Opinion and Readers’ Expectations towards Print Media Cartoons in Pakistan’ (2013) 4 *Mediterranean Journal of Social Sciences* 265, 270.

⁴⁶ L Eko ‘It’s a Political Jungle Out There. How Four African Newspaper Cartoons Dehumanized and ‘Deterritorialized’ African Political Leaders in the Post-Cold War Era’ (2007) 69 *International Communication Gazette* 219, 235. On Malawian cartoons, see W Kondowe, F F Ngwira & P Madula ‘Linguistic Analysis of Malawi Political Newspaper Cartoons on President Joyce Banda: Towards Grice’s Conversational Implicature’ (2014) 4 *International Journal of Humanities and Social Science* 40. On African cartooning, see Arntsen (note 21 above) 22.

⁴⁷ Kuhlmann (note 24 above) 299 relying on Obadare ‘State of Travesty: Jokes and the Logistics of Socio-cultural Improvisation in Africa’ (2010) 4 *Critical African Studies* 4. But, see Achille Mbembe who argues that cartoons have the potential to intensify the power of the autocrat: ‘To the violence of the fantasy another violence, the laughter of those crushed, endeavours to respond, striving to humiliate the “thing” utterly. But this second violence, far from signing the “thing” in death, rather intensifies its presence by enclosing the subject in a mixture of fascination and dread’. The autocrat ‘fills space to the point of still being talked of even as the act of creation is claiming to debase him’. *On the Postcolony* (2015) Wits University Press 165.

⁴⁸ Eko (note 46 above) 235.

⁴⁹ *Ibid* 236.

⁵⁰ Tunç (note 45 above) 60 although Kurdish issues remain a taboo area (at 59).

Though cartooning benefits from constitutional protections, satirical cartoons have always been integral to the South African scene.⁵¹

The importance of satirical freedom for sustaining democracy is further borne out by the role of political cartoons and other satire in authoritarian regimes. A cartoon can ‘mask a forceful intent behind an innocuous façade’.⁵² In many well-documented circumstances, political opinions expressed through the medium of cartoons have managed to evade censorship.⁵³ In cases where authoritarian regimes block communication and stifle the press, ordinary people use ingenious means to communicate their satirical messages.⁵⁴ Modern communication technology provides new avenues for this type of rebellion. Many cartoonists operate from exile over the internet.⁵⁵

The steadfast liberal belief in the right of political satirists to push the boundaries of free expression, treating nothing as sacred, has in the last couple of decades run up against the passionate belief on the part of some people located in non-liberal cultures that certain depictions and claims are fundamentally unacceptable. This sensibility finds sympathy in exponents of some variants of western identity politics, who consider it ethnically or racially offensive for white westerners to ‘laugh’ at formerly colonised peoples of the Global South and at their ways. In the case of cartoon depictions of the Prophet Muhammad, this matter has come to a lethal head on several occasions, most recently and notoriously in the massacre of cartoonists attached to the French satirical magazine *Charlie Hebdo*. Sensitivities around the humiliation of the ‘Other’ are present in South Africa too. While Islam-related controversies have not taken centre-stage in this country, cartoons in which whites satirise blacks tap into longstanding sensitivities to do with everything from whites failing to share alleged African cultural reverence for elders through to white hypersexualisation of male African bodies. Zapiro’s cartoon references to Zuma’s sexual appetite, thus unsurprisingly generate racialised controversy. Similar controversy attended the satirical depiction of Zuma, with genitals exposed, by white artist Brett Murray. Murray’s painting was defaced not long after ANC-allied organisations led a public march on the art gallery in which Murray’s painting was exhibited.⁵⁶

3. The cartoons and the controversies surrounding them

We chose to test responses to three Zapiro cartoons which we included in the questionnaire. Jacob Zuma was the subject matter for all three of these cartoons.

⁵¹ See P Vale *Keeping a Sharp Eye – A Century of Political Cartoons on South Africa’s International Relations 1910–2010* (2011), also see H Dugmore, S Francis & R Schacherl *Nelson Mandela: a life in Cartoons* (1999).

⁵² Hung (note 45 above) 124.

⁵³ See, for example, in late-republican China, Hung (note 45 above) 140. In Yemen before the current war, see Corstange (note 31 above) 293. The same phenomenon is noted by Arnsten in Zimbabwe, see Arnsten (note 21 above) 26. Kuhlmann (note 24 above) 299.

⁵⁴ The well-documented example of Zimbabwe stands out here, see Kuhlmann (note 24 above).

⁵⁵ Arnsten (note 21 above) 24. Kuhlmann (note 24 above) 311.

⁵⁶ D Freedberg ‘The Case of the Spear’ September (2012) 11 *Art South Africa* 36. For a discussion of media issues surrounding the spear, see L Steenveld ‘South African Newspaper Ethics and the Politics of Cultural Belonging: Reflections on The Spear’ (2016) 17 *Journalism* 297.

The depiction of Jacob Zuma with a shower on his head is a famous image of Zapiro's.⁵⁷ The shower is a reminder of Jacob Zuma's rape trial where on his own evidence he had consensual unprotected sex with a 31-year-old family friend knowing she was HIV+. He then had a shower in order to protect himself from the virus. Jacob Zuma was ultimately acquitted of rape, but his testimony was grist to the mill of any satirist. He ended up with a permanent shower on his head in subsequent Zapiro cartoons. '[t]he showerhead stands as a metaphor for every controversial statement or ill-advised political or social move Zuma has made'.⁵⁸

One of the cartoons that we presented to students in the study was the Baby Shower cartoon. This cartoon was published on the birth of President Zuma's twentieth child. Jacob Zuma is famously polygamous and some of these children were born outside his marital relationships. The Baby Shower cartoon shows 20 cute babies falling through the air. They are all miniature Jacob Zumas. They each carry the characteristic shower on their head. In our previous piece, we characterised this as a gently humorous cartoon.



The second cartoon which was also drawn around the time of the birth of President Zuma's twentieth child 'depicts a large phallus rising out of the Union

⁵⁷ Although many viewers find this amusing, others do not. A J Mason 'The Cannibal Ogre and the Rape of Justice: A Contrapuntal View' (2010) 2 *Critical African Studies* 32 quotes Dumisane Hlope who wrote 'While I take it that [rape and the HIV-AIDs epidemic] are social ills that must permeate into our national consciousness in order for us to address them, I believe ... that it is unfair to make Zuma the national epitome of rape, and HIV-Aids' 54.

⁵⁸ M Oostendorp 'The Multimodal Construction of the Identity of Politicians: Constructing Jacob Zuma Through Prior Texts, Prior Discourses and Multiple Modes' (2015) 12 *Critical Discourse Studies* 39, 53.

Buildings. In this one, the President's supposed readiness to engage in unprotected sex (highlighted in his rape trial) was linked to the government's mixed messages about the Aids pandemic'.⁵⁹ In the speech bubble, Zuma's conduct and what he says about AIDS are juxtaposed. One of the small arches on the Union Buildings bears a characteristic shower.



This cartoon did not spark controversy at the time, but it does challenge certain ideas about respect for leadership.⁶⁰ Presidents and leaders are routinely lampooned in liberal democracies. On the other hand, in many countries open mockery of top leadership remains taboo.⁶¹ In some 'sectors of the African political establishment... respect for the dignity of leadership carries weight'.⁶² In a significant number of African countries, the lampooning of political leaders has become more acceptable since the 1990s. Since then, many brilliant cartoons have been produced.⁶³

⁵⁹ Bronstein and others (note 1 above) 64.

⁶⁰ Mason (note 57 above) 53.

⁶¹ In Kenya, the first cartoons of the President emerged in the late 1980s or early 1990s. P Gathara *Drawing the Line: The History and Impact of Cartooning in Kenya* (2002) 25. Liberalisation in Africa in the 1990s meant that African leaders started to be satirised in the press, see Eko (note 46 above) 219–38. On the prohibition of depiction of the President under the pre-civil war Yemeni regime, see Corstange (note 31 above) 295. The taboo on lampooning the Spanish royal family is being eroded, see M Domínguez & A Mateu. 'Are the Winds of Change Blowing in Spain? Cartoonists' Critical Analysis of King Juan Carlos' Elephant-hunting Trip' (2014) 15 *Journalism Studies* 187.

⁶² Mason (note 57 above) 53.

⁶³ For example, see Eko (note 46 above) 219–38. For a stunning gallery of African cartoons, see <<http://africacartoons.com/>>.

Even so, laws are in place criminalising disrespect for presidents in several African countries.⁶⁴

The third cartoon, the Lady Justice rape cartoon, was published in 2008 before Jacob Zuma became President of South Africa. The cartoon establishes a metaphorical connection between Zuma's successful evasion of corruption charges and his alleged rape of a family friend.



The Lady Justice cartoon presents an image of gang rape. The victim will be Lady Justice. Powerfully she remains blindfolded. Her scales have already fallen to her side as she desperately tries to resist her attackers.

Her main attacker is Jacob Zuma, who is depicted with the characteristic shower on his head. He is unbuttoning his pants as if to rape her. Lady Justice is being held down by Zuma's four henchmen or political allies, Zwelinzima Vavi from Cosatu, Blade Nzimande from the SACP, Julius Malema from the ANC youth league and Gwede Mantashe the secretary general of the ANC. Mantashe encourages his 'boss' Zuma to 'go for it'.

The image of a black Lady Justice had previously been used by Zapiro. She first appeared in one of his cartoons in 1994.⁶⁵ (Some commentators see her as a woman

⁶⁴ See P McCracken *Insult Laws: Insulting to Press Freedom: A Guide to Evolution of Insult Laws in 2010* <<https://freedomhouse.org/report/special-reports/insult-laws-insulting-press-freedom>> 50–88, 142–81. On the other hand, in the context of *The Spear*, Lynette Steenveld points out that when dealing with a 'public figure (the State President), Western ethics would preclude ethical considerations applying to this category of person, making [the decision about whether they can be lampooned] an easy ethical decision' (note 56 above) 299.

⁶⁵ Mason (note 57 above) 39. For more on the history of the Lady Justice image in Zapiro's work, see 39–40.

of indeterminate race.⁶⁶) She is blindfolded and carries scales and in this particular cartoon she wears the label 'Justice System'.

The cartoon was published some while after President Zuma's victorious bid to become party leader at the ANC conference at Polekwane in December 2007. His main support came from the politicians who Zapiro now depicted as his henchmen. In June 2009, soon after the cartoon was published, Zuma became President of South Africa.

The cartoon is brutal and unforgiving.⁶⁷ Literary theorists explain that while many cartoons aim to trigger laughter, others generate what is known as unlaughter.⁶⁸ Unlaughter calls 'attention to the serious nature of the everyday experiences of social and economic hardship or political oppression'.⁶⁹ Manning and Phiddian create a taxonomy of cartoons in which one of the categories is 'cartoons displaying savage indignation'.⁷⁰ It is into this category that the Lady Justice cartoon appears to fit.

The Lady Justice cartoon precipitated widespread debate. Zapiro was accused of racism and he was criticised for trivialising rape in a country dogged by sexual violence. The cartoon was also considered unfair given that Zuma had been acquitted of rape. Some considered the cartoon libelous.⁷¹

After analysing the cartoon and the public debate around it Andrew Mason comes to the conclusion that:

Those who support constitutionalism and, in particular, freedom of expression, have championed the cartoonist's right to produce the cartoon, even though they may recognise it as hard-hitting and controversial, while those who see constitutionalism as an impediment to their goals or aspirations have angrily condemned it.⁷²

If Mason's characterisation of the discourse around the cartoon is correct, that would provide a powerful justification for taking seriously student responses to the Lady Justice cartoon in our survey. His view connects a strong urge to protect the right to publish the cartoon with commitment to freedom of expression and constitutionalism. However, things are not that clear cut. During the initial debate about the Lady Justice cartoon, there were strong and consistent freedom of expression advocates who voiced ambivalence about the cartoon. A *Sowetan* editorial of 9 September 2008 stated:

As a newspaper, we are strongly on the side of freedom of expression. It is a right that our predecessors in the South African media fought long and hard for and one of those

⁶⁶ Mason (note 57 above) 39.

⁶⁷ For a biographical account of Jonathan Shapiro and his history, see Dodds (note 32 above) 120–22. Dodds examines Zapiro's history in the liberal democratic movement and his growing disillusionment with the ANC. Andrew Mason argues that disillusionment was a dominant feature of political cartooning at the time when the cartoon was made (Mason (note 57 above) 46–48). Mason writes 'It can be seen that the rape of justice cartoon did not stand alone: it was one of a series of angry and pessimistic cartoons in which the cartoonist vented his disillusionment and frustration at the turn that politics in South Africa was taking' 48. There were also a series of cartoons that came after this cartoon involving Lady Justice, see Hammett (note 42 above, political cartoons) 17–20, 23 and the shower see Hammett (note 42 above, political cartoons) 21–22.

⁶⁸ Hammett (note 42 above, political cartoons) 10.

⁶⁹ Kuhlmann (note 24 above) 298.

⁷⁰ H Manning & R Phiddian. 'In Defence of the Political Cartoonists' Licence to Mock' (2004) 5 *Australian Review of Public Affairs* 25, 31. Unlaughter characterised cartooning in Hung's study of late republican China quoted above. Hung writes 'cartoonists voices were loud and bitter, and their drawings revealed valuable information about their attitudes and those of the people they tried to reach' (note 45 above) 139.

⁷¹ See Mason (note 57 above) generally.

⁷² *Ibid* 55.

rights which, once lost, would be extremely hard to reclaim. The thought of an unfree media is too ghastly to contemplate. But that does not blind us from the reality that it has only been 14 years since we emerged from a system that institutionalised the rape of the human dignity of black people.⁷³

In the Lady Justice cartoon, Zapiro depicts Jacob Zuma as a wildly inappropriate choice for President and associates him with a culture which is a threat to constitutionalism. Andrew Mason locates the cartoon in a period where political cartoonists were generally despondent and Zapiro, in particular, was strongly disillusioned. However, the form of the cartoon may well have had unintended consequences. When the cartoon was published, ANC Secretary-General Gwede Mantashe was quoted as saying:

The message ... is that African leaders are holding justice down and assisting the president in raping her. We, as leaders in the cartoon, are all African, and this shows that the media, which is mostly managed by white people, does not have respect for the ruling party and its new leadership.⁷⁴

A cartoon that is defensible on grounds of free expression may nevertheless be inappropriate or unwise or miss its target. Authors of a study on President Zuma's political brand argue that Zuma was able to utilise the cartoon to his benefit as Zapiro and the newspapers were seen, they claim to be implicated in a 'massive conspiracy to defame' him.⁷⁵ If that argument is correct, this cartoon did not prevent Jacob Zuma from emerging from the 'series of events relatively unscathed'.⁷⁶ The aggression in this cartoon may ultimately have been its undoing. It is well understood that 'satire can sometimes backfire and create sympathy rather than hostility'.⁷⁷ For others, it should be said, the cartoon remains a powerful indictment of outrageous presidential behavior. The quality and the importance of the cartoon is underlined by its treatment alongside many of the most famous cartoons and cartoonists in history in Victor S Navasky's article '15 Historic Cartoons That Changed The World'.⁷⁸

Jacob Zuma sued Zapiro for defamation as a result of the Lady Justice cartoon. In 2011 a PEN representation to the Human Rights Committee complained that 'defamation suits filed by the President of South Africa himself' were 'particularly troubling'.⁷⁹ In the previous five years, the President had 'filed 11 defamation suits seeking R49 million (\$6.1 million) in damages for everything from musical parodies

⁷³ Ibid 61.

⁷⁴ Ibid 60.

⁷⁵ A S Bal and others 'Caricatures, Cartoons, Spoofs and Satires: Political Brands as Butts' (2009) 9 *Journal of Public Affairs* 229, 235.

⁷⁶ Bal and others (note 75 above) 236. It is not uncommon for politicians to emerge from sexual scandals relatively unscathed. Bill Clinton is an example although the sex scandal that he faced is distinguishable on the facts. See R Wiid, L F Pitt & A Engstrom. 'Not So Sexy: Public Opinion of Political Sex Scandals as Reflected in Political Cartoons' (2011) 11 *Journal of Public Affairs* 137. On the impact of cartoons on Silvio Berlusconi and Italy's political brand, see A Bigi and others 'When Satire is Serious: How Political Cartoons Impact a Country's Brand' (2011) 11 *Journal of Public Affairs* 148.

⁷⁷ W A Coupe 'Observations on a Theory of Political Caricature'. (1969) 11 *Comparative Studies in Society and History* 79.

⁷⁸ Posted on BuzzFeed on 2 May 2013, at 10:35 pm <<http://www.buzzfeed.com/victornavasky/15-historic-cartoons-that-changed-the-world#.ct5mbqX5d8>>. Based on V S Navasky *The Art of Controversy: Political Cartoons and their Enduring Power* (2014).

⁷⁹ PEN International and South African PEN Contribution to the 13th session of the Working Group of the Universal Periodic Review Submission on the Republic of South Africa (24 November 2011) <http://lib.ohchr.org/HRBodies/UPR/Documents/session13/ZA/PEN_UPR_ZAF_S13_2012_PENInternational_E.pdf> para 19.

to photography'.⁸⁰ In November 2011, PEN specifically criticised the defamation suit against Zapiro, the *Mail and Guardian* and the *Sunday Times* on the basis that 'the President's ability to muster significant legal resources in an effort to curtail the expression of a political cartoonist sends a powerful signal about the government's tolerance of criticism, and runs counter to the widely-accepted principle that public officials are legitimate targets of satire and parody'.⁸¹

President Zuma ultimately dropped the defamation action against Zapiro and the newspapers.⁸² However, the leading case *Bodrožić v Serbia and Montenegro*⁸³ illustrates that the President's case was on shaky ground.

Bodrožić was a Serbian journalist who had criticised a senior government official in satirical terms and was consequently convicted of the criminal offence of insult. The Human Rights Committee observed that 'in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high'.⁸⁴ The Committee found that the conviction violated Article 19 and required it to be quashed. The case implicitly lends support to satirists and cartoonists.⁸⁵

In the final analysis, the three cartoons in this study work together. Oostendorp looks at the intertextual references between various texts about Jacob Zuma and shows that

The construction that is created of Jacob Zuma is of a man who is sexually irresponsible, of questionable morals and as a weak leader compared to previous ones.⁸⁶

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Zapiro did, however, receive support from the South African Human Rights Commission, see M Mataboge 'Zapiro Wins Round One on Zuma Cartoon' *Mail and Guardian* (25 June 2010) <<https://mg.co.za/article/2010-06-25-zapiro-wins-round-one-on-zuma-cartoon>>. See also Zapiro 'Letter to the South African Human Rights Commission: A response to complaints regarding my cartoon' (2010) 2 *Critical African Studies* 27.

⁸³ *Zeljko Bodrožić v Serbia and Montenegro* (1180/2003), CCPR/C/85/D/1180/2003 (2006); 13 IHRR 389 (2006); 1180/2003, U.N. Doc. A/61/40, Vol. II, at 288 (HRC 2005).

⁸⁴ Ibid.

⁸⁵ 'On 21 January 2002, Mr. Segrt filed private criminal complaints of libel and insult against the author in the Kikinda Municipal Court.... On 14 May 2002, the court convicted the author of criminal insult, but acquitted him on the charge of libel. It dismissed the libel charge on the basis that the factual aspects of the extracts in question were, in fact, true and correct. As to the charge of insult, the Court found that the extracts were 'actually abusive' and 'inflict[ed] damage to the honour and reputation of the private plaintiff'. Rather than constituting, as argued by the author, 'serious journalistic comment in which he used sarcasm', the Court considered that the words used 'are not the expressions that would be used in serious criticism; on the contrary, these are generally accepted words that cause derision and belittling by the social environment'. In the Court's view the use of slang words and emphasized quotations, rather than 'a literary language that would be appropriate for such a criticism', showed that the expressions employed 'were used with the intention to belittle the private plaintiff and expose him to ridicule, and therefore this and such an act of his, though it was done within the performance of the journalist profession, is indeed a criminal offence [of insult]' (Ibid para 2.2, own emphasis). The Committee found that the conviction was a violation of the Covenant.

Article 9(2) of the African Charter of Human and Peoples' Rights 1961 (OAU CAB/LEG/67/3 rev. 5) reads much more restrictively than Art 19 of the Covenant. It states '[e]very individual shall have the right to express and disseminate his opinions within the law'. Article XII (1) of the African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa (23 October 2002, ACHPR/Res 62(XXII)) provides that 'states should ensure that their laws relating to defamation conform to the following standards: - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances; - public figures shall be required to tolerate a greater degree of criticism; and - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others'.

⁸⁶ Oostendorp (note 58 above) 52.

4. The cartoons in the questionnaire: questions surrounding the interpretation of results

There are two noteworthy methodological challenges to interpreting responses to the cartoons in the questionnaire.

First, as indicated, all the cartoons in the questionnaire were accompanied by the statement: ‘This cartoon is disrespectful of the president and should not have been published’. Students needed to agree or disagree with the proposition. The ‘should not’ formulation is ambiguous to the extent that it is not self-evident whether agreement with this statement is committing the respondent to the view that the publication of the cartoon should be illegal. The respondent may simply think it preferable that the cartoon should not have been published or, put another way, that the particular newspaper should have made an editorial decision not to publish the cartoon. Students who are annoyed by the cartoon might react by voicing their antagonism to the cartoon rather than their views on whether the cartoon should be banned. El Refaie argues that people often overreact to images:

The visual mode often engages feelings, attitudes and emotions and it mobilises fears and anxieties in the viewer, at deeper levels than we can explain in a simple, common-sense way.⁸⁷

This risk was strongest with the Lady Justice rape cartoon which notoriously tested the limits of acceptable commentary. For its part, the Union Buildings phallus cartoon is graphic, and could offend sensibilities around visual public depiction of private body parts.

Secondly, there is literature which suggests that one cannot make the assumption that students are visually literate enough to understand the cartoons.⁸⁸ Decoding cartoons is not a simple matter.⁸⁹ El Refaie has done experiments where the same cartoon has been shown to a range of academics who have interpreted them in divergent ways.⁹⁰ Our project mitigates this difficulty in two ways. Firstly, Zapiro’s image of Jacob Zuma with a shower on his head is widely known and understood. The President’s sexual conduct is very prominent in the news and both the Lady Justice rape image and the baby shower cartoon are iconic South African images.⁹¹ Nevertheless, Andrew Mason claims that some viewers did not understand the metaphorical character of the victim depicted in Lady Justice cartoon and perceived it as depiction of a real rape.⁹² We tried to alleviate the risk that students would not understand the cartoons by giving a brief explanation of them in the questionnaire. For example, our caption for the Lady Justice cartoon makes it clear that this was an image of Jacob Zuma raping the criminal justice system.

⁸⁷ E El Refaie ‘Understanding Visual Metaphor: The Example of Newspaper Cartoons’ (2003) 2 *Visual Communication* 75, 91.

⁸⁸ E El Refaie ‘Multiliteracies: How Readers Interpret Political Cartoons’ (2009) 8 *Visual Communication* 181.

⁸⁹ El Refaie (note 87 above) 91.

⁹⁰ El Refaie (note 88 above) 181–205.

⁹¹ In the *Weekly Mail and Guardian* (6 February 2015), fellow South African cartoonists were asked to draw tributes to Zapiro who had been cartooning for that newspaper for 21 years. Fifteen cartoons were produced by South African cartoonists. Seven of those cartoons directly referenced the shower. The only two cartoons which were directly lampooned by the cartoonists were the Lady Justice rape cartoon by Pimples and the Baby Shower image by Roberto Millan.

⁹² Mason (note 57 above) 51.

5. Results

The political freedom of expression responses of the three cohorts of students towards the cartoons, categorised as anti, ambivalent and pro, are displayed graphically in Figures 1, 2 and 3 for black, white, and combined student race groups, respectively.⁹³

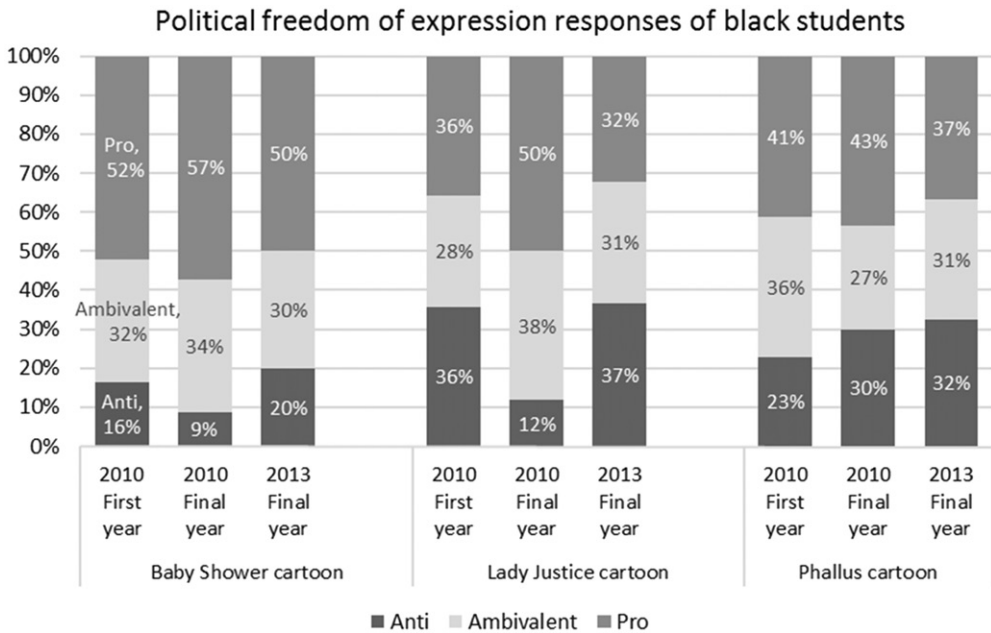


Figure 1. Anti, ambivalent and pro political freedom of expression responses of black students.

5.1. The Baby Shower cartoon

In all three cohorts, approximately half of the black students supported the publication of the baby shower cartoon. In both 2010 and 2013 there was little opposition expressed to the publication of the baby shower cartoon, but with more ambivalence expressed in all three cohorts. While 14% of the black students in the combined 2010 cohorts and 20% of the black students in the 2013 cohort opposed to the publishing of the cartoon, approximately a third of each group were ambivalent. There was almost no opposition to the cartoon expressed by white students (1% and 0% in 2010 and 2013 respectively).⁹⁴ In terms of trends, there was a moderately strong and significant decrease in support for the cartoon between the two groups of male final year students, from 78% in 2010 to 49% in 2013 ($\chi^2(2) = 6.51$, $p = .04$, Cramer's $V = .30$).

⁹³ The anti, ambivalent and pro categories are labelled in the first column of the figures, space permitting.

⁹⁴ However, there is evidence of a small, non-significant increase in the opposition to the cartoon between the black students of the two final year groups (9% in 2010 and 20% in 2013).

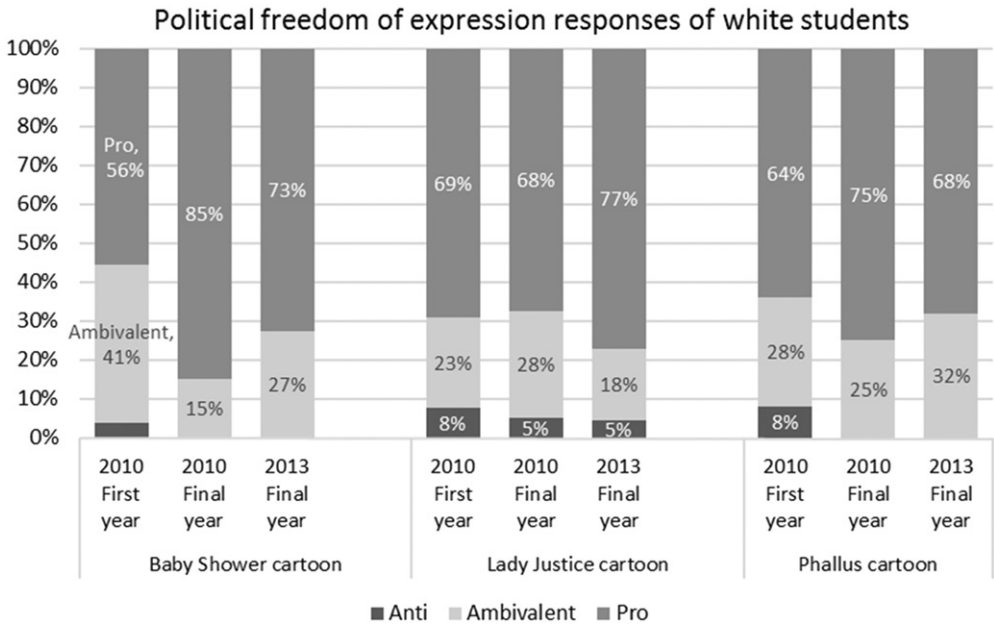


Figure 2. Anti, ambivalent and pro political freedom of expression responses of white students.

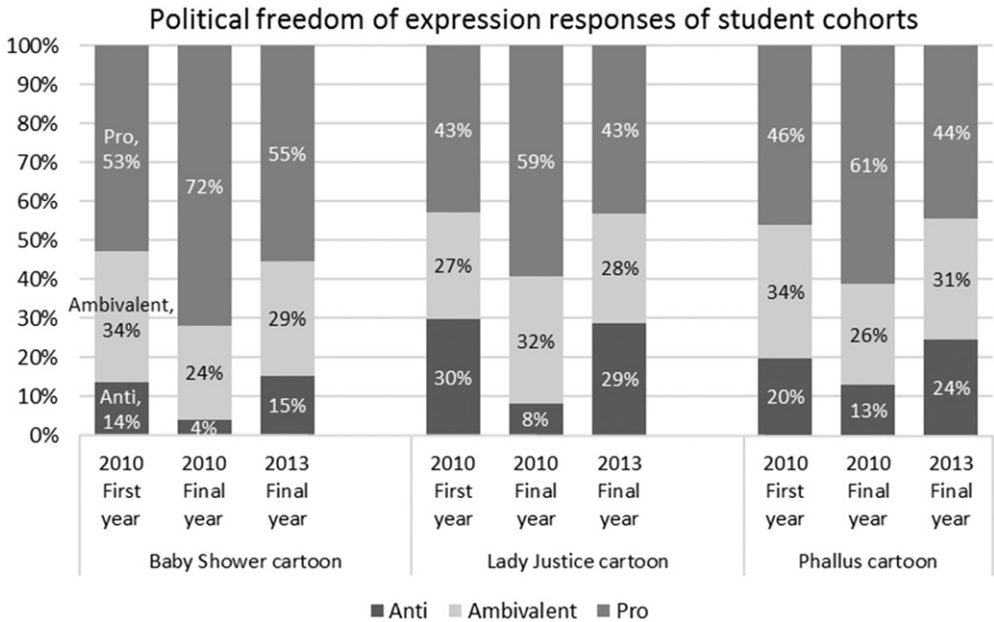


Figure 3. Anti, ambivalent and pro political freedom of expression responses of black and white students combined.

5.2. Lady Justice cartoon

As with the Baby Shower cartoon, black students were more opposed to the Lady Justice cartoon than white students were. In particular, the opposition of the black final year students increased significantly from 12% in 2010 to 37% in 2013 ($\chi^2(2) = 7.20, p = .03$, Cramer's $V = .26$). On the other hand, the lack of opposition of white students remains similar over the four years (5% of the two final year cohorts in 2010 and 2013), with two-thirds (68%) of the combined 2010 cohorts and 77% of the 2013 cohort expressing support for the cartoon.

Thus, these responses imply that black students are considerably less supportive of this cartoon than the whites, and have become even less supportive over time, with support levels of 40% in the combined 2010 cohorts and 32% for the 2013 cohort.⁹⁵

5.3. Union Buildings phallus cartoon

Consistent with the pattern in the responses to the other cartoons, black students are more opposed than whites to the Union Buildings phallus cartoon (25% of black students in 2010 and 32% in 2013), compared to 3% and 0% of whites in 2010 and 2013, respectively, with 68% of whites remaining supportive of the phallus cartoon in 2010 and 71% in 2013.⁹⁶ However, there is a moderately strong and significant decline in the acceptance of the cartoon over the three years between the two male final year groups, with the 2013 male group less pro (69% in 2010 compared to 41% in 2013, $\chi^2(2) = 6.61, p = .04$, Cramer's $V = .31$).

6. Conclusions

According to a Pew Research Center survey conducted in 2015, 40% of Americans aged 18–34 agreed that the 'government should be able to prevent' people from making offensive statements about minorities (as against 58% who disagree).⁹⁷ This suggests Americans may be becoming more like Europeans: the median percentage willing to endorse censorship in the EU is 49%, versus 46% who oppose censorship. Catherine Rampell, writing in the *Washington Post*, connected this finding to controversies roiling American campuses about free speech. A vocal minority of American university students complain of 'micro-aggressions' inflicted by certain forms of speech, and demand 'trigger warnings' before certain sensitive topics are discussed in classes. Her conclusion (or that of her headline writer) is that students are 'young fogies' and that '[m]odern illiberalism is led by students'.⁹⁸ Calls for the restructuring of language have been less visible in South Africa's student movement, whose demand

⁹⁵ As with the Baby Shower cartoon, there was a decline in acceptance between the two male final year groups, with the 2013 group less pro (52% in 2010 compared to 40% in 2013). However, these differences over the four years are weak and non-significant.

⁹⁶ There is a small, non-significant decline in support for the cartoon among the final year black student (43% in 2010 and 37% in 2013).

⁹⁷ Pew Research Centre 'Factank: News in Numbers' (14 December 2015) <<http://www.pewresearch.org/fact-tank/2015/11/20/40-of-millennials-ok-with-limiting-speech-offensive-to-minorities/>>.

⁹⁸ C Rampell 'Young Fogies: Modern Illiberalism is Led by Students' *The Washington Post* (30 November 2015) <https://www.washingtonpost.com/opinions/young-fogies-modern-illiberalism-is-led-by-students/2015/11/30/6f58fd40-97a3-11e5-94f0-9eaff906ef3_story.html>.

for 'decolonisation' has targeted statuary and building names rather than speech (a target selection that has subsequently influenced similar demands on American and British campuses). Still, the history of colonisation and apartheid, like that of slavery and segregation in the US, ensures that language remains contentious in South Africa, especially but not only when it touches on race. Demands for 'decolonised' curricula have been accompanied by intense and censorious scrutiny of academic writing about the past – including by white academic Marxists who give priority to class over race or (to cite a recent publicised case) left-leaning sociologists who mention black collaboration with the apartheid police.⁹⁹ In South Africa blacks are a majority and predominate in government, a fact which renders criticism of government itself racially charged, especially when conveyed in uncompromising terms by white cartoonists or artists (even if they are anti-apartheid progressives). The discussion of Zapiro cartoons in this article must be viewed against this backdrop.

What our findings confirm is a growing reluctance to see the publication of certain kinds of sharp satirical political cartoon. Our data are not sensitive enough to indicate which aspect of the cartoons triggers most opposition: the whiteness of Zapiro, criticism of the government or the sexualised imagery. Nor does it clarify whether Wits Law students favour official censorship as such. What it does show is that the South African constitutional value of free expression is not necessarily viewed as trumping other value or moral considerations, even when the target of its use is powerful politicians with controversial records. This is all the more noteworthy given the statement in the Human Rights Committee's *General Comment 34 on Article 19 of the ICCPR* that 'the value placed by the Covenant upon *uninhibited* expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain'.¹⁰⁰

A growing number of South Africans appear, if our evidence is generalisable beyond the student population, to opt for something more like Joel Feinberg's 'offence' principle of limits to free speech than John Stuart Mills' 'harm' principle.¹⁰¹ In South African constitutional and legislative terms, they appear

⁹⁹ An Open Letter to Adam Habbib, HeadMaster at Wits University Plantation, by his bantu PhD Student, Lwazi Lushaba (2015) <<https://www.facebook.com/MbuyiseniNdlozi/posts/1481791188787057>>.

¹⁰⁰ Human Rights Committee, General Comment No 34: *Article 19: Freedom of opinion and expression*, 12 September 2011, CCPR/C/GC/34, para 11. See also M O'Flaherty 'Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment' (2012) *Human Rights Law Review* 627. Also see Committee on the Elimination of Racial Discrimination, General recommendation No. 35: *Combating racist hate speech*, 26 September 2013, CERD/C/GC/35, paras 15 and 25, which appears to take this particular matter no further. Also see F Cassim 'Regulating Hate Speech and Freedom of Expression on the Internet: Promoting Tolerance and Diversity' (2015) 28 *South African Journal of Criminal Justice* 303.

¹⁰¹ For an introduction to this distinction, see D van Mill 'Freedom of Speech' in *Stanford Encyclopedia of Philosophy* (2002) (revised 2012) <<http://plato.stanford.edu/entries/freedom-speech/>>. While the entailments of Mill's harm principle are debated, they appear to limit only speech that causes physical harm or that invades the rights of others. Feinberg argues, in van Mills' words, that 'we can legitimately prohibit some forms of expression because they are very offensive ... [A] variety of factors need to be taken into account when deciding whether speech can be limited by the offense principle. These include the extent, duration and social value of the speech, the ease with which it can be avoided, the motives of the speaker, the number of people offended, the intensity of the offense, and the general interest of the community at large'.

fairly attuned with the broad definition of hate speech contained in the Equality Act.¹⁰² Even if our results are not generalisable, it is a matter of consequence that Law students themselves should rank values in this way, given that the future cohorts of constitutional interpreters are likely to be drawn from their numbers. Perhaps speech should not be sacrosanct or a trump. But the risks of constricting it in South Africa seem to us not inconsiderable in a country on the cusp of fresh controversies about state secret protection and media regulation.

Copyright acknowledgment

Baby Shower Cartoon © 2010 - 2017 Zapiro. Originally published in Mail and Guardian @ 2010. Rape of Lady Justice Cartoon © 2008 - 2017 Zapiro, Originally published in Sunday Times @ 2008. Aids Message Cartoon © 2010 - 2017 Zapiro, Originally published in The Times @ 2010. Published with permission. See <http://www.zapiro.com/www.zapiro.com>.

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¹⁰² According to the *Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000*, Section 10: 'no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to; (a) Be hurtful; (b) Be harmful or to incite harm; (c) Promote or propagate hatred'. The Equality Act, as it is known, is notable for its relaxation of the 'imminent harm' criterion articulated in the freedom of expression clause which is s 16 of the Bill of Rights.