The nature of government involvement in higher education, academic freedom, institutional autonomy and public accountability
Submission to the Council on Higher Education by the
University of the Free State
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Introductory remarks

1. This submission should not be regarded as an official, formally approved viewpoint of the UFS. Rather, it is some loosely organised ideas and perspectives resulting from open discourse among senior academics and managers. It is presented in three separate ‘contributions’.
2. We regard this as the beginning, rather than the final product of an institutional debate on the above important issues, and intend pursuing this discourse in other institutional and national forums.
3. Also, the document may seen to be raising more questions than answers.
4. As such it represents some facets of an ongoing debate on the role of the university in a developing and transforming society, and its relationship with the state, with implications for institutional autonomy, academic freedom and public accountability.

Contribution 1
Historical perspective

1. The higher education system in apartheid South Africa was a highly fragmented and unequal one – to such an extent that it hardly merited being called a ‘system’.
2. The nine historically ‘white’ universities, established before 1950, were governed under their own private Acts, and enjoyed almost unrestricted autonomy, except for the important restriction on admission of so-called non-White students, but under the Universities Act 61 of 1955, with similar
financial dependence on the state for government subsidies and measures of accountability.

3. The Extension of University Education Act of 1959 created a system of not only racially, but ethnically, distinctive universities in South Africa, a process which continued through the 1970s with the establishment of the ‘homeland’ universities of Transkei, Ciskei, Venda and Bophuthatswana, and concluded with the establishment of Vista University for Blacks in so-called ‘white’ urban areas in 1981.

4. Before 1994 the almost unfettered autonomy of the historically white universities stood in stark contrast to the tight regulation and control of government over universities for Blacks, Coloureds and Indians, regulated by the Universities Extension Act.

5. The pre-1994 universities were different not only in terms of the ethnic groups they served, the medium in which they taught, and their understanding of knowledge production, but also in the manner in which they were governed and their relationship to the state.

6. This racially and ethnically divided higher education system with highly uneven measures of autonomy and accountability had to transform to a single coordinated higher education system, satisfying the requirements of both equity and excellence.

7. It is debatable whether transformation and redress as vehicles to effect the above and address the legacy of apartheid and discrimination have been properly conceptualised by either government or the higher education sector.

8. Universities are responding to these challenges in very different ways. In certain respects, this has led to some degree of officiousness among universities, more specifically, the historically Afrikaans universities.

9. Other challenges that South African higher education had to contend with include new modes of teaching, curriculating and assessing, more extensive and intensive student support because of the poor quality of outputs of the school system and an underdeveloped further education and training system, low graduation rates, growing graduate unemployment, under-representation
of black and female staff particularly in senior posts, and an aging, predominantly white male research corps.

10. To the above challenges can be added the plethora of government-induced policies and legislation that impact on universities, such as the South African Qualifications Authority Act, the Labour Relations Act, the Skills Development Act, the Employment Equity Act, the Promotion of Access to Information Act, and the Promotion of Administrative Justice Act.

11. Not only have new higher education policies and related acts created an unstable environment for universities, but these Acts all to a lesser or greater extent affect or curtail universities' autonomy and bring about greater accountability demands.

12. In addition, these policies have caused an almost unmanageable drain on resources in institutions, not only financial, but more specifically human resources, siphoning off highly qualified and scarce human capacity from the core functions of teaching and research. This in itself impacts on the intrinsic autonomy of the institutions.

13. Another, possibly unintended, consequence of the deluge of new policies, is the development of a common nomenclature and the perhaps excessive buy-in of universities, leading to more uniformity of purpose and expectations of universities.

14. In addition, the restructuring of the higher education system and mergers and incorporations of institutions have given rise to serious concerns about the distinctive nature of the university as well as the development of a perhaps too undifferentiated higher education system.

15. The restructuring of the higher education system was to a large extent driven by the extensive powers vested in the Minister of Education, a situation that potentially has a high risk for the autonomy of higher education institutions.
Contribution 2
The relationship between higher education and the state: Some principles for a normative approach

1. Reflection on issues of accountability, autonomy and academic freedom requires an analysis of the basic principles of a differentiated society and the contours and boundaries of its various institutions (school, churches, the family, business, clubs, universities – and the state).

2. The modern constitutional state is tasked to use its legal system and public legal order to balance and harmonize the multiplicity of legal interests on its territory, protecting legal interests and providing legal redress where legal interests are unduly harmed.

3. These legal interests – of individuals as well as institutions – are to be found everywhere and hence reflects a multiplicity of non-statal societal relationships and collectives, amongst which the university as an academic institution.

4. The harmonization and integration of a multiplicity of legal interests imply that one should recognise inherent limitations to the competence of the state.

5. When one says that the state must recognise and protect legal interests everywhere, also legal interests of and within institutions, that does not mean that the state has the right to determine or prescribe the functions and powers of those institutions.

6. To the contrary, the state must respect and protect the internal competence of those institutions to manage themselves as they see fit (according to the nature of the institution), as long as they do not unjustly harm the legal interest of parties within and outside that institution (in which case legal redress under the protection of the state would be warranted).
7. At the same time it is true that the university as an institution cannot be divorced from its social and economic environment (the issue of accountability).

8. Even though in most countries the government makes a contribution to the functioning and continued existence of universities, this does not mean that such a university is thereby reduced to begin an organ of the state, or that the state could prescribe a socio-political orientation for the university, nor that the state could legitimately prescribe the scientific orientation and mission of a university.

9. The directional choice of a university - manifested in its statement of vision and mission - in principle lies beyond the legitimate grasp of governmental interference. If the state transgresses in this regard it has set its foot on the path of totalitarian and absolutist practice, disregarding the legitimate sphere of competence not only of the university, but in principle of all non-statal institutions.

10. At most the state can apply a general formal yardstick, stipulating the minimum formal requirements for an acceptable and accountable university.

11. The mere fact that the government of a constitutional state under the rule of law (a so-called democratic state or just state) has to integrate and harmonize the multiplicity of legal interests on its territory does not imply that these legal interests emerge from the state or are created by the state and can thus be willfully subjected to the interests, political purposes or discretion of the state.

12. For this reason, once established, a university has the right to determine its own affairs (its directional choice) – a right that should not be seen as granted by the state, but one that should be merely acknowledged (and legally protected) by it, as an essential element of providing the public legal foundations for non-statal institutions in a differentiated society.
13. Respect for the internal sphere of competence of the university safe-guards it against any *illegitimate* interferences from the state.

**Contribution 3**

**Steering, public accountability, academic freedom and institutional autonomy**

1. In considering these concepts, it is essential that they not be considered in isolation from one another. Likewise they cannot be assessed without considering the relationship between the state and higher education institutions.

2. In the current public discourse on these issues, a rather unrefined handling of these complex concepts and their interrelationships is encountered. This harbours some dangers for universities and their proper and legitimate role in society.

3. One such problem relates to the concept of *accountability*. This term often is used in a very nebulous sense to convey some kind of dissatisfaction with the role universities are playing relative to the perceived needs of a particular sector or interest group (whether narrowly or broadly defined), and the expectation of what universities can or should do in this regard.

4. Two examples serve to illustrate this: the political arena, and the business arena.
   
   a. A particular political climate in a particular period may endorse a strong collective commitment to national policy goals and priorities, as articulated through political and democratic processes and enacted by the then government. Whilst one may completely share these objectives, one should be careful, for there is a danger that all institutions may be subjected to the social and political goals of a particular period, ‘mood’, political party or even ideology.
b. The same applies to the view of, for example, business and industry (or professional bodies), on whether and how universities should serve their needs for well-trained employees ‘in order to promote economic growth and employment’, and so forth.

5. In responding to the implied views of ‘accountability’, one may lose sight of the intrinsic nature and role of non-statal institutions (such as universities) in society – and of the importance of their longer-term functionality and role in a healthy and balanced society.

6. Indeed, their functioning may become **distorted** if they are put to the ‘service’ of such non-university goals. Such harm may have dire long-term consequences for a country, and may not be easily reversible.

7. To avoid this, the concepts of accountability and autonomy should be handled with great care.

8. For example, the White Paper (1997) states unequivocally that “public accountability requires that institutions should demonstrate how they have met national policy goals and priorities”. While this may not have been the intention, at face value this could be taken to imply that the state has a right to exercise a considerable degree of power to prescribe teaching and research agendas of universities.

9. More nuanced definitions of public accountability in terms of the foundations of, and relevant forms of, public accountability are imperative for the safeguarding of academic freedom and institutional autonomy in the process of state regulation or steering of higher education.

10. More specifically, any conceptualisation of public accountability must respect, reflect and explicitly be based on the intrinsic nature of the university as a place of scholarship and critical inquiry.

11. Not all government priorities can or should receive the same degree of urgency (let alone of enforceability) regarding universities. Not even all government priorities regarding higher education can or should carry the same weight when considered relative to the principles of academic freedom and institutional autonomy regarding the ‘core business’ of universities.
12. One also needs to consider appropriate manner for interest groups such as business or government/state to convey their views regarding the functioning of universities and/or even to try to influence such functioning without starting on a path which disregards the intrinsic nature of universities, a path of potential totalitarianism or functionalism. It is quite legitimate for interest groups or the state to have a strong view on what universities should do, but it is not legitimate to force those views upon universities in ways which undermine their proper functioning and, indeed, their institutional independence and autonomy.

13. Simply put: the call for ‘public accountability’ has, and should have, bounds. These are to be found, in the first instance, in the intrinsic nature of universities as institutions of scholarship, scientific endeavour and independent critical inquiry.

14. A necessary and acceptable form of state regulation is related to financial accountability for the proper spending of public funds. State overseeing and control in this regard is a constitutional duty (Art.195(1) states that state administration is controlled by the principle of efficient, economic and effective use of resources). The form that state control will and may take in this sphere will depend on the extent to which institutions adhere to this principle. In this respect institutional autonomy and public accountability can be reconciled by the right of universities to internally manage their funds subject to regular reporting and, of course, general principles of financial accounting (including the principle of non-corruption etc.).

15. Similarly more differentiated content needs to be given to a concept such as institutional independence. One could distinguish, for example, between mission independence, goal independence, content (curriculum, research) independence, process independence, and so forth.

16. One type of independence that a university should not rightfully have, is a right to unduly harm the legal interest of its staff or students or other institutions. Despite it being recognised as a unique institutions with its own sphere of competence, in terms of the public legal order it is subject to the
legal processes and procedures of a state in which there is the rule of law. Simply put, if the university harms the legal rights of employees or managers (e.g. unlawful dismissal) or of students (e.g. unlawful expulsion), the state has a right to provide legal redress – and in no way can this be seen as an encroachment upon its institutional autonomy.

17. More generally, the actions of a university have direct and indirect judicial consequences for other role-players (i.e. employers, professional institutions, etc.). In this regard the state has the responsibility to underwrite and protect the different claims and rights in an integrated and balanced manner; this could be typified as a form of ‘bounded autonomy’ of higher education institutions. Clearly this is unproblematic.

18. Issues that currently fall under the rubric of redress or employment equity, and which reflect the priorities of the state in the post-apartheid era, similarly can be seen as unproblematic, being a general external constraint and imperative that is legally binding for all institutions, and which seeks to provide – in a constitutionally-founded manner – systemic redress following a period of systemic discrimination. Standard legal enforcement mechanisms and sanctions underpin these processes.

19. At the same time, even these processes are and should be subject to legal principles and supervision, in the sense that employment equity and related redress mechanisms may not be applied or enforced in a way which unduly harms the legal interests of individuals or institutions – not even by the state. That is, this competence of the state is bounded and constrained by legal and constitutional principles. In this way the rights of individuals and, indeed, independence of universities are and should be guaranteed by law.

20. The concept of steering is closely related to that of public accountability, in particular with regard to the political and policy objectives of a government.

21. A distinction needs to be drawn between steering with regard to policy goals of the government such as transformation objectives or developmental objectives (responsiveness, engagement, etc.) vs. steering with regard to the core business of universities (higher education). The weight given to,
constraints upon and legitimate ways to pursue these, must be differentiated and analysed.

22. In respect of the latter, the principle of institutional independence – and for that matter, respect for the intrinsic nature of the university – requires that the university should not be required or forced to have narrow utilitarian purposes (such as usefulness, functionality, job creation, worker production, etc.) or to serve specific political objectives/goals. But, again, the views of interest groups regarding the objectives that universities should pursue, can legitimately be aired in public discourse – but not enforced through rigid policy or other mechanisms.

23. One of the ways to accomplish this is by the establishment of forums to facilitate active and continuous discourse between the different role-players. An example of this form of institutionalised input is found in the composition of university councils where the broader community is represented. Another is the system of professional bodies regulating the requirements for access to the profession by accrediting higher education programmes for this purpose.

24. Sometimes it appears that universities are less sensitive to abide by the rules of professional bodies. While this may be because universities know that academics are represented on those bodies and would guard against learning programmes which only focus on practical skills, in principle this practice raises the same issues regarding institutional autonomy and academic freedom as that of state prescriptions.

25. Benchmarking and peer review are more appropriate measures to assure quality and the pursuit of preferred HE goals, rather than bureaucratic systems that may become subject to the whims of government officials or political powers.

26. Quality assurance may be a form of acceptable state overseeing, as long as it is done in a way that is reconcilable with academic freedom, e.g. through peer review processes. Even though this does constitute an almost bureaucratic kind of system, a source of irritation to higher education institutions, it should not necessarily be regarded as encroaching on institutional autonomy, but
rather as a (perhaps?) proper and literally appropriate manner (for universities as academic institutions) in which the state fulfils its fiduciary responsibilities.

27. The state should respect and assist universities to maintain their fundamental reason for existence in the long-term interest of the broader society.

28. Steering of universities should not be governed by state dictat or regulations but rather by incentives.

29. Forms of problematic state intervention relates to measures that will curb individual and institutional academic autonomy directly. It would be unfounded interference for the state to should regulate/steer the delivery quotas of universities towards particular categories of science graduates or, equally, that business.market forces should regulate the student intake of universities.

30. Other examples relate to limiting or suspending state subsidies for certain fields of study or limiting research funds to certain areas only.

31. This highlights an important principle: that the state has a basic responsibility for enabling public universities to offer academically meaningful, balanced and comprehensive programmes and to engage in a core level of research. This implies that sufficient public funding should be made available, without prescription or strings or steering mechanisms attached, to secure a foundation for the existence and healthy functioning of a university.

32. This means that criteria for funding may never be so narrow as to only reflect market needs or development needs or political objectives. If the State does want to have a specific policy influence on the direction and activities of HE institutions, that should come over and above the basic funding responsibility noted above. Additional funding in the form of incentives would be appropriate.

33. An example of this is the current imperative for university to be engaged in addressing the problems of South African and of the African continent. The university should take up its responsibility in community involvement through its mode 2 knowledge application enterprises in partnership with the state and
other stakeholders, but universities should be assisted through earmarked funding to fulfil its social responsibility.

34. If state funding is done on the basis only of priorities of the state, virtually nothing remains of institutional autonomy as far as academic programmes and research foci are concerned. (It should also be kept in mind that state funding only accounts for more or less 50% of the financial needs of institutions.)

35. To repeat: In order to preserve the core of academic freedom, state intervention via funding can then be done with supplementary funding for certain prioritized areas of study, but only once the minimum that is needed for the offering of balanced and comprehensive programmes and core research programmes, has been supplied.

36. Each institution should have the freedom to choose methods and mechanisms in order to abide thereto, i.e. freedom within set boundaries. The state should regulate the abiding to these principles but respect the individual institution’s freedom of ways of application.

In conclusion:

In the proposed CHE investigation/research report, Prof. Saleem Badat's letter mentions three areas (bullets on page 1) of inquiry:

- Appropriate nature and modes of government involvement in higher education transformation: Our contention is that the state should not in a quasi-totalitarian manner ‘colonise’ the whole of the public sphere and civic domain, including universities. In its own right the domain of learning, scientific discovery, academic development and scholarly debate constitutes one of the prime non-state areas of the public sphere, and respect for this sphere by the state is a cornerstone of a healthy HE sector and a healthy society, benefiting from the critical inquiry role and independent scholarship of universities.
• Appropriate relationships between government, other bodies with higher education regulatory functions, and higher education institutions: These can be conceived of in a coherent framework as the one suggested above. Urgent steps should be taken to prevent these relationships from degenerating to homogenising systems, administrative machinations and strategic manipulations. Instead open and continuous critical discourse should be promoted at all levels within universities and between universities and the relevant government departments.

• Appropriate conceptions of institutional autonomy, academic freedom and public accountability: None of the definitions of (individual) academic freedom, institutional autonomy and public accountability (1997 White Paper on Higher Education) include the notions of critical discourse, critical questioning, critical positioning or critique. Surely these concepts are crucial in any academic, scientific or educational enterprise. The contribution of universities to the struggle would not have been possible in the absence of intellectuals’ and universities’ critical functions. The absence of these notions in current higher education discourse should be rectified to prevent universities from becoming mere instruments of the state of the views of a particular government in a particular period in history.

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