

STATE INVOLVEMENT AND THE ISSUES OF ACADEMIC FREEDOM, AUTONOMY AND ACCOUNTABILITY

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A. THE RIGHT TO ACADEMIC FREEDOM

1. My point of departure is the Constitution: it is the supreme law and everything and everybody is subject to the Constitution.
2. Academic freedom is a constitutional right – section 16(1)(d). And the right must be given legal content.
3. Academic freedom refers to the freedom to engage in the practice of science. It consists of two components – teaching and research.
4. Summed up it comes down to the following: the right to determine on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study. (This was formulated in the fifties by the Davie-group of academics in reaction to the pressure imposed by the apartheid government. The formulation was incorporated into American law by the Supreme Court.)
5. Put differently:
 - freedom to teach and do research without outside interference
 - freedom to decide who shall teach and conduct research
 - freedom to decide who shall be admitted to study.

B. INSTITUTIONAL AUTONOMY

1. Academic freedom includes institutional autonomy, because many of the above elements must be determined and pursued collectively. (This is also accepted in USA case law and in the German Constitution.)
2. Autonomy refers to the self-governing power of the university to decide for itself on academic-related matters.
3. This includes matters such as appointments, promotions, dismissals, academic structures, teaching and research priorities, admission requirements, curricula content, assessment, and conferral of qualifications.
4. See the quote from the White Paper on Higher Education, p 7.
5. There may be tension between academic freedom of lecturers and autonomy – that is why we have peer review and academic structures within which we operate, but also, why in our internal structures we must keep our managers accountable.
6. Academic freedom is not an absolute right and, like all rights, it may be limited. The right does not exist for itself or for academics, but for the good of society. The right may be limited, but any limitation must be justified in terms of section 36 of the

Constitution (the limitation must be reasonable and justifiable in an open and democratic society).

C. CENTRALISATION OF HIGHER EDUCATION

1. Higher education is the terrain where academic freedom is primarily practised.
2. For understandable reasons, the state wants to steer higher education in a particular direction – to eradicate apartheid, to enhance access, to improve quality, and so on. However, there is a line that should not be crossed in exercising control over higher education, otherwise academic freedom and eventually quality education, will suffer.
3. Through the Higher Education Act higher education has been put under the direct control of the Minister, and has been centralised to the degree that it has become a single, integrated, state-controlled machine. It is this phenomenon that actually gave rise to the present debate and this investigation by the CHE. I have stated my views elsewhere, and here I only sum them up.
4. Through mergers, the size and shape idea, setting of targets, redirection and (the envisaged) centralisation of registrations, standardisation of curricula and qualifications, and funding conditions, higher education has been moulded on a grand scale into a tool at the disposal of the state to produce qualified people for the purposes determined by the state.
5. The government has to a large extent taken control of the higher education field in the broad sense, as well as of even the smallest details of university decision-making and of the practice of our academic work. This is ideological and bureaucratic interference at its best. It is all for a good cause, but the spin-off will eventually be devastating.
6. This approach has transformed the traditional reflective educational process that spawns excellence into a conveyor belt of mass produced degrees, diplomas and certificates. We have become state-run qualifications factories. It is not only bad for education; it also violates our constitutional right to academic freedom and the autonomy of universities. (The CHE report on good governance itself refers to “conditional autonomy” (p 46), conceding that something has changed.)
(Should you argue that I exaggerate and that we are not there yet, do you then concede that we are indeed on our way there? If you do, my question is what are we going to do to turn the tide? If you say we cannot do much, my question is what difference does it then make whether I say we are there or that we are on our way there? If you say we should not do anything, because what happens is the right thing, I can simply answer that nowhere in the world where the state took over higher education did higher education benefit from such interference.)

D. ACCOUNTABILITY

1. One of the objectives of state intervention is to enhance the accountability of higher education institutions (White Paper 1997). I want to comment on this and make a suggestion.

2. Accountability is primarily a political term – it refers to the duty of executive structures, including organs of state, towards the legislature as the elected representative of the people. This is one of the ways in which responsible democratic government is ensured. And this is also the meaning of accountability in sections 1, 55(2) and 195(1)(f) of the Constitution.
3. See the definition of accountability in the White Paper on Higher Education p 7.
4. That universities must be accountable is beyond question – they are not ivory towers, but organs of state, and they receive public money. Of course they must explain how they spend that money.
5. Current measures for accountability include:
 - oversight by Parliament over organs of state (section 55)
 - principles of public administration
 - the Promotion of Administrative Justice Act, the Public Protector, the South African Human Rights Commission, etc
 - public scrutiny, inter alia by the media.
6. **Accountability should not be confused with executive control, or with channeling such accountability through the executive:**
 - We do not increase the accountability of institutions of higher education by centralising power over them – that is a fallacy.
 - Accountability means to take responsibility on one's **own behalf**, not via another. Increased control by the executive actually reduces the accountability of universities because now they are subject to the executive, are responsible for less, and can just defer to the latter.
 - Accountability is not strengthened but weakened by **transferring** the responsibility to another functionary which is itself accountable. How can the Minister take responsibility for 23 odd institutions in addition to her own Department? It actually impedes Parliament's scrutinising function over organs of state and therefore its democratic duty on behalf of the electorate.
 - My suggestion is we make universities directly accountable to Parliament. Direct accountability to Parliament will bring academic freedom and public accountability into **balance**: universities can then explain directly to the people to what end they use their freedom and autonomy.
 - Existing measures for accountability could be strengthened: (i) annual reports to Parliament scrutinised by the education portfolio committee, or a special subcommittee. (ii) evidence before the committee, e.g. by the Vice-Chancellor appearing in person. Reports should be published to inform the public. (One can talk about implementation if the principle is agreed to.)
 - This sounds so much more in line not only with accountability but also academic freedom, than to pile on the responsibility upon the Minister.

E. CONCLUSION

1. Universities do not exist for their own sake and academic freedom is not a goal in itself. Universities are there for the benefit of society and academic freedom and autonomy are simply the rules required to allow universities to function optimally. The purpose of these principles is not to isolate (insulate?) universities from society, but to position them better in order to serve society.
2. Academic freedom and university autonomy are dynamic and flexible concepts and may adapt to different times and needs. A core remains, however, which must be protected for the sake of the freedom necessary to practise science, and for the sake of a democratic society itself. We must not sacrifice academic freedom as a basic constitutional right for the sake of short term goals. A democratic society is nothing if it is not also about freedom. After all, what was achieved above all else in the nineties was freedom.
3. Universities and lecturers must be allowed the freedom to test the frontiers of knowledge and to pursue science wherever it may lead them. The real contribution of universities is to promote all forms of knowledge. That is the only way in which they can fulfil their obligation towards society.
4. The state and universities should both appreciate their respective roles in a democratic society. Both serve society and their relationship should be one of partnership and co-operation, and not one of unilateral and prescriptive conduct from the side of the state. The state may have commendable objectives to transform society, but if in implementing its policies it erodes basic but also fragile principles of freedom, it will undermine the very objective it pursues – a stable democracy and a better life for all.
5. When I listen to some of the motivations for state intervention in higher education, I realise there are deep philosophical issues and differences at stake. It is a question of whether we see society as a single homogeneous entity in which all its components are simply tools requiring regulation and control in order to organise and structure society according to the views of those who believe they know what is best for everybody, or whether we accept society as a pluralistic organism in which freedom and autonomy of the individual and of various components are valued as essential elements of a free society; moreover, as the true acknowledgement of people's human dignity and the very key to unlock our true potential and realise the best for society as a whole. I choose the latter approach.