

*Academic Freedom, Institutional  
Autonomy and the Corporatised  
University in Contemporary  
South Africa*

*Research Report*

*Kristina Bentley, Adam Habib and Seán Morrow*



*Council on Higher Education*

***Academic Freedom, Institutional  
Autonomy and the Corporatised  
University in Contemporary  
South Africa***

*Research report prepared for the CHE Task Team on South African  
Government Involvement in, and Regulation of, Higher Education,  
Institutional Autonomy and Academic Freedom (HEIAAF)*

*by Kristina Bentley, Adam Habib and Seán Morrow*

**Academic Freedom, Institutional Autonomy and  
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Published by:

The Council on Higher Education

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Pretoria

South Africa

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0126

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Web site: <http://www.che.ac.za>

**ISBN: 1-919856-60-9**

**Date of Publication: December 2006**

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This project and publication has been made possible by the support of the Ford Foundation.

The views expressed in this publication do not necessarily represent the views of the CHE.

## CONTENTS

Preface	.iv
Note on the Authors	.vi
Acronyms	.vii
Academic Freedom, Institutional Autonomy and the Corporatised University in Contemporary South Africa, by Kristina Bentley, Adam Habib and Seán Morrow	.1
Introduction	.1
1. Academic Freedom in Africa in Comparative Historical Context	.4
1.1 Trapped by poverty	.8
1.2 African reactions	.9
1.3 Africa and South Africa	.10
2. Conceptualising Rights: Institutional Autonomy and Academic Freedom	.14
2.1 Deontology versus teleology: what is the <i>purpose</i> of academic freedom?	.16
2.2 Individual versus communal rights	.17
2.3 Towards a normative conception of academic freedom in South Africa	.20
3. Structural Reforms to Safeguard Institutional Autonomy and Academic Freedom	.24
Conclusion	.31
Endnotes	.32
References	.34
Interviews	.38

## PREFACE

This paper by Kristina Bentley, Adam Habib and Seán Morrow of the Democracy and Governance Programme of the Human Sciences Research Council (HSRC) is one in a series of research papers on the topic of academic freedom, institutional autonomy and public accountability in contemporary South African higher education. These perspectives have been commissioned as part of the enquiry of an independent Task Team, convened by the Council on Higher Education (CHE), to investigate the past decade of regulation of South African higher education by government and other agencies, and to promote debate on conceptions of autonomy, freedom and accountability, in general, and in the specific context of higher education transformation.

Amid concerns and claims by some that the nature of government involvement in South African higher education in the second decade of democracy is in danger of moving from 'state steering' to 'state interference', the CHE believed it important to undertake a sober and rigorous investigation of the issues, so giving effect to the CHE's responsibilities independently to advise the Minister of Education, to monitor and evaluate higher education, and to contribute to higher education development.

Specifically, the Higher Education, Institutional Autonomy and Academic Freedom (HEIAAF) Task Team investigation – ongoing between 2005 and 2007 - has aimed to:

- stimulate research and writing;
- build shared understandings of institutional autonomy, academic freedom and public accountability, through the creation of various public forums, public discussion and debate on these important principles; and
- develop consensus, as far as is possible, on the nature and modes of government involvement in higher education transformation, and on the relationships between government and other regulatory bodies, and higher education institutions.

Five key mechanisms were adopted by the Task Team for these purposes.

First, an overview of recent and current debates in South African higher education around the issues, was commissioned and completed in October 2005. The overview was posted on the CHE web site, together with a select bibliography of further reading, as a means of informing and stimulating wider debate.

Second, the Task Team issued an invitation to stakeholders (stakeholder bodies, higher education institutions, institutional stakeholder formations and individuals) to make submissions in writing or in person, on issues falling within the scope of the HEIAAF enquiry. These too were posted on the CHE web site and formed part of the source materials provided to commissioned researchers.

Third, the Task Team has supplemented, and continues to supplement, stakeholder submissions by conducting interviews with selected individuals or groups having knowledge, experience, perspectives or affiliations central or relevant to its enquiry.

Fourth, independent research projects were commissioned by the Task Team. Research proposals were developed, in the first instance, on the basis of lines of enquiry suggested by the overview of recent and current debates, and by stakeholder submissions. In addition, the intention was that the individual pieces of research should afford complementary and multi-faceted perspectives on the core issues of the HEIAAF enquiry, allowing for the sum of the individual projects to be greater than their parts. One such research outcome is presented here as one in a set of research reports published by the CHE.

Fifth and finally, the Task Team has organised and accessed structured fora, in order to facilitate discussion, exchange views, and further debate. Six regional fora served the purpose of engaging institutional and other stakeholders in the debate (convened in Pretoria, Bloemfontein, Cape Town, Johannesburg, Durban and Port Elizabeth, between March and June 2006).

The Task Team's investigation will culminate in the latter part of 2007 in an independent research report; a national seminar for the purposes of disseminating the report; and a report to the Minister of Education (which may be the research report, or alternatively, may be a policy report prepared by the CHE on the basis of the Task Team's independent report). The current moment in the investigation is an important one for consolidating the investigation through continued engagement with the issues and the Task Team will convene a public seminar for this purpose early in 2007. This paper is, therefore, offered as a means of building the debate, and developing shared understandings through reflection and engagement, towards the envisaged outcomes.

The Task Team acknowledges the important contribution of the following people to this publication and to the unfolding HEIAAF process:

- the commissioned researchers and their research teams;
- the keynote speakers and discussants at the regional fora;
- institutions, organisations and individuals who have contributed to the HEIAAF process via submissions, interviews, critical reading of draft research papers, and attendance at regional fora; and
- the Ford Foundation which has provided partial funding support for this publication and for the HEIAAF project.

*Dr Khotso Mokhele*

*Chair: CHE HEIAAF Task Team*

*December 2006*

## NOTE ON THE AUTHORS

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## ACRONYMS

ANC	African National Congress
CHE	Council on Higher Education
CHET	Centre for Higher Education Transformation
CODESRIA	Council for the Development of Social Science Research in Africa
DoE	Department of Education
HEIAAF	Higher Education, Institutional Autonomy and Academic Freedom
HSRC	Human Sciences Research Council
HBI	Historically Black Institution
HWI	Historically White Institution
NGO	Non-Governmental Organisation
NRF	National Research Foundation
NSFAS	National Student Financial Aid Scheme
OECD	Organisation for Economic Co-operation and Development
SAUVCA	South African Universities Vice-Chancellors Association
UCT	University of Cape Town
UDUSA	Union of Democratic University Staff Associations
UKZN	University of KwaZulu-Natal
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNISA	University of South Africa
UP	University of Pretoria
Wits	University of the Witwatersrand



# **ACADEMIC FREEDOM, INSTITUTIONAL AUTONOMY AND THE CORPORATISED UNIVERSITY IN CONTEMPORARY SOUTH AFRICA, BY KRISTINA BENTLEY, ADAM HABIB AND SEAN MORROW<sup>1</sup>**

## **INTRODUCTION**

There can be no better time for the Council on Higher Education (CHE) to investigate whether institutional autonomy and academic freedom are under threat in South Africa. Xolela Mangcu's departure from the Human Sciences Research Council (HSRC) and Ashwin Desai's troubles with the University of KwaZulu-Natal (UKZN) have sparked a national debate on academic freedom and institutional autonomy (Haffajee 2005; Macfarlane 2006). These have not been isolated incidents. Some years earlier, similar concerns arose as a result of separate disputes between Caroline White and Robert Shell with their respective managements at UKZN and Rhodes University (Magardie 2000; Southall & Cobbing 2002). In all these cases debate went far beyond the academy. Indeed they became the subject of national conversations in the printed media and radio talk shows. The concern, beyond the individual cases, was whether academic freedom was being violated either by institutional managers or by government's involvement in academic and research institutions.

On their own, these incidents might not have been enough to motivate the CHE to open a debate on the subject. However about two years ago, Jonathan Jansen, the Dean of Education at the University of Pretoria (UP), sparked another debate on the subject with two provocative presentations to the Institute of Race Relations and the University of Cape Town (UCT), in which he accused the Department of Education (DoE) of undermining higher education institutions' autonomy and academics' freedom through the funding formulae and legislative interventions (Jansen 2004a, 2004b). These presentations were followed by a series of articles and fora hosted by independent research centres where opinions were again sharply polarised (Badsha 2004; CHE 2004; Du Toit 2004, 2005; Nongxa 2004; Pandor 2004). Cumulatively, these events motivated the CHE to invoke its mandate, which requires it to investigate issues of national concern in higher education proactively, and it established a task team on the state of institutional autonomy and academic freedom in South Africa. Indeed, as the country is now in its second decade of democracy, sufficient time has elapsed to make at least provisional judgements as to how society and its institutions, amongst them institutions of higher education and research, are evolving. To

do this effectively, we must deal with the issues as dispassionately as possible under the circumstances.

At the outset, it is important to identify to whom we are referring when the debate on institutional autonomy and academic freedom is engaged. Who are the alleged violators of academic freedom? Clearly the debate in contemporary South Africa is not the same as that under apartheid.<sup>2</sup> Neither is it the same as in some other parts of the continent and world where academics are regularly harassed, maimed, jailed and even killed (Africa Watch 1991, Diouf & Mamdani 1994). In these cases, the repressive apparatus of the state violates academics' freedom. Contemporary South Africa is not confronted with such a threat.

But who then are the alleged perpetrators of this crime in contemporary South Africa? Jonathan Jansen (2004a, 2004b) and many of the institutional managers in the historically white universities believe that the supposed violator is the state. But their ire is directed not at the repressive arm of the state, but rather at the bureaucrats at the DoE and maybe even the CHE. For Jansen, these bureaucrats have made severe incursions into institutional autonomy through the funding formulae and the post-apartheid legislative apparatus. The result, he argues, is not only a violation of university autonomy but also of the freedom of individual academics.

But there is a second set of perpetrators of this crime, namely institutional bureaucrats within the walls of the universities. We include Councils in this category, as well as those in administrative hierarchies up to and including Vice-Chancellors. Scholars such as Roger Southall and Julian Cobbing (2005), and André du Toit (2004, 2005), speak of these alleged violators of academic freedom. They refer to the corporatisation of the university, and note how the new managerialism undermines the collegiate governance and atmosphere of the academy. This is the essence of Du Toit's critique of Jansen. He argues that Jansen is able to conflate institutional autonomy and academic freedom, following TB Davie's original formulation, because he sees the threat as external.<sup>3</sup> But once it is recognised as internal, as does Du Toit, then the conflation itself becomes dangerous for academic freedom (Du Toit 2000b, 2001, 2005). This is because institutional autonomy could in the end empower the institutional bureaucrat to such an extent that the freedom of individual academics could be imperilled.

The third set of alleged violators of academic freedom is that of senior academics themselves. This has not often been recognised in the recent debate, but the argument was made in a provocative article published in the late 1990s in *Debate*, a left wing journal. In "Death of the Intellectual, Birth of the Salesman" the authors, Ashwin Desai and Heinrich Bohmke (1996), tracked the writings of leading Marxist scholars in the 1980s and 1990s. Desai and Bohmke argued that these scholars no longer determine their research agendas themselves, but that they are determined rather by those prepared to buy their research and writing skills, most often the government or the private sector. They claimed that academic freedom in this case was violated by the propensity of senior academics to sell their skills to the highest bidder.

The studies identified in the preceding paragraphs are not summarised here to contest or

support any of the perspectives advanced. After all, there is at least a kernel of truth in all of these analyses. They are subjected to more detailed reflection later in the paper. The purpose in considering these arguments at this stage is to bring to the fore the range of stakeholders involved in this debate. Moreover, it is useful to demonstrate that the divide is not as neat as one may at first assume and that the debate needs more nuanced conceptualisation than appears to have happened thus far.

We hope to do this in the pages that follow. First, however, we reflect on the experiences of academic and institutional freedom in the first decades of post-colonial transition in Sub-Saharan Africa. This is necessary because, as Mahmood Mamdani (1992) argued over a decade ago, they seem to be very similar to those of contemporary South Africa. Understanding how these countries dealt with similar issues, and the consequences thereof, is important to enable us to understand the future consequences of the present state of affairs on academic freedom and institutional autonomy in this country. It is also useful in providing comparative lessons that may help to chart a strategic path that reinforces the twin goals of academic freedom and social accountability in South Africa.

This becomes the focus of the second part of the paper. In an attempt to transcend the polarised character of the present debate, we undertake a theoretical analysis of different conceptions of rights and how these apply to institutional autonomy and academic freedom. This section concludes by favouring, as does André du Toit (2000a, 2001), a republican interpretation of academic freedom that couples it to social accountability. But we argue that the republican interpretation on its own does not resolve the problem of realising institutional autonomy and academic freedom in South Africa. Learning again from the African experience, we recognise that academic freedom and institutional autonomy will not be the automatic product of the articulation of a progressive interpretation of rights and its codification in a regulatory framework. Rather we argue that these outcomes will be a product of how power is organised within higher education. More precisely, we argue that it is in the contestation among empowered stakeholders – state technocrats, institutional bureaucrats within universities, academics, students, and a variety of other collectives – that institutional autonomy and academic freedom will be constructed. How to empower these stakeholders through policy reform and through measures that are embedded in economic and social realities is then the focus of this section. Finally, the paper concludes with a summary of the various strands of the argument and with recommendations as to how to advance institutional autonomy and academic freedom in South Africa.

## 1. ACADEMIC FREEDOM IN AFRICA IN COMPARATIVE HISTORICAL CONTEXT

Questions of academic and intellectual freedom, in South Africa and throughout Africa, are inextricably linked to the continent's colonial inheritance and the African response to it. In particular they are linked to the various forms of nationalism in the name of which African states came to independence and which provided their justification thereafter. In this section of the paper we will first examine the ambiguous colonial heritage. The discussion will be schematic and will refer mainly to regions once dominated by Britain, given the space available and the links of language and historical experience. We will then consider South Africa itself and ask what relevance this broader African experience has to this country.

Colonial governments were highly authoritarian. Space for debate, where it even existed, was confined within generally racially-based exclusions and limitations. Over most of colonial Africa the reaction of the educated and politically conscious minority amongst the subordinated majority population initially tended to be to appeal, through petitions, loyal addresses and the like, to the universal application of liberal principles to British subjects of all races. This was logical but, it became increasingly apparent, politically naïve, given actual power relations in colonial and settler societies. Also, there were very few African people who were highly educated in the dominant Western idiom in existence by the time of independence. This meant that debates and contestations about academic freedom seemed to have little meaning in the context of small numbers trying to establish themselves in a new and unprecedented situation. Zambia, for example, had fewer than one hundred graduates at independence in 1964 (Roberts 1976: 234). The overwhelming priority appeared to be to establish a functioning government and flourishing economy under the new leadership, not to worry about apparently arcane issues of academic freedom.<sup>4</sup>

By the time that opinion in Britain had shifted, though with many inconsistencies, towards the granting of independence to its former colonies – India and Pakistan in 1947, and Ghana in 1956, are important milestones – there had been significant changes in the political atmosphere in the African colonies, and the politics of petition had tended to fade away, superseded by a more militant nationalism. It is the nature of this nationalism and its relationship to academic and intellectual freedom to which we now turn.

At around the time of independence of many African states in the 1960s and thereafter, a large number of new universities were created. They followed metropolitan patterns in their organisational and academic structures, the way their curricula were organised, and even in their ceremonies and forms of academic dress. Given the paucity of highly educated indigenous people, and the fact that those there were tended to move into high posts in government and politics, the staff of these universities were initially largely expatriate. This is not to say that these expatriates were necessarily out of sympathy with the aspirations of the new elites in these countries. For example, the important “Dar School” of the 1960s that made such a significant contribution to African nationalist historiography, with its stress on “African activity, African

adaptation, African choice, African initiative”, was at first composed almost entirely of British academics and their Tanzanian students (Ranger 1968: xxi). This contributed to Africanist and socialist thinking in Tanzania and elsewhere.

From the beginning, these universities relied almost entirely on state funding, and on foreign funding mediated by the new states. This was inevitable in the circumstances, and of course left the universities and their staff vulnerable to governmental pressure. This pressure was particularly onerous when, as happened in most of these states, single-party regimes became widespread, thus – in spite of arguments that criticism would take place within the one-party framework – removing any substantial institutionalised source of critique and renewal. Since the one party ostensibly represented the national will, criticism of that party and its decisions tended to become something dangerously close to treason in the eyes of the authorities.

Internal university dynamics intersected with this broader picture. As academics, nationals of the newly-independent countries began to be trained to higher-degree level – almost all of them at first at universities in Europe or North America – they returned to an environment dominated by expatriates. Under such slogans as “Zambianisation”, “Africanisation” and “indigenisation” pressures mounted on university administrations to appoint and promote indigenous academics, and to reduce the expatriate presence as much as possible. This was abetted by the policy of the post-colonial British and other donors, who supplemented the salaries of their nationals in technical and scientific fields, though less so in the social sciences and humanities, where issues of academic freedom tended to be raised most frequently.

All this could be seen merely as the rough edges around a desirable and inevitable process of indigenisation. Indeed, there is no inherent reason why state involvement should always threaten academic freedom. Specific historical circumstances determine whether this does or does not happen. From the point of view of the autonomy and independence of universities and the people working in them, it meant that the state, already a formidable presence in most of Africa and largely untrammelled by a vigorous civil society independent from the political sphere, was further called upon to involve itself in academic affairs. Invited as a paying passenger, the state ended up sitting resolutely in the driving seat, to the discomfiture of many academics. Thus academic freedom of expression came to be ever more closely monitored and controlled, an ironic result of moves to create universities whose staff were intended to be more representative of the population as a whole. This was not a simple process however: as will be seen, there were African and African-oriented academics, generally on the left, who from the beginning were critical of the new African governing elites and were suspicious of tendencies to stifle independent thinking (see, for example, Ashby 1965; Moja, Muller & Cloete 1996; Yesufu 1973).

What lies behind these trends? Terence Ranger, himself long identified with an African nationalist

viewpoint, has asked, about Zimbabwe in particular but by implication about other African societies, whether nationalist movements were in fact “positive schools of democracy”? (Ranger 2003: 1). He and many other scholars have discussed the evident failure of the “first democratic revolution” in Africa, and have suggested various reasons for this failure, such as the malign legacy of liberation wars, or the mingling of colonial liberation with the Cold War, which led in some cases to the arguably inappropriate application of authoritarian forms of Marxism-Leninism to African societies.

It has been suggested that nationalist movements may in fact incubate authoritarianism and even despotism. John McCracken has argued, drawing from the Malawian case but suggesting that it applies more widely to nationalist movements in Africa and beyond, that “nationalism was a genuinely liberating force ... in that it provided a stage on which previously marginalised groups such as women and peasants could perform. At the same time”, he continues, “popular participation did not equal popular empowerment, nor, more importantly, did it reflect that respect for individual rights and minority opinions on which democracy must be based” (McCracken 1998: 249). Indeed in Malawi, McCracken’s case study, there is ample evidence to show that the nationalist victory in 1964 was quickly followed by a lengthy and remorseless hounding, in the name of Malawian nationalism, of any expression of ideas at odds with those of the self-styled embodiment of the nation, Dr Hastings Kamuzu Banda. For example, the churches were suborned and silenced; the legal profession was undermined by cowed and easily-manipulated traditional courts, and academics at the new university who were considered subversive were summarily expelled from the country if they were expatriates, or arrested and imprisoned if they were Malawians. The best Malawian academics tended to leave the country and work abroad. Malawi under Banda epitomised oppression under the cloak of nationalism, and the University of Malawi was an institution where academic and intellectual freedom was completely denied in the name of this version of nationalism.

The University of Malawi under Banda illustrates intellectual, and at times concretely physical, oppression. Yet the very ruthlessness of this oppression led, if not to its nemesis, at least to an emphatic (and, for its practitioners, dangerous) subterranean critique of power by some Malawian academics. This intellectual underground often expressed itself through the metaphors and paradoxes of poetry (Mapanje 1981; Nazombe 2003). Often, however, even poetic ambiguity was not enough to protect intellectuals, as the case of Jack Mapanje, the country’s foremost poet, shows. He was arrested and detained without charge or trial from 1987 to 1991 (Kerr & Mapanje 2003; Ó Máille 2000).

The Banda dictatorship took possession so crudely and immediately of Malawian nationalism that it gave very little opportunity for the elaboration of a more subtle discourse relating to academic freedom in a newly-independent African country. However, the threats to academic freedom are not confined to the poorest countries such as Malawi. While academics and others should take the Malawian case to heart as a worst-case scenario, other post-independence situations in more developed African countries indicate that Malawi was not unique.

A case in point is that of the Kenyan novelist and literary and social critic Ngugi wa Thiong'o. Ngugi's early books (see, for example, Ngugi 1964) are a reflection on Kikuyu traditions in the context of the fight against British colonialism and on the tensions between tradition and modernity in the newly independent state. He quickly came in conflict with the emerging regime in Kenya, saying, as early as 1969, that "[w]hen we, the black intellectuals, the black bourgeoisie, got the power, we never tried to bring about those policies which would be in harmony with the needs of the peasants and workers. I think it is time that the African writers also started to talk in the terms of these workers and peasants" (Wästberg 1968: 25). After a long period of post-independence literary silence, he wrote *Petals of Blood* (1977), implicitly highly critical of the new elite in Kenya. He was arrested after the performance in the same year of his Gikuyu-language, socially critical play, *I will marry when I want*, and was imprisoned without charge or trial for a year. From 1982, his life threatened, he lived in exile in the United Kingdom and then the United States, where he is still based.

Environments are of course different in different countries. The comments of some intellectuals are tolerated, either because the state in which they live is relatively liberal, as with the novelist and film-maker Sembene Ousmane in Senegal, or because the person concerned is so prominent that their further arrest or silencing in some other way would be highly embarrassing internationally, as with the academic, playwright and social and political commentator Wole Soyinka in Nigeria. It is important, from a South African perspective, not to fall into the trap of treating Africa as an undifferentiated mass of oppression and intolerance.

Nevertheless, Ngugi's case is fairly representative of many of the better-known late twentieth-century critical African intellectuals, and it is possible to recognise some continental patterns which perhaps indicate common tendencies resulting from common causes and broadly similar histories. A recent example, chosen because it is from a neighbouring and relatively prosperous country often considered a model of democracy, tolerance and due process, is that of the political scientist Kenneth Good, expelled in 2005 from Botswana, where he had lived and taught since 1990. The immediate reason appears to have been a book chapter on the question of the presidential succession in Botswana, delivered as a seminar paper at the University of Botswana (Good & Taylor, in Southall & Melber 2006). The text, though critical, was well within the bounds of what would be accepted in most academic environments as reasonable comment. The suspicion is that this expulsion was related to Good's history of critical political analysis, for example on the question of the treatment of the San minority in Botswana (see, for example, Good *et al.* 2001; Taylor 2006).

A final point needs to be made, briefly but emphatically, in this section. In this paper,<sup>5</sup> the focus of attention is academic freedom at universities and similar institutions. This is indeed important. However, an excessive focus on such institutions risks an elitist approach that could be self-defeating in the long run. Academic freedom is inseparable from freedom of expression in society as a whole. Intellectual freedom will not be safe in African universities without similar freedom in and for trade unions, churches, civil society organisations, the press and the other

social institutions. Indeed, laws such as those in South Africa protecting workers in general against arbitrary dismissal are also important guarantees of fair treatment for academics. This is particularly important in Africa, where in most cases there are, compared with more economically developed parts of the world, relatively few self-sufficient organisations independent of the state. We will return to this point below in the context of South Africa.

### **1.1 Trapped by poverty**

In the world of ideas, it is tempting to treat ideas as all-determining. For example, when intellectuals come into conflict with governments, and lose their jobs at universities or research institutes, this may be ascribed to political or ideological differences. This may often be the case, or ostensibly so. However, material conditions in Africa weigh not only on the mass of populations, but also on academics and intellectuals. Perhaps more insidious than direct political oppression because it tends to abort critical comment before it is even born rather than visibly strangling it at birth, economic necessity weighs heavily on academic and intellectual freedom and by limiting career options tends to put academics at the mercy of political and institutional authority. Lyn Schumaker has argued persuasively for an approach to intellectual history in Africa that gives full weight to the material basis of research and intellectual endeavour (Schumaker 2001). While academic freedom cannot be completely reduced to the ability and opportunity freely to challenge political, academic or some other form of power, it is, as it were, the purest form that such freedom can take. Even examples of such challenges that are isolated and perhaps in some cases verge on the eccentric should be taken very seriously.

Until the recent growth of a category of small arts colleges, generally church-run, the university or universities in most states in Africa, as noted above, have been government creations, founded in the immediate aftermath of independence and closely linked to the nationalist agenda. They have relied on government funding, or to a smaller extent on government-mediated funding from abroad, and the economic crises experienced by many African countries have been echoed in the chronic problems of universities: libraries where new books are rarely acquired and where runs of journals often ceased years ago, declining real pay for academics, administrations that are often corrupt, and crumbling infrastructure. The result is strong tendencies to intellectual isolation and academic stagnation.

Such conditions are outlined, for example, in many of the essays in Lebeau and Ogunsonya *The Dilemma of Post-Colonial Universities* (Lebeau & Ogunsonya 2000). They are pertinent to questions of academic freedom. The effects are that lecturers neglect their work and pursue business opportunities, for example running bottle-stores or taxis, or farming. This leads to rapid deterioration of the university, and not so much, or not alone, a decline in academic freedom as a marginalisation of the whole academic enterprise where issues of free speech and intellectual endeavour are never even posed in the first place.

Even more insidious is the tendency to move from critical research to consultancy. Here,

intellectual work continues, but with a change in emphasis from relatively free research and, if necessary, criticism, to paid commissions for foreign embassies, international organisations, companies, or other bodies. Research becomes a question of following the remit of the employer, which rarely includes a brief to undertake critical examination of social questions. Even where the brief does include research into such questions, it is likely to follow the externally-formulated template of an international non-governmental organisation (NGO), United Nations agency or the like rather than stemming from priorities as seen from within the African country, with consequently damaging effects on the intellectual climate.

In short, academic freedom is menaced not only by oppressive and intolerant governments, and by an approach that sees universities as arms of the state, with academics largely confined to allegedly 'relevant' research, but also by an institutional impoverishment that, deliberately or not, is in the last analysis the responsibility of these governmental paymasters. It appears that there has been a rapid fall in the prestige of academics over much of Africa, in stark contrast to the situation in the late colonial and early independence periods. No doubt this is due at least in large part to their impoverishment, and the consequent lowering of their levels of qualification as those who are better equipped leave the profession and often the country. This leads to degeneration in the quality and reduction in the quantity of intellectual interchange, and a devaluing of the currency of academic freedom.

Academic freedom, in other words, is not something that a country can easily simply decide to have. It depends on historical and material preconditions, which may well limit the choices of academics and intellectuals, whatever they might wish to be the case. For instance, the endowments of Oxbridge or the Ivy League colleges, or even of such South African universities as the University of the Witwatersrand (Wits), UP or UCT – with their ambiguous origins, ranging from the dispossession of the monasteries to the funds of mining magnates – give a different level of security to university-based intellectuals than the meagre, predominantly single-stream and sometimes unreliable funding of many African universities.

## **1.2 African reactions**

We do not want to fall into extreme pessimism on the one hand, or flee from that into voluntarism that floats free of reality. However, the picture on most of the African continent is bleak, and there are objective factors that make academic freedom difficult to achieve. This is clear to intellectuals on the continent, and has resulted in various declarations such as the 1990 Kampala Declaration on Intellectual Freedom and Social Responsibility (<http://www1.umn.edu/humanrts/africa/KAMDOK.htm>). Such declarations, with their demands for intellectual rights and freedoms, the right to form autonomous organisations, an end to censorship, and so on, in themselves say little about the real state of academic freedom and the power relations that make or do not make such freedom possible. They also tend to focus on universities, and do not dwell on the indivisibility of freedoms and rights across society, an elitism that may increase academic vulnerability.

However, the *Kampala Declaration*, the conference from which it derived and the resulting book, are significant because they can be taken as marking the disillusion of the African intelligentsia with the nationalist project to which it had earlier tended to adhere, and with the political elites that were and are the beneficiaries of this project (Diouf & Mamdani 1994). This disillusion was nothing new in 1990, and indeed a more general wave of unrest and political change swept over much of Africa at around this time. From the point of view of this discussion, however, the important point is that the governing elites that had founded universities and fostered an indigenous class of academics were now seen as having abandoned and sometimes even turned hostile towards academics and as having betrayed academic freedom. Though this may have forced intellectuals back into what may be their proper role of critiquing power, they were now doing so from such an economically and socially vulnerable position that their voices were often hardly heard.

South Africa is oddly positioned in this debate. It is a wealthier country than any to its north. It has a robust radical tradition. It has some well-established universities. But there are also dangers similar to those in the rest of Africa that South African intellectuals might be suborned, and, in the long run, their position and the future of academic freedom weakened. We now turn to these parallels.

### **1.3 Africa and South Africa**

South Africa is part of Africa, geographically, politically, economically, socially and intellectually. The country has now re-established the relations with the rest of the continent that were disrupted by apartheid. While the 1930s and 1940s were very different from the decades that followed, and the strong relationships that then existed between South Africa and the rest of Africa were within an imperial frame of reference, in the apartheid period intellectual horizons shrank in parallel with the growth of the apartheid *laager*, and independent Africa was in general barred to South African researchers. South Africa lost touch with the rest of the continent. Now however, once more, and at many levels, relations between South Africa and the rest of Africa are fluid and dynamic. Having looked at African experience in the field of academic freedom, which is generally not positive, it is important to see where it parallels South Africa, and, while bearing in mind reservations about the alleged inevitability of South Africa following patterns of countries to the north, what lessons might be learned from it.

Discussion of South Africa and Africa is always a delicate affair. South Africa is different in some respects to the rest of Africa, because of its history, its economy and the unusual composition of its population. The possibilities of mutual misunderstanding and resentment on both sides of the Limpopo are many. But South Africa is also an African country. Therefore it is legitimate to look at the rest of the continent and to consider South Africa as subject to many of the same forces and influences that have played and are playing on societies to the north. This should be done without defaulting either to an extreme form of South African exceptionalism, or to facile and near-racist views of South Africa 'going the same way' as the rest of Africa. Both these views

betray ignorance of the complex and varied continent to the north.

A major issue is the complexity and relative wealth of South Africa. Poverty does not encourage academic freedom because, as noted above, people, including university academics and intellectuals, have few alternative sources of income. In most African countries if you lose your university job, perhaps because of political or social criticism, you are likely to have few employment alternatives. This was clear, for example, even in relatively prosperous Kenya after a long strike of university lecturers, when union officials, all of whom were dismissed from their teaching posts, ended up in low-paid or part-time employment, or abroad (Adar 1999).

It is the relatively abundant material resources, and their relatively wide distribution, at least amongst the educated elite, that enable a proportion of the South African intelligentsia the space, if they choose to so use it, to criticise and challenge power. An adequate material base of this sort is a necessary but not sufficient condition for such intellectual freedom.

Even in South Africa things are not necessarily easy for the dissenting intellectual from a university, research council or elsewhere, and the career alternatives are not as plentiful as in the rich countries of the West. Nevertheless, there are more niches – in the wide variety of universities and other higher educational institutions, in civil society organisations, in research NGOs, in journalism and so on – where such an intellectual can hope to shelter and continue to make a living without coming under intolerable pressure from erstwhile employer or government.<sup>6</sup> There are many examples, amongst them those of Rob Shell (Southall & Cobbing 2001), Xolela Mangcu and Ashwin Desai, each widely covered in the press. These *causes célèbres* will not be re-examined in detail. The point however is that in each case after these individuals were either dismissed or felt obliged to resign from posts at universities or research councils following clashes with the authorities, the protagonists managed to re-establish themselves in a teaching and/or research environment in South Africa, albeit in some cases with difficulty.

The specific history that any society carries with it is vital, and here we again emphasise, with all proper warnings against exceptionalism, that South Africa *is* different. This difference has a long history. In the Cape Colony, later the Cape Province of the Union of South Africa, an earlier pattern of political rights and freedoms for educated and sufficiently prosperous males of all races once prevailed. These rights and freedoms, as applied to the black middle-class, were whittled away and finally completely abolished in the course of the first half of the twentieth century. Thenceforth, they became the privilege solely of those classified as white. Nevertheless, this earlier history of responsible citizenship for some black South Africans, though hedged around by the limitations of its environment and time, hinted at a pattern to which the country might return.

In addition, while it is important not to sanitise the pre-1994 system in South Africa, it was in many respects a democratic system for a minority of the population, though oligarchic and

oppressive when seen from outside that racial magic circle, and hostile even to the significant minority of dissenting whites. In the university context, this hostility was expressed in coercion of radical white academics: David Webster and Rick Turner were murdered by agents of the regime. Nonetheless, though as these examples show there were evident limits to the toleration even of white dissent, elements of a more liberal society (a parliamentary system, the franchise and free elections, and, theoretically at least, a relatively free press and freedom of speech) did apply within and only to the dominant, white, group. Part of the process of creating this internally democratic racial oligarchy was that of excluding other races from the democratic process, as referred to above.

The revolution of the early 1990s did not achieve the complete overthrow of this old political system, but was rather one where the leading movements representing the mass of the population demanded that they be integrated into a greatly extended form of the old system. Thus revolutionary purism mingled with the parliamentarianism of the old regime and created a situation where concepts of due process and legality and even tolerance were strengthened by the incoming regime, and extended to the population as a whole.

African nationalism in South Africa in any case had a heritage where such concepts resonated more than in many African countries with their historically much shallower nationalist movements and their experience of largely undiluted colonial authoritarianism. It is perhaps not surprising that ideas of academic freedom, closely linked to parliamentary democracy, press freedom, and religious and other forms of tolerance, while frequently challenged – perhaps in part *because* frequently challenged - have tended to flourish more in South Africa than in most countries to its north. This is not by any means to say that academic freedom is in all circumstances and for ever assured in South Africa.

So far, we have emphasised factors that make South Africa different from many other African states. However, South Africa experienced a particularly vicious form of colonial oppression that has left a strong mark on higher education as on other areas. Universities, for example, continue to be disproportionately staffed by white academics, though it is important to emphasise, as earlier examples indicate, that this does not mean that all such academics actively or tacitly behave in a conservative manner. On the other hand, and in tension in some ways with the non-racialism espoused by the African National Congress (ANC), a tide that is rising strongly at the moment emphasises the historical disadvantages of the majority 'black African' population. Indeed, redress is justified and necessary, in the academic as in other spheres.<sup>7</sup>

At this point, however, the experiences of other African states and South Africa can be brought together. Many voices at the recent "Native Club" conference, the impetus and support for which came from the Presidency – a significant fact in itself, emphasised the injustices and inequities which black and especially 'black African' intellectuals have inherited and under which, it was argued, they still labour. However, in the academic and intellectual sphere unanticipated dangers need to be considered carefully. In many African countries, we have seen, the state, brought in

to protect and promote black academics, used the opportunity to extend its influence and occupy ground that intellectuals might consider their own. Mesmerised by power, some may risk abandoning the independence and freedom that are essential to their role as intellectuals. They might, however, be advised to hammer out issues of historical inequity themselves, before calling on the state to intervene. Once called into the academy to back a particular position, the state, as in other African countries, may be difficult to evict.

Thus, in confronting the conundrum of the South African academy, we are forcefully reminded of that of the rest of the continent in the first decade or two of their own post-colonial transitions. In these societies at the beginning of their transitions, their academies were also confronted with higher education institutions largely staffed by expatriates or settlers. Newly trained African intellectuals felt marginalised in these institutions, and they turned to the state to intervene. Settler and expatriate academics appealed to institutional autonomy and academic freedom but were soon overpowered. The problem, however, was that almost as soon as the state entered these institutions, it refused to leave. The irony is that a decade or two later the very academics who had asked the state to intervene convened in Kampala, Uganda, and raised the banner of academic freedom and institutional autonomy - the same demands raised earlier by the expatriate and settler academics. They were now confronting often fragile states that were at the same time largely unchallenged by any significant independent forces of civil society, possible allies in the fight to defend and advance academic freedom.

What lessons can be learnt from these experiences? The debate in South Africa thus far has eerie echoes of that which took place in the continent a decade or two earlier. Jansen critiques the state's intervention in the university, and the Minister of Education, Naledi Pandor, responds that intervention is necessary in order to advance the cause of democratisation and transformation. In this she is supported by a number of black academics. The debate is of course polarised. On the one hand are politicians, technocrats, and some black academics, all of whom raise the flag of democratisation and transformation. On the other hand are institutional managers, the white academy and some black academics, the proponents of institutional autonomy and academic freedom. Southall and Cobbing (2002) would be on this side of the debate, although they would see the institutional managers as the conduit of the state's neo-liberal logic. How can we avoid this Manichean trap? If we cannot, we may be doomed to repeat the mistakes and, as a result, experience the same consequences as our compatriots to the north. We must now try to work out a theoretical foundation for institutional autonomy and academic freedom in contemporary South Africa.

## 2. CONCEPTUALISING RIGHTS: INSTITUTIONAL AUTONOMY AND ACADEMIC FREEDOM

The concept of academic freedom is not new. Socrates went defiantly to his death in 399 BC protesting that “if you think by killing to hold back the reproach due you for not living rightly, you are profoundly mistaken” (Hallowell and Porter 1997: 7). The classical Greek conception of academic freedom was not rooted in the notion of a right to be free from interference, but rather a *duty* to seek and speak the truth (Crabtree 2002). This was therefore akin to the substantive positive notion of academic freedom referred to below – it is a *deontological* conception of academic freedom (rooted in duties), rather than a *teleological* notion, motivated by it having good *ends*. During the European Middle Ages this *deontological* conception developed into the idea that the pursuit of the truth was a duty from God:

Since academics were charged with such a sacred duty, secular and even religious powers were very reluctant to meddle in the affairs of the universities and granted them considerable freedom in their internal affairs ... It was well understood that the performance of a God-given mandate took precedence over any decree issued by a king. (Crabtree 2002)

This deontological conception of the rationale for academic freedom is in contrast with that held in Europe, in particular Germany, in the nineteenth century, which was based on “a philosophy of society in which everything in society was seen as being in the service of the state and an aid to its development. Accordingly education was enlisted in the effort to serve the interests of society” (Crabtree 2002). This is a teleological view of the academy, and while it may quite consistently include a practice of academic freedom as the best means to reach this end, this is instrumental (utilitarian) rather than rights-based. In other words, the rights that comprise academic freedom are subject to limitations and trade-offs for the sake of the pursuit of the ends identified.

These two views are clearly in contrast with one another, but it is important to take note of them, as it is precisely the contemporary articulation of these two conceptions of the *purpose* of academic freedom that underlies most debates in the South African context, and which inform the polarised views identified.

In the late 1980s and into the 1990s, academic freedom “became a subject of intensive debate by international non-governmental as well as governmental organisations and human rights activists” (Symonides 2000: 195). This was congruent both with the process of democratisation that followed the fall of communism in Eastern Europe and “the fact that academic freedom is threatened and violated in many countries” (Symonides 2000: 195). This latter frequently manifests itself in a range of abuses of human rights, such as imprisonment without charge or trial. More difficult to define on human rights grounds and to combat on this basis, are more subtle threats to academic freedom. Of course, it is these less obvious but just as threatening incursions into academic freedom that are of particular concern for this project. For example, if the state withholds or threatens to withhold funding from an institution, or differentially funds

institutions favouring those that comply with a preferred agenda, this would undoubtedly curtail academic freedom by some accounts, but we would be stretched to compare this with serious human rights violations, such as, say, torture.

This would seem to suggest that the relationship between academic freedom and universal human rights is something more complex than at first appears. We discuss below the idea that the right to academic freedom may be communal rather than individual, but we take it as given that it would count as a violation of human rights on anyone's account if academics are threatened, tortured, imprisoned, and so on, for exercising their academic freedom.

According to Symonides (2000: 197-198), academic freedom consists of the following distinct rights:

1. The right to become a member of the academic community (subject to merit) without discrimination;
2. The right to determine the subject and methods of research on the part of the academic community;
3. The right to determine the content and methods of teaching on the part of the community;
4. Students have the right to study their chosen field, participate in the organisation of the educational process and have their acquired knowledge and experience officially recognised (presumably in the form of a degree);
5. The right to seek, receive, obtain and impart information and ideas, and where there are restrictions (presumably on things like research using dangerous materials), the academic community should be granted special facilities and protection; and
6. The right to co-operate with colleagues in any part of the world.

This is a comprehensive list and rather exceeds the modest contents of the TB Davie statement of (negative) academic freedom that is sometimes taken as canonical in South Africa. Given that academic freedom is most frequently thought of as a negative right – the right to freedom from interference – one would expect that academic freedom, like other freedoms asserted as rights, would be enumerated with the civil and political (first generation) rights. Curiously however, academic freedom is most often discussed under the aegis of economic, social and cultural rights, and the United Nations Educational, Scientific and Cultural Organisation (UNESCO) is the international body that has been tasked with preparing an international instrument dealing with academic freedom. While there are a number of Draft Declarations on the subject, including the 1993 *Montreal Declaration*, a globally accepted instrument to protect academic freedom remains elusive. It is, however, worth noting the language of the proposed paragraph to be added to the *Montreal Declaration* at the UNESCO international colloquium on academic freedom in 1996, which asserts that academic freedom consists of respect for the human rights of members of the

academic community:

Members of the academic community enjoy, as human beings, all the rights recognised in the existing international human rights instruments. **Specifically they enjoy the human rights required for the exercise of the academic functions** as spelled out in the present declaration. (Symonides 2000: 198-199 [our emphasis])

In South Africa, in one sense, this problem has been short-circuited by the inclusion of academic freedom as a specific item in the Bill of Rights in Chapter 2 of the Constitution (section 16). This means that in this country at least, academic freedom is both a positive (declared) right as well as being recognised as in some sense a moral, normative right. However, as the Constitution merely enumerates academic freedom as one aspect of freedom of expression, it does not give us much guidance as to the *content* of the right. And the current contestations over this outlined below indicate that this is a debate that is long overdue. It is worth mentioning that while academic freedom is couched as an aspect of freedom of expression in South Africa, it is also sometimes enumerated as a cultural right, as part of the right to education (which would make it a positive right in the sense of requiring resources to be committed to it), and is more often conflated with freedom of speech, or rather treated as a special kind of freedom of speech.

A further point worth raising here is the question of the universality of assertions of academic freedom as a composite notion consisting of a list of human rights. One of the reasons why the attempt to draft a definitive instrument protecting academic freedom has been beset with difficulties is precisely because its content is so difficult to define. And if it is understood in its usual sense, as a protected liberty (a negative right) then it would seem to be congruent with the values of liberal democratic societies, and therefore not capable of being made universal. However we consider that the empirical evidence from around the world – cases where academic freedom is asserted in response to its abuse – supports the view that some conception of academic freedom is widely shared by the global academic community (see Human Rights Watch 2002).

### **2.1 Deontology versus teleology: what is the purpose of academic freedom?**

Broadly speaking, there are two ways to understand the rationale for a defence of academic freedom. On the one hand, it may be defended on the basis that it stems from a set of rights held by academics collectively (but not necessarily corporately – see the following section). On a libertarian account, all that this would require would be the freedom of the academy from outside interference, and, internally, the freedom of individual academics to teach and research without hindrance. This would not however amount to a positive set of rights requiring that resources be allocated to ensure the practice of this freedom. We call this the formal or negative deontological account as it is based on a set of (negative) moral rights that the world at large, but the state in particular, has a moral duty to honour by not interfering in them.

There are a number of problems with this conception of academic freedom. For one thing, it is

a culturally biased conception, rooted as it is in the unreflective recognition of the value of negative freedom and the rights of individuals. It is contextually problematic because potentially it leaves the universities untouched and unchallenged to meet the demands of any society, and, given the pressing egalitarian demands of post-apartheid South Africa, this conception must necessarily be seen as inadequate.

On the other hand, academic freedom may be defended because of its value to society as a whole. On this teleological (utilitarian) account, academic freedom is to be protected, not because of the moral or human rights of the members of the academy, but because it has good outcomes for society in its entirety. Thus, the rights that comprise academic freedom are not the primary consideration. Rather they are derived from some prior teleological consideration about what overall purpose the academy serves in society as a whole. In other words, the academy, either as a collective or a set of individuals, has special defined rights because the work that these rights allow them to do is to the benefit of the whole society. And of course if the academy fails to deliver these positive outcomes, then the rights can be limited or revoked altogether.

These two alternatives represent the extremes on either end of a continuum, and both are unsatisfactory as has been noted. However there is another alternative, the substantive or positive deontological account. André du Toit refers to it as the “thick” or republican notion of academic freedom (see Du Toit 2000a and 2001). What this account relies upon, is recognition of the moral rights that inform the notion of academic freedom, but it couples these rights with quite substantive correlative duties. Members of the academy thus at one and the same time have the right to conduct academic practices in ways that recognise their autonomy, but they also have a duty to do so in such a way as to recognise various social or common goods. In the South African context these would be things like the right of access to education and therefore the need to find ways to liberalise admissions policies, the need to redress past injustices and a lack of representivity in the academy, and the need to reflect on the content of the curriculum to ensure that it adequately meets the demands of the post-apartheid context.

Before moving on to consider the application of these theoretical reflections, it may be useful to consider whether academic freedom (the various rights which may be taken to comprise it) is an individual or a communal right. The difference turns out to be quite significant for what follows, because if it is an individual right shared collectively, then institutional autonomy is not consonant with academic freedom. If however it is a communal right, the argument that academic freedom is consonant with institutional autonomy follows, although the human rights of individual members of the community will nevertheless be protected.

## **2.2 Individual versus communal rights<sup>8</sup>**

Peter Jones, in considering this problem, remarks that “[a] group right properly so called is a right possessed by group *qua* group. It is not to be confused with a right which is common to a group of individuals but which each individual possesses as an individual” (Jones 1994: 182-183). So for

example, disabled people's right of access, according to Jones's definition, would not be a group right, but rather an aggregative individual right. What defines the holders of this particular aggregated individual right is that they are disabled.

Jones, in a later article on the subject of group rights, goes on to distinguish between the two concepts of group rights mentioned above. The first of these, attributed to Joseph Raz, Jones labels the collective conception. Jones cites Raz as specifying three conditions for the existence of a group right: firstly, in accordance with the interest conception of rights,<sup>9</sup> the right in question exists because it relates to an interest of sufficient importance to its holders to justify holding others to be under a duty to respect and maintain it. Secondly, the relevant interest is that of people as members of a group and the good is a public one. Finally the interest of any individual member of the group in the public good in question would not on its own be sufficient to justify holding others to be under a duty, but rather it is the combined weight of the interest of all the individual members of the group that adds up to create a right in this sense (Jones 1999: 356-357).

Now the problem with this conception of rights is that it is difficult to distinguish rights in this sense from aggregative individual rights, as all that is required here is that a group of individuals have a shared or common interest that is in sum sufficiently weighty to justify holding others to be under a duty to honour it. Furthermore, important individual interests that otherwise ought to have the 'trumping' power of the interests that as a matter of course ground rights may be subsumed by a utilitarian balancing of interests in this account. For example, if only one person was affected by the noxious pollution from a factory, would we want to say the individual had no right not to be harmed in this way?

The alternative conception of rights that Jones identifies, which corresponds more closely to what is normally understood by the notion of a group right, is what he labels the "corporate" conception. He approaches this conception of rights by reflecting on the question of the capacity to be a right-holder, which:

turns upon the attribution of moral standing. To violate a right is to wrong the holder of the right. It is to fail to do what is owed to the right holder. That indicates that someone or something can hold rights only if it is the sort of thing to which duties can be owed and which is capable of being wronged.<sup>10</sup> In other words, moral standing is a precondition of right-holding. (Jones 1999: 362)

The corporate conception of rights is therefore contingent upon assigning to groups the moral standing that is necessary for that group to be a rights-holder. This is distinct from the collective conception in the sense that the moral standing of the group on that account derives from the moral standing of the individual members, but the whole is merely a sum of its parts. The corporate conception requires the assignment of moral standing to the group separate from or in addition to the sum of that of its members. The whole is therefore at least separate from (if not greater than) the sum of its parts. The difference between the two conceptions of group rights is summarised thus by Jones:

[W]hat distinguishes a group as a group for right-holding purpose is quite different for the corporate than for the collective conception. Just as an individual has an identity and a standing as a person independently and in advance of the interests and rights that he or she possesses, so a group that bears a corporate right must have an identity and a standing independently and in advance of the interests that it has and the rights that it bears. Its being a group with moral standing as a group is a logical prerequisite of it being an entity that can bear corporate rights. So the 'groupness' of rights, for right-holding purposes, is understood quite differently by these two conceptions. (Jones, 1999: 363)

Some consideration must now be given to the types of *objects* of such rights – what sort of things could a group feasibly be seen to have a right *to*? The most obvious answer is those things to which distinct cultural or ethnic groups, or some other collective category, claim rights; but academic freedom and the rights that inhere in that conception may also fall into this category. This brings the discussion back to the topic of the treatment of individuals within groups that are deemed to have the requisite moral standing, and therefore rights. Because it is only on the corporate account of group rights that claims to treat unequally individual members of the group, possibly in contravention of their rights, can arise. This is not a problem for the collective conception, since the interests of the individuals inform the interests of the collective, and so anyone whose interests were not consonant could, and presumably would, cease to be a member of the group for the purposes of that interest.

Jones makes the distinction between group rights that are externally directed and those that are internally directed. On a collective account, the interests of the group could potentially conflict with those of people outside of the group, but not, as is explained above, those within the group. For example, a collective right to have designated cycle paths could conflict with the rights of individuals whose private property was potentially infringed by those paths. And in that case the relative weight of the interests in question would determine which collective or group should prevail. The corporate conception however raises worries about the rights of individuals within the group, and whether the rights of the group can be in conflict with those of its individual members. The corporate conception, relying as it does on the moral standing of the group, can also lay claim to an equal status for groups *vis-à-vis* other groups. And it is frequently such claims to equal respect and self-determination that are invoked to preclude enquiry into the treatment of individual members of the group. Jones goes on to remark, “the internal threat posed by the corporate conception consists not only in its enabling a group to claim rights against its own members. It lies also in its propensity to allow the moral standing of the group to displace that of individuals and sub-groups who fall within the group’s compass” (Jones 1999: 377).

If one applies this understanding to the negative deontological conception of academic freedom outlined above, academic freedom would amount to a negative right to institutional autonomy, and the internal workings of the academy and its treatment of its members would be regarded as matters for the community to decide, so long as the constitutional rights of members are not violated (for example, freedom of movement). On the teleological account, however, because there is a prior set of aims that underlie whatever specific rights the academy may have, no such

appeal can be made to the notion of institutional autonomy as an aspect of the corporate rights of academic freedom. The state therefore need only recognise the individual rights of members of the community, and on this account, they are no different to employees in any other profession. This is unsatisfactory because it fails to give any moral or normative content to the notion of academic freedom, regarding it as purely instrumental.

This brings us to our third alternative, the substantive or positive deontological (republican) account of academic freedom, which as noted above is suggested as more appropriate to the South African case. This approach would re-order the hierarchies implicit in each of the other two approaches, such that the academy as a corporate body would not necessarily have such overriding power over its individual members as in the first account, and the state would not have such overriding power over the academy as in the second. Some middle, deliberative, ground that seeks to assert both the positive rights, *and* to recognise the substantive duties of the academy – both corporate and collective – would need to be sought.

In thinking about what the terrain of this middle ground would look like, the next section reflects current arguments about academic freedom in South Africa, noting that these have tended to reflect the polarised views outlined here. This is followed by the proposition of an alternative based on the work of André du Toit.

### ***2.3 Towards a normative conception of academic freedom in South Africa***

It is beyond question that the academic environment in South Africa has changed substantially since 1994. It is argued that one of the key features defining the post-apartheid university is the increase in managerialism and the shift of power from the faculty to central university administration (see Southall and Cobbing 2001). There have been numerous high-profile cases in recent years involving conflicts between university managers and academics, and thus incursions on academic freedom in this environment appear to have been internally directed. At the same time, some academics complain that the state has become increasingly interventionist in the higher education environment, and that there is at best an ambivalent relationship between the academy and the state, underscored by the impression that the academy is not to be trusted to transform itself independently to meet the new demands of a democratic society (see Holiday 2004). Both these internal and external shifts reflect a larger global dynamic that, though often contested and at times held at bay, privileges the values of the neo-liberal project and the worth of skills over knowledge.

External intervention on the part of the state tends to stimulate calls for the academy to be treated as a corporate entity with rights to non-interference, and the right to govern itself internally as it deems fit. This is the view of John Higgins, who argues that

While it is obvious that there are significant differences in the content of higher education policy between the ANC and the apartheid state, it is clear that, on the level of formal regulation of institutional autonomy, the ANC is seeking to achieve a far greater centralised control of the universities than any apartheid government dared to dream. (Higgins 2000: 116)

Higgins goes on to argue that we should not mistake one teleological justification for interference for another – because the post-apartheid state is ‘well-meaning’ in comparison to its pre-1994 counterpart is not a good reason to abandon the notion of academic freedom, understood here as institutional autonomy. To do this is to be untrue to the very *purpose* that the university serves. The university is *not*, in Higgins’s view, an instrument of state policy there to deliver on the “needs of society” dressed up as the needs of the economy (see Higgins 2000: 112). It is there to play an entirely different role:

The university is the one establishment in society whose function is the pursuit of truth, not for direct commercial advantage or in the service of a political ideology but for its own sake, in the firm belief that no society (and certainly no state bureaucracy) knows in advance what knowledge will come to be useful. Academic freedom in the university is a humble reminder of blindness and shortsightedness; so many crucial inventions have been discovered by accident and not by design, or by turning an apparently failed or useful research project to another direction. Viagra, penicillin, radium and radar are all examples worth considering. (Higgins 2000: 116)

This corresponds with the negative deontological account of academic freedom outlined above. This view of academic freedom and of the role of the university was reiterated by Robert Shell in an interview on 1 May 2006. Shell makes the point that inasmuch as academic freedom implies being able to speak the truth without fear or favour, the university is therefore the only inherently progressive institution in a democracy, because it is the only institution that has as its specific mandate independent thought and knowledge production.

A similar argument is made by Jonathan Jansen, who emphasises that it is dangerous to assume the continued existence of a “benevolent state”. He argues that it is precisely the *potential* for the state to intervene in the future that underscores the need for institutional autonomy. This autonomy, once ceded, is all but impossible to reinstate. Jansen makes this point with reference to the rest of Africa:

One African nation after another has found that as the post-colonial state failed to deliver in the economic domain, and as the state then moved towards greater authoritarian behaviour, the first target was the university. If and when that point arises in the future, on what grounds will the South African university be able to challenge the post-apartheid state? (Jansen 2004a: 10)

Not surprisingly Jansen’s view is challenged by the state in the person of the Minister of Education, Naledi Pandor. Minister Pandor, in a response to Jansen published in the *Sunday Independent* on 24 October 2004, cites the 1997 Education White Paper 3 as saying “there is no moral basis for using the principle of institutional autonomy as a pretext for resisting democratic change or in defence of mismanagement” (cited in Pandor 2004). This would seem to assume that South African institutions are as a matter of fact engaging in such resistance under the guise of institutional autonomy. Pandor goes on to argue that

institutional autonomy cannot be unfettered and is linked to the **demands of public accountability, in particular institutions receiving public funds to be answerable for their actions and decisions not only to their own governing bodies but also to broader society.** The

unaccountable and laissez-faire development of South African higher education has greatly contributed to the inequalities and inefficiencies that we grapple with today. These include the unnecessary duplication of costly areas of study without due regard for quality, and ill-conceived public-private partnerships where the academic responsibility of public universities is abdicated in favour of financial gain and financial maladministration. (Pandor 2004 [our emphasis])

No doubt there are institutions in South Africa's higher education sector that are deserving of this censure; but this view seems to assume that *all* are complicit and recalcitrant, and that it is therefore necessary for the state to intervene to ensure that the academy performs its role – as the state conceives it – adequately. Pandor's view reflects what has been labelled above the teleological or utilitarian conception of academic freedom, which is clearly on the opposite end of the continuum to the views of Higgins and Jansen. Is there some way to steer between these two positions?

Jansen himself argues that “the infringement of institutional autonomy will continue unless the higher education sector begins to speak with one voice” and, furthermore, until it strengthens systems of institutional governance (Jansen 2004a: 8). These points are significant because they raise the question of what *duties* the academy has in the exercise of its academic freedom. If we reject the two polarised views presented here, what would be a more robust, substantive, *participatory* conception of academic freedom that would rescue South African institutions from the charge of being reactionary, elitist and untransformed on the one hand, and subject to the interference of the state on the other? The final section attempts to suggest an alternative.

André du Toit makes the comment that “we need to be careful of how we conceive of academic freedom as well as the supposed threats to this” (Du Toit 2000a: 103). His remark relates to Mahmood Mamdani's description of the “double dilemma” facing South African academia. This consists of the existence of the formerly white, liberal universities with traditions of institutional autonomy and academic freedom, but lacking a sense of social accountability and representivity; and of the formerly black universities, which are more socially responsive, but also more bureaucratic and less independent. Mamdani ascribes this dilemma to the colonisation and racialisation of South African institutions and poses the challenge of decolonising and deracialising them at three levels: individual, institutional and procedural (Du Toit 2000a: 103).

It is in meeting this challenge that the potential for a more substantive deontological approach is asserted:

Once again it will depend on our notions of academic freedom and freedom of speech themselves. In the thin or liberal sense of negative protection of individual and institutional rights it is difficult to conceive of the legacies of intellectual colonisation and racialisation as threats to academic freedom. (It is difficult to realise that the enemy has been within the gates all this time!) But in the **thick sense of empowering intellectual discourse communities** these dangers are recognisable and only too real. The challenge then is the necessary and ongoing transformation of the institutional culture of the university; this is no external threat to academic freedom; on the contrary, it is needed to secure effective academic freedom itself. (Du Toit 2000a: 103 [our emphasis])

The transformation of this institutional culture is not something that can be externally imposed, but if it is achieved, it may be an effective means to ward off external interference on the part of the state. What is needed here is the recognition that the powers conferred by academic freedom go hand in hand with substantive duties to 'deracialise' and decolonise intellectual spaces. This is not congruent with an agenda set by the state, but rather requires the academic community *qua* community to set the agenda for itself. In recognising its corporate duty to seek and speak the truth, both its independence can be asserted, and its critical social and educational function discharged.

### 3. STRUCTURAL REFORMS TO SAFEGUARD INSTITUTIONAL AUTONOMY AND ACADEMIC FREEDOM

Thus, a route out of the intellectual quagmire in which the South African academy finds itself can begin with the republican conceptualisation of academic freedom most clearly articulated in the South African debate by André du Toit (2000a, 2001). As indicated above, Du Toit makes a distinction between libertarian and republican conceptions of academic freedom. In the former, it is conceptualised as a negative right, whereas in the latter, the definition is conceptualised more positively. In this more positive conception, academic freedom is seen to be compatible with social accountability. Using this conception, this report holds that academic freedom needs to be coupled with reform of the university system, meaning protection of academic freedom while coming to terms with prevailing economic and political realities, if it is to retain any relevance in contemporary South Africa. It should be noted that Jonathan Jansen and the more far-sighted university bureaucrats and state technocrats would also support this conception.<sup>11</sup>

But this conceptual breakthrough does not go far enough. This is because it suffers from a severe methodological weakness most often associated with the policy researcher, state technocrat and institutional bureaucrat. For these actors, if freedom and autonomy are conceptualised in a progressive way, and codified in a regulatory framework, then somehow this will translate into reality. But the African experience shows that this is not the case. Even though nationalist academics called for governmental intervention in the language of rights and responsibilities, events on the ground soon overtook them (Mkandawire 2005). This is because contestations on the ground were determined not by abstract conceptions and the existence of a regulatory framework. Rather they were determined by how power was organised. The state prevailed because power was deployed in its favour.

A solution thus has to be constructed beyond the perspective of the policy researcher, state technocrat and institutional bureaucrat. In fact, it needs to be built on a social science tradition that recognises that structures, and in particular configurations, of power between social actors are what determine their choices and how as a result institutions, systems and societies evolve (Cardoso and Faletto 1979). Use of this methodological approach prompts the recognition that while a republican conception of freedom is useful, we need to go beyond it. There is an urgent need to reform the higher education system and its practice to realise a dispersal of power. Reform may be necessary in many areas of university life, and in different measure and form in different institutions, given their varied histories. However we focus on reform of the power relations that are the often shifting foundations upon which universities, like all institutions, are built. And it is precisely in the contestation of empowered stakeholders - state technocrats, institutional bureaucrats, academics, students and a variety of other collectives - that institutional autonomy and academic freedom is constructed.

What are these reforms of the higher education system and academic practice that can lead to

this dispersal of power? Four systemic reforms are identified below, two of which facilitate institutional autonomy while two speak directly to academic freedom. It is important to note here that institutional autonomy is integrally linked to academic freedom. Without the former the latter is not possible. Loyiso Nongxa argued, in an interview on 5 June 2006, that “academic freedom and institutional autonomy are complementary in a way, in that institutional autonomy can create an environment for greater freedom [for] academics not to be constrained by external forces”. Yet he recognises, as does Du Toit (2000b, 2001), that institutional autonomy on its own will not guarantee academic freedom. It is a necessary but not sufficient condition for the advancement of the latter right.

The problem therefore is to propose an approach that creates the maximum feasible space for academic freedom, while taking the realities of power and of political and economic influence into account. To do this, firstly, a plurality of stakeholders must be represented in the higher education system. This need not only mean that the higher education system must be representative of our demographics. Certainly this is necessary and a course must be charted to achieve this end. After all, while black students comprise 72% of university enrolment, black staff made up a mere 28% of the academy in 2000.<sup>12</sup> Gender representation is similarly deficient. While women make up 37% of the academy, they represent only 13% of the full professoriate (Koen 2003: 510-511). But representation is not simply about demographics. Given the university’s mission to generate knowledge, it must reflect a multiplicity of ideological voices including the voices of those who are intellectual dissenters in our society. This is necessary for the production of knowledge itself. Ideological plurality promotes critical engagement and reflective discourse, which are necessary for sharpening ideas and arriving at nuanced conclusions.

But this demographic and ideological plurality is not simply a moral and research imperative. For our purposes it is also an institutionally strategic imperative. This is because demographic and intellectual plurality facilitates the social legitimacy of universities. This is essential especially in a country with a history of exclusion, where, as a result of material backlogs, there are multiple competing demands on the public purse. When citizens recognise the university as reflecting themselves, their concerns, hopes and aspirations, then the university itself is legitimised. And legitimacy is an important source of power.

This is perhaps one of the most important lessons from the African experience. Over most of the continent, the political elite was able to erode the autonomy of universities and the freedom of academics on the grounds that they did not represent the interests of the society within which they were located. This is the essence of Kwame Nkrumah’s celebrated attack on the universities.

We do not intend to sit idly by and see these institutions which are supported by millions of pounds produced out of the sweat and toil of common people continue to be centres of anti-government activities. We want the university college to cease being an alien institution and to take on the character of a Ghanaian University, loyally serving the interest of the nation and the well-being of our people. If reforms do not come from within, we intend to impose them from outside, and no resort to the cry of academic freedom (for academic freedom does not mean irresponsibility) is going to restrain us from seeing that our university is a healthy university devoted to Ghanaian interest. (Cited in Mkandawire 2005: 22)

Attacks such as these were made possible because these institutions did not possess social legitimacy. To avoid a repeat of the African experience, South Africa's universities must transform in both demographic and intellectual terms. Only this will legitimise the higher education system, and enhance its credibility *vis-à-vis* political elites, state technocrats and other empowered stakeholders in the society. How this relates to educational and research quality, in which many South African universities are deficient, is too complex a question to explore here. However, we would argue that social legitimacy is a necessary, though not sufficient, condition for such quality, and for the national and international academic legitimacy that this implies.

Secondly, the higher education system must have a diversity of income streams supporting its activities. Presently, it relies on state funding, which, however, as in most parts of the world, is declining; student fees, which are an increasing proportion of the total income of higher education institutions, some of which are however paid through the government-financed National Student Financial Aid Scheme (NSFAS); and 'third-stream' revenues. While difficult to generalise because of the until recently disparate nature of South African higher education institutions, and the recent remodelling of the complete system, 40% to 50% of the income of most universities was generated from state subsidies in 2003, while student fees made up an additional 23% to 25% (De Villiers and Steyn 2006: 6).<sup>13</sup> The balance consists of third-stream revenues of many different kinds.

State financing of the higher education system enhances the power of state bureaucrats and political elites. While public funding will inevitably comprise a sizeable component of the university system, it is important that higher education managers open up other income streams (apart from student fees) to support their institutions' activities and that this is seen as an opportunity, where necessary, to speak with an independent voice. This means accessing the resources of the private sector, individual benefactors, and domestic and foreign foundations. To differing degrees, universities do this, some very successfully.

South African universities receive a declining proportion of their revenue from the state. The percentage is lower than the OECD average and lower than the contribution in most African countries. Within the South African system, the last figures available for the period before the recent merger of higher education institutions show that direct state funding comprised a smaller proportion of total funding for historically white than historically black institutions (HWIs, HBIs), and that third-stream income was correspondingly more important for the former than the latter. It is notable that the level of critical independence tends to be greatest where third-stream income is at its highest, as at the universities of Cape Town, the Witwatersrand and Pretoria,

though this is a striking correspondence rather than direct proof of a connection.

Another area, that requires further research, is the disaggregation of third-stream income. This is a very disparate category, divided by the CHE into philanthropic, entrepreneurial and earmarked research funding, and with a proportion coming indirectly from government through such institutions as the National Research Foundation (NRF) (CHE 2006: 72-81). While diversity of sources is in itself helpful, there are differences between the effects of one source and another, with some aid tied closely to particular corporate, charitable or governmental agendas. Even here, the overall effect may be to set up a series of different poles of influence, with the possibility of creating areas of intellectual contest in the spaces between these separate and possibly competing influences. However, the data available to the authors on the nature of third-stream income and its relationship to intellectual trends are insufficient to allow firm statements on the matter. We note this as an area for future research.

Nevertheless, despite the lack of disaggregated data, there can be some general conclusions. Perhaps the most important is that more could be done to generate third-stream income. South Africa has been in the midst of a democratic transition and a number of stakeholders have made resources available either for enabling reconstruction or for legitimising themselves to a new political elite. Official Development Assistance has, for instance, increased dramatically over the last decade (Ewing & Guliwe n.d.), as have corporate social responsibility initiatives (Rockey 2000; Russel & Swilling 2001). Higher education should take these opportunities, though not uncritically, and interpret them not only as financial benefits but also as creating space for academic freedom. Moreover, higher education's financial health can be greatly strengthened by transforming research from an institutional cost to an income stream. Universities host a range of knowledge workers, and their skills are increasingly marketable in a world where intellectual property is valued. These skills can be deployed in the service of multiple stakeholders in society. The transitional character of South African society has meant that policies are under review, and academic skills are required by the state for monitoring, evaluation and policy development. Sections of South African academia have long served civil society in enhancing democracy and advancing the interests of marginalised communities. The trick, of course, is to undertake these initiatives in a form that generates income for the universities, and this can be done more easily with the state and corporations than with civic actors. Herein lies the danger: these institutions could end by simply servicing elite interests in society. However, if this were managed carefully, the university could remain loyal to its mandate of community outreach and service, while simultaneously generating resources for services rendered to resource-endowed stakeholders.

Universities in South Africa are recognising this potential for income diversification. A number are experimenting with providing a research service to corporates and the state. Lessons need to be learnt from these experiences and generalised across the higher education system.<sup>14</sup> But care must be taken not to become complacent. There are dangers inherent in this process, the biggest of which is that the state or business corporations' demand that the university

compromise its research ethics. Already this has become a problem in some universities in the United States. A number of cases have emerged there where, for instance, academic research has been compromised by institutions' relationships with business corporations (Horton 2004). The problem in these cases was that universities entered into relationships with corporations that violated the academic enterprise. The solution paradoxically is not to avoid entering such engagements. Rather it requires increasing them so that the university does not become overly dependent on any one client. The lesson to be learned is that multiple funding streams for higher education can only enhance university power *vis-à-vis* the Department of Education.

However, as has been recognised earlier, these two reforms – transforming universities and multiplying their income streams – enhance institutional autonomy, but not necessarily academic freedom. As was also noted earlier, it cannot be assumed that the former will lead to the latter. For academic freedom to be realised, reforms would be required that not only enhance the power of the academic administrator *vis-à-vis* the state bureaucrat, but also that empower the individual academic in relation to the institutional manager. The following suggested reforms are directed to this latter goal.

Thus an institutional culture that rewards scholarship and intellectual productivity needs to be built in the higher education system if academic freedom is to be realised. Currently, a relatively egalitarian tradition in the academy, reflected in fairly equitable remuneration scales within hierarchical bands, tends to undermine the incentives that may inspire research productivity and innovation. Indeed, the problem is further aggravated by the embarrassingly low remuneration afforded to members of the academy, especially in relation to other professions in the public and private spheres in the country.<sup>15</sup> The effect is a race to the bottom, especially in financial terms. The brightest minds, as a result, tend to gravitate away from the academy with dire consequences not only for the higher education system, but also for economic development in South Africa. Where they remain, they are prompted to abandon the academy in favour of academic management and administration. Again, the character of remuneration conditions this behaviour. The architecture of remuneration in the universities is such that academic administration receives far grander financial rewards than the core teaching and research functions of the academy. The message embodied in this system is that management is far more important and prized than the academy itself (Habib and Morrow 2006).

A systematic reform of remuneration is in order if intellectual productivity and scholarship are to be prioritised and realised. The architecture of the remuneration system needs to be transformed in favour of the academy. Highly prized professors should earn on a par with, or even higher than, senior management. This is not unheard of in other countries such as the United States or even the United Kingdom. Should such a reform be implemented, the symbolic message emanating from the system would be that the most highly achieving academics are prized and can expect to be rewarded correspondingly. Moreover, a system of rewards for scholarship and intellectual productivity reflected both in better remuneration for productive academics, and better financial support for research by public and private stakeholders, would

go a long way towards reforming the system of incentives in the universities. More significantly, it will, in addition to attracting the most capable and creative minds to the academy, also enhance their power *vis-à-vis* institutional bureaucrats who would be obliged to recognise the value of productive academics because their academic stature and intellectual output would be the key to enhancing resource flows to the university. In short, academic freedom flourishes when it falls within the territory of self-confident and assertive academics who are patently valued by the system.

Finally, academic entrepreneurialism needs to be encouraged, valued, and actively built in the higher education system. This is because such active marketing of the academy is necessary to relate academic work to the interests of a variety of stakeholders, including marginalised sections of society. This is often not understood either by those who advocate academic entrepreneurialism or their critics. Entrepreneurialism does not simply imply the generation of money. In its wider interpretation, it involves the engagement of the academy with the immediate concerns of the society within which it is located. Of course there is a long tradition of such behaviour. The academy has always hosted public intellectuals who engage with other social actors and each other on policy, or even on the direction of social evolution.<sup>16</sup> Such entrepreneurial behaviour not only brings credibility to the higher education system, but can at times translate into increased resource flows to universities, either through the professoriate's direct research and other activities, or through the enhanced reputation of the university which their engagement engenders. It is precisely academic involvement in the generation of these benefits for the university and involvement with the interests and concerns of the wider society that enhances their power *vis-à-vis* institutional bureaucrats and enables the defence of academic freedom from a position of strength.

Linked to the question of such social engagement is that of academic unions. This is an area that deserves further investigation from the perspective of academic freedom. The early 1990s, a period of intellectual and political ferment when academics were arguably at their most vociferous and influential, was also a period when academic unionisation was at its height, with the Union of Democratic University Staff Associations (UDUSA) an influential participant in policy debates. Academic unionism has now fractured, with numerous staff associations and the incorporation of some academics into general unions. This may well have had a damaging effect not just on the payment and conditions of service of academics, but also on their roles in practising and defending freedom of speech.<sup>17</sup>

Collectively the reforms identified above can have the systemic effect of dispersing power to academics and their institutional managers. This dispersal of power thus contributes to the establishment of empowered stakeholders. As has been argued earlier, it is precisely in the process of contestation that academic freedom and institutional autonomy can be constructed. Jonathan Jansen, in reflecting on this recommendation, raised the concern that an equality of empowered stakeholders held the danger of an alignment amongst some of them against those who had a direct and permanent stake in the academic enterprise. As a result he insisted, in an

interview on 18 May 2006, that academics and universities as institutions be prioritised in the empowerment agenda. But is this not what these recommended reforms, directly targeted at empowering academics and institutional managers, both of whom are long-term actors in the academic enterprise, are intended to achieve? Indeed, while managers and academics will tend to be united on institutional autonomy, it is likely that tensions will often remain between them on questions of academic freedom. Where academics, as we have suggested, are able to create positions of power for themselves, they should have firmer ground on which to stand in defending academic freedom within their institutions and in the society as a whole.

The recommendation advanced in this report is very different from that which seems to emerge implicitly in the existing literature. In this literature, there is either a hope for some distant institutional revolution to create the macroeconomic fundamentals for a better resourced or even free higher education system; or there is incessant hand-wringing, and continuous complaints about the neo-liberal character of our world. Our recommendation is that institutional autonomy and academic freedom need to be constructed through the contestation of empowered stakeholders, which itself is a product of the messy process of higher education reform and entrepreneurial academic practice.

## CONCLUSION

We have outlined what appear to be the threats to academic freedom in contemporary South Africa, setting this within the context of the perils that it has faced in post-independence Africa as a whole. By an over-eager embrace of the nationalist elite, we argue, African intellectuals abandoned the defence of their freedoms and opened themselves to marginalisation and impotence from which they now try to disentangle themselves. We argued also that poverty gave African institutions of higher education few defences against their capricious paymaster, the state.

The South African experience, we suggested, differs in some respects from much of the rest of Africa. However, there are also parallels, and the South African academy should be aware of the precedents, which are often worrying. We constructed a theoretical justification for academic freedom in contemporary South African conditions, arguing for a 'republican' conception that recognises the social responsibilities of the academy, and its responsibility also to engage in its own reform, while proposing that it is the exercise of these responsibilities that will enable the articulation of a robust and unapologetic defence of academic freedom.

We then considered the context of such arguments: the prevailing disposition of political and economic power, which any proposal to defend and enlarge academic freedom must put at its centre. We proposed four means by which institutional autonomy and academic freedom might be strengthened. Two (a wide variety of stakeholders and income streams) strengthen institutional autonomy. Two (reform of academic remuneration and greatly increased academic entrepreneurialism) go beyond institutional autonomy and in addition bolster academic freedom by strengthening the weight and significance of academic and intellectual pursuits. Thus, we hope to ground our definition of academic freedom in contemporary realities, and, taking objective constraints into account, to escape unrealistic expectations, whether based on a conservative nostalgia for a romanticised past that will never return, or a chiliastic anticipation of a future that is based more on faith than rationality.

## ENDNOTES

- 1 The authors would like to thank those, particularly Rob Morrell and Nico Cloete, who have commented on this paper.
- 2 Cheryl de la Rey, in an interview on 25 April 2006, commented that it is important to understand the notion of academic freedom in its historical context. The classical account of academic freedom – that of total non-interference by the state – reflects a response from a particular time, when the state’s interference was unduly threatening. However, the concept now needs to be revisited in light of the change in context, as definitions must always be historically informed.
- 3 TB Davie was the Vice-Chancellor of the University of Cape Town between 1948 and 1955. He is most remembered for his opposition to the apartheid regime’s initial attempts to redefine and reorganise higher education. His formulation of academic freedom was the right to decide “who shall teach, what we teach, how we teach, and whom we teach”.
- 4 This is not to discount early advances in higher education in, for example, South Africa and Sierra Leone, with subsequent development in the late colonial period in some other Anglophone and Francophone states. Though numbers were small, debates on academic autonomy could be vigorous in such environments.
- 5 And indeed throughout the CHE’s enquiry into academic freedom, autonomy and accountability in South African higher education.
- 6 It should be said that even at the height of apartheid some South African universities fought for and maintained a degree of autonomy from the state, sheltering many dissenting intellectuals. Protected by tenuously surviving, albeit racially based, democratic institutions and traditions, institutional autonomy, a prerequisite for academic freedom, did not entirely disappear.
- 7 In separate interviews on 2 June 2006, both Ahmed Bawa and Vishnu Padayachee emphasised the destructive effects that a racialised discourse can have on academic collegiality and intellectual endeavour. Professor Bawa in particular emphasised the difficulties of providing a philosophical underpinning for “local legitimacy” and the “national project” without tumbling into unfocused, and therefore capricious and divisive, racial manoeuvring.
- 8 For a more detailed account of the problem of individual versus group rights from the perspective of cultural rights, see Bentley 2003
- 9 For the sake of brevity, this paper omits a discussion of the rival choice and interest theories of rights. For a detailed account see Kramer, Simmonds and Steiner, 1998.
- 10 The distinction is being drawn between those things in respect of which we have duties – for example, the duty not to deface works of art or buildings – and those things towards which we owe duties and which we wrong if we fail to honour those duties. A person is clearly wronged if we fail in our duties towards them (as are arguably animals, the dead or future generations) but the wrong in the case of the destruction of a work of art is not towards the work of art itself, but to others who will be prevented from benefiting from it.

- 11 Jansen, for instance, expressed his support for a definition of academic freedom that was compatible with and integrally linked to notions of social accountability. Interview with Jonathan Jansen, 18 May 2006.
- 12 These percentages are calculated from Figure 7 provided in Subotzky 2003 and Table 5 detailed in Koen, 2003.
- 13 Information from Nico Cloete indicates that some institutions have an even lower dependence on government funding, which is 30.2% in the case of Wits and 36.95% in the case of UCT.
- 14 One set of institutions that has succeeded in doing this are the Science Councils. The HSRC, for instance succeeded in raising its external income from almost nothing in 1999 to approximately R150 million in 2005 (Orkin 2005).
- 15 As a result of the ever-poorer salaries, academics spend an increasing proportion of their time on consultancies with adverse consequences for research productivity in the country. A CHE report warned that “while HEIs must find ways to encourage contract research, they must beware that it does not edge out basic research as it has the potential to do – with devastating results” (Council on Higher Education 2004: 115). Richard Pithouse, in an interview on 2 June 2006, spoke of an associated problem: “if we carry on like this, how are we going to have the capacity to produce our own intellectuals? The people who ... learn to do social science for money, and in projects, they do not become intellectuals, they become researchers, and it’s a different thing”.
- 16 The clearest example of this in South Africa was the role of the liberal academy in the struggle against apartheid. For just one study in this regard, see Jansen 1991.
- 17 We are grateful to Mala Singh for drawing our attention to the relevance of this area in the context of academic freedom.

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## INTERVIEWS

Professor Ahmed Bawa, interview by Seán Morrow at Pietermaritzburg Campus, University of KwaZulu-Natal, 2 June 2006.

Professor Cheryl de la Rey, interview by Kristina Bentley at the University of Cape Town, 25 April 2006.

Dr Ashwin Desai, interview by Seán Morrow at Howard Campus, University of KwaZulu-Natal, 2 June 2006.

Professor André du Toit, interview by Kristina Bentley at the University of Cape Town, 24 April 2006.

Professor Paula Ensor, interview by Kristina Bentley at the University of Cape Town, 4 May 2006.

Professor Jonathan Jansen, interview by Adam Habib, Pretoria, 18 May 2006.

Dr Xolela Mangcu, interview by Adam Habib, Johannesburg, 17 May 2006.

Professor Loyiso Nongxa, interview by Adam Habib, University of the Witwatersrand, 5 June 2006.

Professor Vishnu Padayachee, interview by Seán Morrow at Ike's Bookshop, Durban, 2 June 2006.

Mr Richard Pithouse, interview by Seán Morrow at Howard Campus, University of KwaZulu-Natal, 2 June 2006.

Professor Robert Shell, interview by Kristina Bentley, Cape Town, 1 May 2006.



*Published by:*  
*Council on Higher Education*  
*PO Box 13354*  
*The Tramshed*  
*0126*  
*South Africa*  
*Tel: +27 12 392 9132*  
*Fax: +27 12 392 9120*  
*Web site: <http://www.che.ac.za>*

***ISBN: 1-919856-60-9***

*Date of Publication: December 2006*

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reproduced without the CHE's permission.*

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*Designed by Blue Apple Publishing*

*This project and publication has been made  
possible by the support of the Ford Foundation.*