



Council on Higher Education

Autonomy as a Social Compact

Research Report

by André du Toit

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Council on Higher Education

Autonomy as a Social Compact

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Institutional Autonomy and Academic Freedom (HEIAAF)*

by André du Toit

Autonomy as a Social Compact

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PREFACE

This paper by André du Toit of the University of Cape Town (UCT) 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 fora, 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 purpose 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

February 2007

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André du Toit is Emeritus Professor of Political Studies at the University of Cape Town. Educated at the universities of Stellenbosch and Leiden in the Netherlands, he taught in the departments of Political Philosophy at Stellenbosch University and of Political Studies at UCT. At different times he was a Fellow and/or Visiting Professor at Yale, Harvard, Princeton, the Free University in Amsterdam and Århus University in Denmark. His main teaching and research interests are in political philosophy, political ethics, South African intellectual and political history and transitional justice. He is (co-)author of *South Africa's Political Alternatives* (SPROCAS, 1973), *Afrikaner Political Thought 1780-1850* (with Hermann Giliomee, 1983), *Political Violence and the Struggle in South Africa* (with Chabani Manganyi, 1990), *Towards Democracy: Public Accountability in South Africa* (1991) and a large number of scholarly articles in such journals as *American Historical Review*, *Comparative Studies in Society and History*, *South African Historical Journal*, *Les Temps Modernes*, *SA Journal of Philosophy*, *Politique Africaine*, *Journal of Southern African Studies*, *Politikon*, and *Journal of Natal and Zulu History*. Relevant recent publications include "From Autonomy to Accountability: Academic Freedom under Threat in South Africa?" *Social Dynamics* 26 (2000) 76-133; "Critic and Citizen: The Intellectual, Transformation and Academic Freedom", *Pretexts: Literary and Cultural Studies* 9 (2000) 91-104; "The Legacy of Daantjie Oosthuizen: Revisiting the Liberal Defence of Academic Freedom", *African Sociological Review* 9 (2005) 40-61; and "Sokratiese Vryheid aan 'n Volksuniversiteit", in D Hertzog *et al.* (eds), *Gesprek Sonder Grense* (2006): 94-111.

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ACRONYMS

AAC	Association of American Colleges
AAU	Association of American Universities
AAUP	Association of American University Professors
ANC	African National Congress
AUT	Advisory Council for Universities and Technikons
CHE	Council on Higher Education
CHET	Centre for Higher Education Transformation
CODESRIA	Council for the Development of Social Science Research in Africa
CUP	Committee of University Principals
DoE	Department of Education
EU	European Union
HAI	Historically Advantaged Institution
HDI	Historically Disadvantaged Institution
HESA	Higher Education South Africa
HOD	Head of Department
IAU	International Association of Universities
IMF	International Monetary Fund
NCHE	National Commission on Higher Education
NPHE	National Plan for Higher Education
NWG	National Working Group
SAPSE	South African Post-Secondary Education
SAUVCA	South African Universities Vice-Chancellors Association
UAC	University Advisory Committee
UCT	University of Cape Town
UGC	University Grants Committee
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNISA	University of South Africa
US	United States

AUTONOMY AS A SOCIAL COMPACT BY ANDRÉ DU TOIT

EXECUTIVE SUMMARY

This report is a preliminary exploration of the potential of a ‘social compact approach’ for building shared understandings of academic freedom, institutional autonomy and accountability in contemporary South African higher education. The social compact approach is distinguished by its focus on institutional culture(s) in the light of historical trends and shifts, and on underlying social patterns and structural modes of governance – in contrast to approaches which take as their point of departure normative principles of academic freedom and autonomy or develop policy frameworks for the relation between university, state and society.

In broad outline, the report explores the underpinnings of a historical, albeit implicit, social compact between universities and the state, as evidenced by high levels of university autonomy in many countries in the mid-20th century; asks why this underlying pact began to break down and with what consequences for academic freedom and autonomy; and suggests possibilities for restoring a compact for autonomy as an effective defence of academic freedom in South Africa. The report comprises two parts. *Part 1* develops an analytical framework for a social compact approach. *Part 2* analyses the general implications of a social compact approach for the key issues of autonomy, academic freedom and accountability and applies these to the South African case. In so doing, the report lays the groundwork for future research into concrete issues of academic freedom in a possible social compact between South African higher education and society, such as: the need for professionalising academic tenure as a means of transforming the institutional culture of universities in terms of the freedom of research and teaching; and the basic problem of student access to, or exclusion from, the university as the core issue of the freedom to learn at the level of higher education. The following paragraphs outline the report’s more detailed arguments and findings.

Subsection 1.1 highlights aspects of the challenge of (re-)negotiating a comprehensive and enduring social accord for the contemporary university, including developing an understanding of different notions of what kind of university is needed for what kind of society; what university and society expect from each other; how the university fits into a democratic society; and how university, government and society influence one another. This scan of the terrain concludes that any attempt to address such questions must be rooted in an appropriate conceptualisation of academic freedom and institutional autonomy.

The report’s central framework for such a conceptualisation is introduced in *subsection 1.2*. Academic freedom is presented as a constitutive principle for the modern research university, while also recognising that particular aspects of academic freedom will be variously uncontroversial or highly contested, depending on different political cultures and divergent historical trajectories. Key distinctions in understandings of academic freedom are discussed in

relation to the main trajectories – in the Anglo-Saxon world, continental Europe and (South) Africa – of the development of the modern research university. An encompassing framework for analysing claims to academic freedom in relation to autonomy and accountability is proposed, based on Graeme Moodie’s tripartite formulation of academic freedom. The three components of academic freedom as a composite ideal are: 1) *scholarly freedom* (individual academic freedom), 2) *academic rule* (in university governance) and, 3) the *institutional autonomy* of the university (in its external relations to state and society). The question is raised regarding the potential for conflict between these different components, e.g. the ways in which institutional autonomy under certain conditions may serve as the capstone of academic freedom but under other conditions might come to threaten scholarly freedom and academic rule.

In subsection 1.3 the three components of the composite ideal of academic freedom are developed into a more systematic analytical framework through an interrogation of potential internal and external threats applicable to each. *Scholarly freedom (subsections 1.3.1 and 1.3.2)* is the necessary condition of the development of research and teaching in specialised scholarly disciplines involving the collegial association of scholarly peers. It is argued that scholarly freedom necessarily involves a disabling restriction/exclusion of the lay public as a counterpart to inclusion of qualified scholars in “communities of the competent” (Haskell). A core question becomes: why should or could a democratic society and state agree to such autonomous in-group empowerment of the scholarly community? Scholarly freedom in this special sense is distinguished from the general right to political free speech. An examination of the relationship between scholarly freedom and freedom of speech in a variety of historical/cultural contexts leads to the conclusion that, in South Africa today, despite the recognition of both academic freedom and freedom of speech in the Constitution, effective ways have yet to be consolidated to protect the public free speech rights of academics in extra-curricular contexts, for example, where academics as university employees come into conflict with their institutional administrations. Neither does scholarly freedom necessarily depend on collegial self-governance or *academic rule (subsection 1.3.3)*, although specific forms of academic rule – the professorial chair, the academic department, the academic Senate – could, even if potentially corruptible in practice, serve to sustain and protect (professionalised) scholarly freedom. In turn, while *institutional autonomy (subsection 1.3.4)* is often taken to be equivalent to academic freedom, or as the ultimate capstone of scholarly freedom and academic rule, it is argued here that it is not a necessary condition for academic freedom and may even develop into a powerful internal threat against it. A four-part schema developed by Johan P Olsen – the university as 1) a community of scholars, 2) an instrument for national purposes, 3) a representative democracy, or 4) a service enterprise embedded in competitive markets – is used to illustrate that the significance and function of institutional autonomy shifts according to the way in which relations between university, state and society are conceived. Under an *instrumental* or *political* vision of the university, institutional autonomy may be negatively valued; under a *constitutive* or *market* vision it will be positively valued for opposite reasons. Likewise, a *functional conception* of institutional autonomy is primarily concerned with the extent to which a university as an institutional whole functions independently without undue interference by external parties or forces; in contrast, a *substantive conception* sees the sustaining and protection of academic rule

and scholarly freedom as a necessary condition of institutional autonomy. It is argued that when institutional autonomy is primarily conceived in functional terms, then an executive management no longer fully committed to the core values of the academic and scholarly enterprise may come to constitute a threat to academic freedom.

Subsection 1.4 highlights the difference between a social compact approach as an *analytical framework* and as a *historical development and social reality*, noting that historical and comparative instances of social compacts for autonomy (in their various forms) may be explored in their own right and with a view to developing a more general analytical framework for understanding the elements, dynamics and enabling conditions for such compacts. For this reason, the second part of the report uses both a comparative context (including examination of more general academic cultures at work in university traditions in the United States, Britain, continental Europe, and Africa) and the South African case to explore core analytical questions about: the relevance of social compacts for autonomy in the contexts of scholarly disciplines, of university governance, and of economy and society; the mode of social compacts for autonomy (formal, informal, ‘theorised’); the terms, scope and objectives of social compacts for autonomy; and the relevant causal factors and conditions for these compacts.

Subsection 2.1 considers the apparent paradox of academic freedom as involving a social compact for autonomy. It finds that in practice the historical reality of such a social compact for autonomy – in Anglo-American and European societies, and even in South Africa making due allowance for historical distortions – can in part be accounted for by the changing stakes of the state and society in the university. Traditionally, universities had been elitist teaching institutions of relatively marginal economic and political significance, the autonomy of which could be implicitly tolerated as of little general consequence. In the 20th century two shifts changed this equation: *an institutional shift* from elitist teaching colleges to the emergence of the modern research university along with the democratisation and massification of higher education, and *a conceptual shift* from a constitutive conception of scholarly freedom to a social compact conception of academic freedom through the professionalisation of scholarship and the rise of the university-based academic profession. These created the conditions for a ‘high stakes’ social compact for autonomy that increasingly came under stress in various contexts. However, to some extent, post-colonial Africa must be viewed as an exception, as imported models of academic rule combined with socio-economic crises have tended to hinder the development of traditions of academic freedom and of the academic profession.

Subsection 2.2 examines comparative socio-political contexts and academic cultures as factors influencing social compacts for university autonomy. The analysis considers the relevant trajectories and features of the Anglo-Saxon academic culture, major continental European traditions, as well as the case of post-independence African universities (*subsection 2.2.1*), also comparing and contrasting these with the pattern of development of American academic culture (*subsection 2.2.2*). Drawing on the work of Guy Neave, an important distinction is made between the continental European “Roman” tradition of incorporating universities into the centralised nation state, and the British “Saxon” tradition of independently-founded university

communities co-ordinated by a facilitatory state – with the latter being more conducive to, or dependent on, some form of underlying compact. The latter tradition is found to have been transplanted to South Africa with the key difference that here universities were statutory creations. African universities elsewhere are seen as being closer to the “Roman” mode of incorporation in both pre- and post-colonial periods, although again no straightforward mirroring is found. American academic culture is found to exhibit a complex and eclectic mix of traditions, while the 1940 *Statement of Principles on Academic Freedom and Tenure* of the Association of American University Professors (AAUP) and the Association of American Colleges (AAC) provides a significant instance of a historical pact on internal university governance. The key finding (*subsection 2.2.3*) is that the prospects of a social compact for autonomy differ appreciably according to socio-political context and the way in which academic freedom is configured in context.

Subsection 2.3 focuses on scholarly freedom as a social compact, tracing the lineage of the professionalisation and hegemony of academic scholarship. It is argued (*subsection 2.3.1*) that the development of an academic *profession* was closely allied to pursuit of the ideals of the modern research university (unity of teaching and research), and the associated growth of academic and institutional self-confidence. However, from the mid-20th century, these achievements generated contradictory social and political demands upon universities that have increasingly come to undercut the hegemony of the academic profession (*subsection 2.3.2*). A key finding (*subsection 2.3.3*) is that under these complex conditions, in South Africa as elsewhere, the further professionalisation of academic work is a vital internal prerequisite for any external compact between universities and society.

Subsection 2.4 explores the extent to which academic rule involves an internal compact in university governance, noting that academic governance paradoxically involves both hierarchical and egalitarian dimensions. *Subsection 2.4.1* considers the governance structures in the core academic enterprise (collegialism) and *subsection 2.4.2* considers the relationship between academics and other sectors of the university community. Collegialism is found to represent an internal compact amongst academic peers, though that does not imply democratic association with non-peers. However, collegialism is tempered in practice by co-existing forms of hierarchical and ‘mixed’ governance: the professorial chair; the academic department, intermediate structures, such as faculties and schools, and the academic Senate; the histories and traditions associated with these in various contexts are discussed. The AAUP/AAC *Statement* in the US is found to represent a rare example of an internal pact in which representatives of management (university presidents) and of the organised academic professoriate agreed to the principles of academic freedom and academic rule as an appropriate structure of university governance. However, no historical or contemporary equivalent is identified in South Africa. In sum, the discussion concludes (*subsection 2.4.3*) that, while an internal compact binding academic peers is fundamental to academic life, academic authority must also be built on demonstrated scholarly credentials assured through hierarchical means. Therefore a strong and professionalised system of academic tenure is a necessary condition for protecting scholarly

freedom and ensuring academic rule within the university, whether or not this is based on any compact with the wider university community.

Subsection 2.5 proceeds to examine institutional autonomy of the university in social compact terms, culminating in a particular focus on the South African case. The discussion in *subsections 2.5.1 and 2.5.2* highlights, especially through an exploration of the British case in contrast to continental European examples, the fact that institutional autonomy in the university's external relations is not a necessary condition for scholarly freedom and academic rule within the university; that the institutional autonomy of the university has both external dimensions, in relation to state and society, and internal dimensions in terms of the relationship between executive management and the academic staff; that social compacts for autonomy may concern the university's substantive autonomy (including scholarly freedom and academic rule) or its functional autonomy only; that a shift from the former to the latter may entail a threat to internal academic freedom; and that such a shift may occur more easily where compacts between state and society have been implicit rather than explicit. In contexts where universities are recognised to be key resources for social and political development, 'high stakes' are involved in social pacts for institutional autonomy. *Subsection 2.5.3* discusses the possibility that under these circumstances the 'managerial revolution' inside universities may be aligning with governments' drive for accountable university performance, towards a new social compact in support of functional – rather than substantive – autonomy. This is considered to hold a potentially serious threat to scholarly freedom and academic rule.

Subsection 2.5.4 examines institutional autonomy as a social compact in the South African case. It argues (*subsection 2.5.4.1*) that institutional relations between universities and the state in South Africa were highly ambivalent prior to 1994. The undoubted serious violations by the apartheid state of the universities' institutional autonomy to decide on student access obscured the extent to which the state continued to respect elements of academic freedom. As a key example, under apartheid the liberal or 'open' universities were still allowed considerable institutional autonomy in terms of basic funding arrangements. Since 1994, the explicit framework for state-university relations has been the constitutionally-based higher education policy framework of 'co-operative governance', in which the state's role is one of steering, while institutional autonomy is exercised within the limits of accountability as related to transformation imperatives. The framework of 'co-operative governance' is considered for its potential in terms of the makings of a new social compact for autonomy. Even more than some important unintended consequences, it is found that specific policy interventions have shifted relations between the state and universities: most prominently, compulsory institutional restructuring has unquestionably entailed some violation of institutional autonomy (*subsection 2.5.4.2*). Yet it is argued (*subsection 2.5.4.3*) that these shifts have not followed from government direction alone, but have also entailed the influence of different forms of managerialism: 'strategic' (soft), 'entrepreneurial' (hard), 'transformative' and 'reformed collegial' (following categories used by Tembile Kulati and Teboho Moja). Under these conditions, the absence of intermediary

institutions between universities and the Department of Education has led to a breakdown of co-operative governance and thus to its 'unmaking' as a potential compact for accountable institutional autonomy. This breakdown is analysed in terms of three fault lines – between 'strong' and 'weak' institutions; between 'collegialists' and 'managerialists'; and between a national agenda of redress and equity and one of efficiency – which also serve to suggest potential future alliances for forging a new social compact for autonomy.

The report's conclusions are drawn in *subsection 2.6* which recapitulates central arguments in the report, while providing a particular focus on the potential resolution of tensions among autonomy, academic freedom and accountability. First (*subsection 2.6.1*), different notions of accountability are distinguished and described (functional and hierarchical, political and public, financial and fiduciary, and collegial). Second, the discussion in *subsection 2.6.2* relates the different kinds of accountability to the three components of academic freedom referenced throughout this report, and to different models of university organisation. A key conclusion is that while collegial accountability is core to scholarly freedom and academic rule, and is a vital component of institutional autonomy, a functional conception of institutional autonomy is in danger of reducing accountability to the minimalist terms of financial accountancy and 'quality assurance'. *Subsection 2.6.3* returns to an analysis of the breakdown of trust between universities and state and society, as a factor in the breakdown of former social compacts for university autonomy. It concludes that any new social compact should be based not on 'trust' but on accountable autonomy. Specifically, a new social compact is seen as involving three elements. The first element is professionalisation of the scholarly enterprise and of the institutional culture of university-based academics; this is the necessary condition for an internal pact for accountable, scholarly freedom, which also has external legitimacy in state and society. The second element is a strong academic tenure system buttressed by a system-wide representative and accountable academic staff association, and by the commitment of representatives of university leadership and executive management to substantive institutional autonomy; these create the conditions for an internal compact ensuring academic rule, based on strong scholarly qualifications. The third element is a complex institutional coalition for accountable substantive autonomy; its dual conditions are an external compact between executive management and the state – supported in practice by an intermediate system-wide representative forum of higher education institutions – and an internal compact between management and academic faculty within particular universities.

1. INTRODUCTION: A SOCIAL COMPACT APPROACH TO ACADEMIC FREEDOM, INSTITUTIONAL AUTONOMY AND ACCOUNTABILITY

1.1. A social compact for autonomy: crisis and challenge

This report sets out to provide a new and distinctive approach to current issues of academic freedom, institutional autonomy and accountability in the South African context and in comparative perspective. At the most general level, the report poses such questions as whether the increasing demands on the universities for greater and more effective ‘accountability’, often viewed as so many threats to *academic freedom* and *institutional autonomy*, may not rather be taken as indicative of a breakdown of former levels of trust in the relation between the university, on the one hand, and state and society, on the other. Put very crudely, the remarkable degree of effective autonomy enjoyed by the modern university in the mid-20th century reflected an underlying trust by society and state that universities would be of general benefit if left alone to pursue teaching, scholarship and research on their own terms and according to their own values and criteria. But that is no longer quite the case. On all sides, in other parts of the world but increasingly also in South Africa, there are calls that universities and academics must be more accountable, resulting in the introduction of various mechanisms and procedures for ‘quality assurance’, etc. Leaving aside the specifics of these measures, the calls indicate that universities are no longer trusted to benefit state and society if simply left to their own devices. The underlying social compact has broken down or, at the very least, is under serious threat. If so, then further questions arise as to the nature and content of that underlying social compact between the university, on the one hand, and state and society, on the other:

How and when did this compact come about?

What were its grounds or enabling conditions?

Why and how did this underlying social compact begin to break down?

What are the implications and consequences for academic freedom and institutional autonomy? and

What, if anything, might be done to restore the basic social trust necessary for the defence of academic freedom?

These are not the usual questions in local discussions of academic freedom, institutional autonomy and accountability. By and large, the prevailing approaches to these matters typically take one of two forms. One familiar kind of discussion consists in applying strongly normative notions of the nature of the university and academic freedom to current cases and developments. A good example of this is the continuing hold of the TB Davie formulation of “the four essential freedoms”,¹ especially in South African liberal defences of academic freedom and institutional autonomy against the perceived threats of external state interference in university affairs. A second and quite different kind of discussion is that of the many policy-oriented surveys and analyses of current developments in the field of higher education.² While the first type of approach is concerned with providing a principled and often rights-based perspective on current realities, running the risk of lapsing into abstract and ‘essentialist’ constructions of the nature of the university and academic freedom, the latter deliberately locates

itself in relation to the official policy framework and relevant developments in the domain of higher education, sometimes with a risk of losing sight of the enduring contours of the institutional forest for all the focus on more immediate policy trees. Instead, this report attempts to provide a complementary perspective on academic freedom, institutional autonomy and accountability, one that is more concerned with the intermediate realm of institutional culture in the light of historical trends and shifts, underlying social patterns and structural modes of governance. We will term this distinctive perspective that of a 'social compact' approach.

There have recently been various pointers to the need for a social compact approach of this kind. Thus the International Association of Universities (IAU), in the Preamble of their 1998 declaration on *Academic Freedom, University Autonomy and Social Responsibility*, reaffirmed these principles and redefined their implications "within the framework of a new **Social Contract** which sets out mutual responsibilities, rights and obligations between University and Society so that they may meet the challenges of the new Millennium" (IAU 1998: cf. Thorens 2006: 91).

There is, of course, a long-standing tradition of rights-based manifestos, declarations and international conventions proclaiming and reaffirming the principle of academic freedom as an essential civil and human right. Although academic freedom did not specifically feature in the classic French Declaration of the Rights of Man (1789) and was not incorporated in the US Bill of Rights (the first Amendment of 1791 only guaranteed the general political right of 'freedom of speech'), German constitutional law recognised *Wissenschaftsfreiheit* from 1848 (Richter 1992: 1834-1835). Academic freedom was included in the UN *General Declaration on Human Rights* (1948) and was subsequently further elaborated in such documents as the *International Covenant on Economic, Social and Cultural Rights* (1966), *The Bologna Magna Charta Universitatum* (1988), the Lima (1988), Kampala (1990) and Dar-es-Salaam (1990) *Declarations* and the UNESCO *Recommendations Concerning the Status of Higher Education Teaching Personnel* (1997). For our purposes, the striking aspect of the IAU Declaration is that it did not merely reaffirm academic freedom once more as an essential right but instead located this within the framework of the need for "a new social contract setting out the mutual responsibilities, rights and obligations between university and society". While the various declarations of rights effectively assume the existence of some relevant underlying social and political compact, the reference to a "new social contract" implies that this compact may no longer actually be in place and needs to be (re-)negotiated. In the new democratic South Africa, academic freedom and the freedom of scientific research have been explicitly included in article 16(1)(d) of the chapter on fundamental rights of the 1996 Constitution. While this may be of great symbolic significance it remains, in the absence of any specific decisions by the Constitutional Court, less clear how this constitutional right to academic freedom applies in a variety of practical contexts. Thus, to give an example to which we will return, the "conscience clauses" which were formerly a feature of some University Statutes no longer are in effect, and South African academics now fall under the new general labour legislation of 1995 in the same way as everyone else. What are the implications for some form of academic tenure, supposed to provide effective protection of academic freedom? As it now stands, it is not clear that the constitutional recognition of academic freedom can provide any direct

answer to this question. This may be compared with the position in the United States where the 1940 *Statement* of the Association of American University Professors (AAUP) and the Association of American Colleges (AAC) has long provided the basis for the highly formalised system of academic tenure operating in American universities and colleges. Strictly speaking, the 1940 *Statement* had no constitutional or legal basis; it came about as the outcome of a protracted process of negotiation and an eventual pact between the AAUP and AAC (Metzger 1990); at best it is an example of “very soft law” not policed by the courts (Van Alstyne 1990: 79) and its basic principles were only subsequently incorporated into constitutional law, eventually by the Supreme Court itself. For all this, the 1940 *Statement* and the underlying historical pact on which it is based have been immensely influential in shaping the American practice of academic freedom in general, and the system of academic tenure in particular.³ Compared to this, the recognition of academic freedom in the new South African Constitution remains an untested ideal. We will return in more detail to the significance of the 1940 AAUP/AAC Statement as a negotiated pact in subsection 2.4.2; at this stage, it serves to illustrate the basic difference between a rights-based principled affirmation of academic freedom and an approach concerned with the underlying social compacts involved.

In this light, it may be instructive to consider the following observations made by a seasoned observer of trends in comparative higher education at a CHET seminar in Cape Town in February 2005. Dr Peter Maassen observed:

“In South Africa, there may be a need to look at models where the state and higher education have arrived at *an agreement, a kind of social contract*, about what needs to be done. In terms of such an agreement, protection is to be given (by the state) and outcomes produced (by the sector) that could help the sector in dealing with the Treasury more effectively. This new relationship would have to be based on a vision of the role of higher education in the knowledge society, on what needs to be achieved in the next three or five years, on how the higher education sector connects with local and international agendas, and how the research agenda should be shaped.” (Maassen 2005; emphasis added)

Though Maassen conceives of this “agreement” or “social contract” as primarily between higher education institutions and the state, it is by no means restricted to these alone. His reference to the need for “a vision of the role of higher education in the knowledge society” indicates a more comprehensive notion of a ‘social contract’. The challenge here – in the dual context of a new knowledge economy in which society’s former trust in universities may have broken down – is to (re-)negotiate a comprehensive accord.

A helpful indication of what might be involved in such a ‘social compact’-approach is provided in Johan Olsen’s study of *The Institutional Dynamics of the (European) University* (2005). Olsen observes that in historical perspective the development of the modern university as a specialised institution committed to academic teaching and research was one part of the large-scale transformation from pre-modern to modern societies in Europe. As Max Weber outlined in his classic works of historical sociology, the academic world of the modern university constituted a particular institutional sphere distinct from other autonomous domains of the economy and the market, state and bureaucracy or religion:

“Institutional differentiation created interdependent but partly autonomous institutional spheres of thought and action based on different logics, norms and values, principles of organization and governance, resources and dynamics, such as democratic politics, market economy, religion, science, art, and civil society.” (Olsen 2005a: 6)

However, at the onset of the 21st century and in the context of European Union transformation Olsen notes, with reference to Wittrock’s (1993) article on the “three transformations” of the modern university that

“the University’s days of almost unquestioned pre-eminence as an instrument for coping with society’s problems have gone. Excellence has been developed in other institutional settings and the University is not necessarily the preferred site even for basic research. The distrust of public sector professionals has to some degree also spread to university employees and generated demands for external quality assurance and cost efficiency controls while massification has made it impossible for the University to guarantee upward social mobility for all students.” (Olsen 2005a: 35)

What this requires, he proposes, is precisely the need for (re-)negotiating the terms of the social contract between university and society:

“The current dynamics raise questions about the University’s long-term pact with society. What kind of University for what kind of society? What do the University and society expect from each other? How is the University assumed to fit into a democratic polity and society? To what extent and how, are the university, government and society supposed to influence each other?” (Olsen 2005a: 3)

From a historical and institutional perspective, Olsen argues, universities are based on underlying social pacts involving long-term cultural commitments:

“well-entrenched institutions reflect the historical experience of a community,... they take time to root and ... they are difficult to change.” (Olsen 2005a: 6)

However, in radically changing circumstances even entrenched institutions can encounter “widely-agreed-upon performance crises”, typically through the intrusion of values, criteria and procedures derived from other and alien institutional spheres. Olsen terms this a form of “institutional imperialism (which) ... may threaten to destroy what is distinctive about ... institutional spheres” (Olsen 2005a: 7). Evidently what he has in mind is the ‘managerial revolution’ of university governance with the consequent intrusion of market-based principles and a corporate business ethos in the institutional sphere of higher education. It is in this kind of crisis of confidence, both internally and externally, that questions must arise about the underlying social compact:

“There is, however, also institutional defense systems against invasion of alien norms. Typically, an institution under serious attack re-examines its pact with society and its rationale, identity and foundations ... Change, then, is affected by how strong is the University as an institution ... Is it likely to be able to counteract institutional imperialism and invasion of alien premises and re-examine its identity and pact with society? ... An implication is that the University’s ability to impact its own future and its ability to defend the position as a fiduciary institution dedicated to academic freedom and excellence will depend upon factors such as: How strong is the academic community today? What is its content – what foundational values and principles are it likely to give priority to? How

well does the University itself understand the processes and conditions that facilitate an academic community that honor academic quality and how are these principles explained to an audience largely ignorant of the nature of academic work and scholarly identity?" (Olsen 2005a: 7, 29, 32)

Olsen concludes that what will be required from universities in order to ensure the protection of academic freedom is precisely not the unilateral assertion of their own autonomy in rejection of demands for accountability but rather the paradox of getting state and society to agree to the principles of an 'autonomy pact' for the universities:

"In democracies the confidence of citizens and elected representatives is in the last instance decisive for how far institutional autonomy will reach and what will be an institution's legitimate role in the social order ... One way to generate support for the University is to convince the public that a well-functioning democracy requires a (partly) autonomous university." (Olsen 2005a: 36, 37)

What this suggests, in effect, is the notion of the need for a new 'social pact for autonomy': while the former underlying social compact can no longer be relied on to provide the necessary guarantees for the protection of academic freedom and institutional autonomy, the challenge must be to negotiate a revised 'autonomy pact' appropriate to the different conditions of the new knowledge economy and globalising processes.

The distinctive nature of this notion of universities (re-)negotiating their underlying social pact for autonomy may be clarified by contrasting it with the competing notions of *the responsive university* (Keith 1998) and/or that of *the enterprise university* (Marginson and Considine 1993). In both cases, the idea is that, in response to changing social conditions and demands, universities should change the distinctive nature of their academic operations (if they have not already done so) in ways which would effectively amount to a capitulation of their traditional autonomy claims. Thus for Kent M Keith, adapting to the new 21st century context implies the need for universities to be more "responsive" in both their internal and external relationships:

"Responsive colleges and universities will need new external relationships, including social partnerships with the communities and regions they serve, partnerships with government policy makers, and joint ventures with other institutions ... We will need to be student centered in our undergraduate programs, community centered in our outreach programs, and nation centered in our research activities ... The responsive university will be closely connected with many publics and will be in constant conversation with them. The conversations which take place in new social partnerships will be different from those most faculty engage in at present. Faculty members ... will have new behaviors and 'languages' to learn." (Keith 1998: 164, 168)

Keith makes it clear that entering into these new social partnerships will force the "responsive university" to accommodate its traditional and distinctive academic practices to the very different dynamics of the outside worlds of business, labour, politics and popular culture. Such new social partnerships are not the same thing as a social pact for autonomy; rather, the "responsive university" is defined as one that will no longer insist on maintaining autonomy even in the sphere of academic affairs. Similarly Marginson and Considine have documented the emergence of "the enterprise university" as a dominant form in Australian higher education by the 1990s.

So far from insisting on its autonomy in any serious sense, the university itself is conceived as basically an economic enterprise or a service station operating in regional or global markets. Research and higher education are commodities, bundles of goods to be sold in a free market (Marginson & Considine 1993; Olsen 2005a: 12).

Of course, the notion of negotiating a new and revised social pact for autonomy merely outlines the challenge currently facing universities and does not of itself provide any answers. Indeed, on the face of it the notion of autonomy as a social compact is paradoxical, if not contradictory, and poses the question:

Under what conditions would state and society be prepared to subscribe to a compact allowing a basic and significant measure of autonomy to universities in academic affairs? If the history of the modern university shows that in significant cases a social pact of this kind did actually operate for a good part of the 20th century, then the more recent history indicates that in various important ways this is no longer the case. This must pose the further questions:

Is it conceivable in current conditions that the former social compact for autonomy could be restored, and how should that be achieved?

However, in order even to begin to address these questions we need first to clarify the meaning of autonomy and academic freedom in much more specific terms. Our first order of business must be to develop an appropriate conceptualisation of academic freedom and autonomy.

1.2. Conceptualising academic freedom

Academic freedom is a complex ideal, and the relation of its various constitutive elements and composite parts to autonomy and accountability is neither obvious nor straightforward. Its application in a range of different contexts – in the professional context of the various scholarly disciplines, in the internal governance of teaching and research within the university, and in the external relationships of the university to state and society – typically tends to raise rather different kinds of issues. Moreover, depending on the different political cultures and divergent historical trajectories of universities in the Anglo-Saxon world compared to continental Europe – not even to mention their position in Latin America or Africa and the developing world – certain aspects of academic freedom may be taken for granted as uncontroversial, while others may become highly contested. In practice, this can easily lead to confusion, either conflating academic freedom with related but distinct notions such as freedom of speech, or identifying it with one of its component parts such as institutional autonomy. For our purposes, it is essential to avoid these confusions and to develop a clear and consistent set of conceptual distinctions.

Though institutions of higher education have existed at various times and in different places in which academic freedom was severely circumscribed (de George 1997: 55), academic freedom is nothing less than a constitutive principle for the modern research university. In the words of Louis Menand, it is the key legitimating concept of the academic enterprise:

“Academic freedom is not simply a kind of bonus enjoyed by workers within the system, a philosophical luxury, universities could function just as effectively, and much more efficiently, without. It is the key legitimating concept of the entire enterprise ... [Academic

freedom] establishes a zone of protection and self-regulation in the interests of furthering the end of academic activity – that is, of teaching and inquiry.” (Menand 1996: 4, 6)

The seminal formulations of these constitutive principles of academic freedom for the modern research university were those of *Lehrfreiheit* (freedom of teaching and inquiry⁴) and *Lernfreiheit* (freedom of learning) elaborated in 19th century Germany following the Humboldtian reforms. Significantly, these articulations of the constitutive principles of academic freedom did not emerge in the context of a liberal society or a democratic political culture but in the hierarchical and authoritarian setting of 19th century Prussia where universities did not enjoy institutional autonomy but were institutions of state, and professors were appointed by the minister as part of the civil service. In this context, as Matthew Finkin explains,

“*Lehrfreiheit*’ meant that associate and full professors, who were salaried government officials working in universities supported by the state ... could determine the contents of their courses and impart the findings of their inquiries without seeking ministerial approval or fearing ministerial reproof.” (Finkin 1983)

When these German ideals of *Lehrfreiheit* and *Lernfreiheit* were taken up and transplanted to the United States at the end of the 19th century as inspiration for developing the American research university on the German model, they underwent significant modifications and elaborations. The seminal 1915 AAUP Report of the Committee on Academic Freedom and Tenure, as manifesto of the modernising academic profession, started out by explicitly basing itself on the dual principles of *Lehrfreiheit* and *Lernfreiheit*, but then effectively proceeded to ignore the latter while expanding the former into something closer to the political right of free speech. As Metzger’s authoritative account points out:

“These theorists [of the 1915 AAUP Report] had no room in their blueprint for *Lernfreiheit* or student freedom; only faculty members were to be the beneficiaries of their call for trustee restraint. They expanded the boundaries of *Lehrfreiheit* to include not only the freedom of the faculty to teach and do research without fear of censorship – the German two-part convention – but also the freedom of the faculty to talk and write about matters outside their certified area of competence and unrelated to their professional duties.” (Metzger 1990: 15)

It may strike us as surprising that in the transplantation from the authoritarian context of 19th century Germany to the democratic setting of America it should be the focus on the right of *student* access and learning which disappeared from the core formulation of academic freedom. No less surprising is the same omission in the TB Davie formulation of the “four essential freedoms” in the South African apartheid context of the 1950s, as noted by some astute external observers: “Conspicuously absent was any reference to the freedom of students to study where and what they wished” (Moodie 1996: 131⁵). After all, the immediate object of protest in this case was the exclusion of black students from access to higher education in apartheid South Africa. Even so, the ‘Open Universities’ did *not* so much set out to assert the principle of *Lernfreiheit*, or the right of qualified students to higher education; rather, it was precisely concerned with the right “*of a university* to determine for itself on academic grounds ... who may be admitted to study” (The Open Universities in South Africa 1957: 11-12). It was the institutional autonomy of the universities that was taken to be at the heart of the defence of academic freedom.

In both cases, the approach was in line with the primary concern with academic freedom as a

matter of institutional autonomy typical of the British tradition and of the Anglo-Saxon world more generally. Unlike universities in continental Europe, British universities have historically enjoyed a substantial measure of self-government or institutional autonomy from the state, and, in consequence, academic freedom has tended to become conflated with institutional autonomy (Moodie 1996: 147; Pritchard 1998: 102). But as Eric Ashby has already observed:

“It is necessary to draw a distinction between the corporate freedom of a university and the academic freedom of teachers in a university. There is a distinction; the concepts are not synonymous.” (Ashby 1974)

The dangers of narrowing academic freedom too much to the issue of institutional autonomy were starkly revealed from the 1980s when the Thatcher government in Britain made a point of challenging just these assumptions (Tapper & Salter 1995). Alarming as the Thatcherite assaults on the conventional institutional prerogatives of British universities certainly were, they did not *ipso facto* bring about the demise of academic freedom in all respects.

The more serious and rigorous attempts to conceptualise academic freedom in the literature have accordingly suggested that we need to differentiate a number of distinct aspects or dimensions going together in the actual practice of academic freedom. The TB Davie formulation of the “four essential freedoms” provides a striking and elegant instance of this. No less an authority than Justice Frankfurter has termed this “perhaps the most poignant statement on academic freedom to appear anywhere” in the course of the landmark 1957 Supreme Court judgement *Sweezy v New Hampshire* (Van Alstyne 1990: 111); and it was also taken up in the US Carnegie Commission Report of 1982. Yet, as already noted, the “four essential freedoms” did not include the dimension of *Lernfreiheit*. To this we might add that remarkably the TB Davie formulation also omitted a specific reference to the dimension of research freedom itself – perhaps as a reflection of the fact that in the 1950s South African universities still conceived of themselves primarily as teaching universities, and did not yet aspire to the status of research universities.

Other formulations have delineated the composite aspects of academic freedom in different terms. Thus Richter has characterised the multifaceted significance of academic freedom

“a) as *freedom of opinion* ...; b) as *political freedom* ...; c) as *religious freedom* ...; d) as *individual freedom of teaching* ...; e) as *individual freedom of research* ...”

For good measure, he added that “academic freedom is also related to institutional autonomy, and to self-government, without, however, being identical to these” (Richter 1992: 1835). Similarly de George has identified three main aspects:

“Academic freedom has three aspects: institutional autonomy, student freedom to learn, and faculty freedom to teach and research. Each is restricted and each carries with it responsibilities.” (de George 1997: 55)

However, it is the tripartite set of distinctions suggested by Graeme Moodie that may be most helpful as an analytical framework for exploring issues of academic freedom in relation to autonomy and accountability. Starting with Moodie’s formulation of these distinctions, the report adapts and develops them for our own purposes.

In an important article on “Justifying Claims to Academic Freedom” in *Minerva* (1996), Moodie

argues that academic freedom involves three distinct claims relating to 1) (individual) academic freedom, 2) academic rule (within the university) and 3) the institutional autonomy of the university (in its external relations to state and society) (Moodie 1996: 131). To begin with, Moodie appears to conceive of 1) as an individual right, a negative liberty, “the absence of constraint upon or interference with the work of the individual scholar”. But he also notes that “in essence the modern claims for scholarly freedom derive from the nineteenth century German ideal of *Lehrfreiheit*, freedom of teaching and inquiry” and, rather than being a freedom from all constraints, inherently requires scholarly discipline and authority: “[Scholarly activities] have to be done in particular ways: in accordance with the traditions and methods of the discipline, even when criticising or seeking to improve them” (Moodie 1996: 137-138). This may be compared to Burton Clark’s notion of “discipline-based authority”, as a particular version of the Weberian notion of professional authority or expertise, a matter of impersonal standards shared by the discipline or profession, not of personal authority relations or individual rights (Clark 1983: 1); it may thus better be taken to refer to the dimension of *scholarly freedom*. This is the domain of Polanyi’s ‘republic of science’: “the pursuit of science by independent self-coordinated initiatives” which has no use for superordinate authority but relies on “essentially mutual authority ... established *between* scientists, not above them ... to assure the most efficient possible organisation of scientific progress” (Polanyi 1962: 56, 60). Its primary location is in the context of the various scholarly disciplines, collectively organised activities of research and inquiry depending on the co-operation and constraints of scholarly peers in a particular discipline. (Note that such scholarly disciplines are not confined to particular universities; historically they were based in the “learned societies” of the Enlightenment world and since the end of the 19th century they have developed as professionalised national and international disciplinary associations.)

As against this, Moodie makes clear that both 2) *academic rule* and 3) *institutional autonomy* specifically involve the university as institution, though in different contexts. Especially in the British tradition, where historical practice has tended to combine institutional autonomy (in the university’s external relations) with academic rule (in their internal mode of governance), they are often conflated at a conceptual level: “ ... in Britain academic rule has rarely been distinguished from university or institutional autonomy ... for academics have, broadly speaking, ruled within universities” (Moodie 1996: 147). In principle, though, academic rule, defined as the self-government or rule by academics within the internal governance structures of the university, clearly differs both from scholarly freedom in general and from the autonomy of the institutions in which most scholars work. This is the function of the various internal governance structures developed over time in modern universities: the professorial chair, the (collegial) department, academic faculty boards, the academic Senate – all of these are designed to ensure that in the university’s academic affairs academics themselves shall rule. As institutions universities, of course, are not confined to academic affairs only: they have property interests, require financial administration and specialised bureaucracies of various kinds; they interact with a range of stakeholders. Academic rule does not require that academics themselves should be in charge of all these non-academic aspects of the institution; it does require, though, that academic affairs should be recognised as the ‘core business’ of the university and that the overall

leadership of the institution (the President/Rector/Principal/Vice-Chancellor) be in the hands of (former) academics rather than professional managers and that Senate rather than Council retain the final say in academic affairs. We return (subsection 1.3.4) to the significance of what effectively amounts to a deliberate choice for “amateurism” in the executive management of the university, in preference to executives selected for their professional management and administrative expertise who are not necessarily fully committed to the core values of the academic enterprise as such (Epstein 1974: 103ff.).

With regard to 3) the *institutional autonomy* of the university – i.e. in the context of its various external interactions with the state, local communities or wider society, in relation to individual or corporate donors, etc. – it matters less whether academics themselves rule within the university. Here, the crucial question is that of the extent to which the university functions as an autonomous corporation with recognised powers of self-government secured from interference by external agencies, whether that of state or society. In the Anglo-Saxon tradition, where key universities were founded as independent corporations by royal charter, institutional autonomy is often assumed as an indispensable condition of academic freedom. In the continental European tradition, though, universities typically function as part of the state apparatus: professors are appointed by the minister and as civil servants; in Germany final examinations taken by future teachers and lawyers are *Staatsexamen*, i.e. state rather than university examinations (Pritchard 1998: 101); and in France universities offer national diplomas not university-designated degrees (Richter 1998: 58). Yet the leading German and French institutions of higher education are not therefore less than proper universities or without academic freedom. In South Africa, too, universities were historically statutory creations (Moodie 1994: 2). If the former high proportion of state funding of South African universities has more recently been significantly reduced, universities themselves remain closely tied into the state policy for the higher education sector. Even American private universities depend on high levels of federal research funding, so that the 1982 Carnegie Commission concluded that, “there is, in the strict sense, no such thing as autonomy on campus” (cited by Millet 1984: 214). More accurately, the extent of institutional autonomy enjoyed by universities in actual practice tends to be, in important senses, always conditional and limited. Rhoades comments that

“The language of Anglo-American academe is infused with an imagery of colleges and universities as autonomous corporations that is inappropriate to most higher education systems, in many ways even to American and British ones.” (Rhoades 1990: 1376)

Still, to the extent that universities can achieve a substantial degree of institutional autonomy in their external relations, this can provide, especially in conjunction with strong academic rule internally, the most effective bulwark against the infringement of academic freedom. That is why external threats to the institutional autonomy of the university, more especially through state interference in the university’s internal affairs, have often been taken as the major threat to academic freedom itself.

Ideally, the three distinct components of academic freedom – i.e. 1) scholarly freedom in the context of the scholarly disciplines, 2) academic rule in the internal structures of university governance, and 3) institutional autonomy in the universities’ external relations to state and

society – can and should complement and mutually reinforce one another. But, in practice, they do not always go together and in some ways may even come into conflict with one another. In such cases the threats to academic freedom are not only external, but may also be very much internal to the university itself. Eric Ashby followed his insistence on the need to distinguish between the corporate freedom of the university and the academic freedom of teachers in the university with the reminder that

“Indeed, a fully autonomous university can nevertheless challenge the academic freedom of its members ... and a university which is not autonomous can nevertheless safeguard the academic freedom of its members, as Prussian universities did in Wilhelm von Humboldt’s time.” (Ashby 1974)

This is confirmed by Johan Olsen, another seasoned observer:

“Historically there is ample evidence that the University’s identity and integrity can be threatened from outside. But conflicts are not necessarily between the University and the rest of society. More likely there are disagreements within the University ... Actors within the University can also threaten its identity and integrity ...” (Olsen 2005a: 37)

The potential of such internal threats to academic freedom necessitates further conceptual clarification, more especially of the precise sense in which each of these distinct components relate to basic autonomy claims.

1.3. An analytical framework for identifying external and internal threats to academic freedom

This section briefly explores such questions as the following in order to develop Moodie’s conceptual distinctions into a more systematic analytical framework for identifying both external and internal threats to academic freedom:

How is scholarly freedom related to freedom of speech and to intellectual freedom generally?

Can scholarly freedom be a threat to academic rule or institutional autonomy?

Would that also necessarily constitute a threat to academic freedom itself?

Conversely, in what sense, and under what conditions, might academic rule or institutional autonomy come to threaten scholarly freedom? and

Would such threats to scholarly freedom by academic rule or institutional autonomy necessarily constitute threats to academic freedom itself?

1.3.1. The autonomy of scholarly freedom as empowering discipline/disabling restriction

In so far as scholarly freedom of inquiry, research and teaching requires protection from external interference by the uninitiated lacking in the necessary disciplinary competence and expertise – be they politically powerful, able to dispose of economic resources or to wield cultural and social authority – it is a negative liberty. The scholarly commitment solely to follow the argument where it and the evidence lead, rules out all extraneous sources of epistemic authority. More importantly, though, scholarly freedom is a collective and productive practice functioning by virtue of self-imposed disciplinary constraints on the scholarly enterprise. In this sense, scholarly freedom, as a core constituent of academic freedom, “operates simultaneously as a liberty and

as a restriction” (Menand 1996: 7). Scholarly disciplines are self-defining “communities of the competent” (Haskell 1996: 44), based on claims to specialised epistemic authority serving both to empower and to exclude: they empower those whose work is recognised by their scholarly peers even while excluding those who do not measure up to these scholarly criteria and disciplinary procedures. Scholarly freedom thus crucially depends on the assertion of autonomy by a distinctive disciplinary ‘in-group’ and rules out any inclusive or democratic notion of freedom of opinion in matters of disciplinary knowledge. In the words of historian Thomas Haskell,

“Historically speaking, the heart and soul of academic freedom lie not in free speech but in professional autonomy and collegial selfgovernance. Academic freedom came into being as a defense of the disciplinary community ... and if it is to do the work we expect of it, it must continue to be at bottom a denial that anyone outside the community is fully competent to pass judgment on matters falling within the community’s domain ...” (Haskell 1996: 54)

Such autonomous scholarly and disciplinary communities may be linked to the university – indeed Haskell refers to the modern university as “an ensemble of such specialized disciplinary communities” (Haskell 1996: 54) – but do not themselves necessarily coincide with it. The university is not the natural or exclusive home of the disciplinary community. We may need to be reminded that the scientific revolutions beginning in the 17th and 18th centuries were not primarily based at the universities, but in the great ‘learned societies’ of the Age of Enlightenment. With the exception of the universities in Scotland, linked to the Scottish Enlightenment, even ancient universities like Oxford or Cambridge operated mainly as (often quite moribund) teaching colleges unconnected to ongoing scientific research and scholarship (Wagoner & Kellams 1992: 1677). “French Encyclopedism and the English Enlightenment flourished outside the universities” (Hofstadter & Metzger 1955: Vol 1, 371). The seminal breakthrough of the 19th century German research universities consisted precisely in establishing a vital link between research-based scholarship and teaching at the core of the university. Even so, the scholarly disciplines were not confined to the universities and elaborated their own concurrent and overlapping professional domains. As Haskell documents, the rise of the modern American research university from the end of the 19th century was closely associated with the emergence and consolidation of a range of new independent and professional disciplinary associations, such as the Modern Language Association (MLA; 1883), the American Historical Association (AHA; 1884), the American Economic Association (AEA; 1885), and many others in succeeding years (Haskell 1996: 43). A century later these had grown, in North America alone, to some 360 national and international disciplinary organisations, constituting a realm of “invisible colleges” (Wagoner & Kellams 1992: 1682). While individual scholars might be appointed to and based at different universities, it is their membership in these disciplinary associations or “invisible colleges” that is at the core of their scholarly and professional identities and activities. By such means as specialised scholarly journals and conferences under the auspices of nationally and internationally organised disciplinary associations, the community of scholars developed its own distinct realm of intellectual interaction and communication serving to buttress their assertion of epistemic autonomy:

“By keeping up a constant exchange of communications in the form of journal articles and books, as well as private correspondence and face-to-face conversations at periodic conventions, the members of these far-flung communities ... would police each other’s opinions and thus provide, in theory at least, a collective warrant for one another’s authority ... The result of the sharpened identity and growing solidarity of specialists was an effective monopoly on ‘sound opinion’ within their domain. The cardinal principle of professional autonomy is collegial self-governance; its inescapable corollary is that only one’s peers are competent to judge one’s performance.” (Haskell 1996: 46)

In an important sense the claim to autonomy at the heart of scholarly freedom thus refers to the specialised disciplinary association of scholarly peers in a more basic sense than to the collectivity of academic colleagues at a particular university. As Ashby observed in the 1970s:

“the academic finds that the claims of the guild of university teachers, demanding loyalty to the university he serves and the pupils under his care, can easily be overshadowed by the claims of a second guild to which he belongs: that of his peers in his specialism.” (Ashby 1974: 80)

More recently, the point has been elaborated by Louis Menand:

“A professor’s loyalty is ordinarily much greater to his or her discipline than it is to the particular campus he or she happens to have ended up working at – just as a lawyer’s loyalty to ‘the law’ is meant to supersede his or her loyalty to the particular firm he or she happens to practice in. That is what professional identity consists in, and one of the ways disinterestedness is supposed to be created. Academic freedom, as it is now structured, depends crucially on the autonomy and integrity of the disciplines.” (Menand 1996:17)

It should be clear that this is not just a point about the multiple loyalties characterising membership of modern academic communities within and beyond the university; more importantly, it means that academic freedom in general is marked by the same logic of disciplinary empowerment and disabling restrictions, of exclusion as the counterpart of inclusion. Indeed, this is the basic principle of intellectual organisation of the university as Menand explains:

“The research university is ... a virtual paradigm of professionalism: specialists within each specialized field have wide authority to determine who the new specialists will be, and in what the work of specialization properly consists. This authority insures a commensurably wide freedom of inquiry; but (and this is the important point) *only for the specialist*. For people who do not become members of the profession, this system constitutes not a freedom but an almost completely disabling restriction ... When we talk about the freedom of the academic to dictate the terms of his or her own work, we are also and unavoidably talking about the freedom to exclude, or to limit the exposure of, work that is not deemed to meet academic standards. Academic freedom is, at a basic level, an expression of self-interest: it is a freedom for academics. Non-academic intellectuals and scholars are required to operate without it.” (Menand 1996: 9)

Once we recognise the restrictive nature and exclusionary function of academic freedom in the context of the scholarly disciplines, it should also be clear that academic freedom must also be

inherently *problematic*, in the sense that such claims cannot be self-justifying. In a broader social perspective the question must arise:

Why should the lay public agree to their exclusion from and by the ‘communities of the competent’?

Likewise, in a broader political perspective the question must be:

Why should or could a democratic society and state agree to such autonomous in-group empowerment of the scholarly community?

These are nothing less than the basic issues at stake in a social compact for autonomy applied to academic freedom, and we shall return to this in later sections of this report. Meanwhile, we first need to delineate more closely the complex relation of the academic freedom involved in scholarly disciplines to freedom of speech and/or general intellectual freedom.

1.3.2. Scholarly discipline as distinct from freedom of speech and intellectual freedom

There is an obvious and rather trivial sense in which academic freedom is an instance of protected free speech. Without any protection of free speech, academic freedom would also fall away. Yet it would be a serious mistake, and generate major confusions, to conceive of academic freedom as little more than a subset of freedom of speech in the particular context of the university. In a liberal democracy, freedom of speech is a general political right of all citizens including academics. Academics, too, are citizens with the constitutional protection of political free speech. This does not amount to scholarly freedom but has everything to do with basic general political and civil rights: “Freedom of speech is a liberal constitutional right available to all citizens and not merely to scholars ... However, freedom of speech is not a basic right of scientific, but rather of political freedom of opinion” (Richter 1992: 1835, 1836). The ignorant, uneducated and uninformed lay public, whose views would never pass muster in scholarly and scientific circles, have equal protection in terms of freedom of opinion and speech; nor can academics and scientists claim any special rights to political free speech by virtue of their scholarly status.

Why, then, should there be any recognition of academic freedom, as distinct from the general political right to free speech, at all? One context where this can be of vital importance is that of an authoritarian state and society committed to the general values of science and scholarship. While no liberal democracy, 19th century Prussia was prepared to recognise *Lehrfreiheit* and *Lernfreiheit* as constitutive principles of the modern Humboldtian research university. In this sense, academic freedom was specifically restricted to scholarly contexts only: “The German idea of academic freedom stressed the freedom of the professor to teach his or her subject in the classroom and to conduct and report on research without any restrictions. It did not extend to professorial utterances or writings on other subjects” (Altbach 1991: 32). In so doing Prussia was an example of what might be termed an ‘enlightened autocracy’. Other authoritarian societies, autocracies and despotisms have been less enlightened, denying academic freedom along with the general rights of political free speech. In these cases academics have had to align their quest for recognition of academic freedom in particular with the general political struggle for civil and political rights, not least that of freedom of speech and opinion. Thus it is notable that such academic manifestos as the Lima, Kampala and Dar-es-Salaam *Declarations* from the 1980s and

early 1990s, in the context of popular movements for democratisation of repressive societies, deliberately set out to argue for the need for academic freedom as part and parcel of a more general package of human and democratic civil rights:

“We, as academics, intellectuals and purveyors of knowledge, have a human obligation and a social responsibility towards our People’s struggle for Rights, Freedom, Social Transformation and Human Emancipation ...” (Dar-es-Salaam Declaration 1990)

Significantly these *Declarations* tended to use the more general term “*intellectual freedom*” in preference to that of ‘academic freedom’ claimed for academics and scholars in particular. In its Preamble, the *Kampala Declaration* raises the banners of ‘intellectual freedom’ as the foundation for general democratic and human emancipation:

“Intellectual freedom in Africa is currently threatened to an unprecedented extent ... The struggle for intellectual freedom is an integral part of our struggle for human rights ... we, the African intellectual community have an obligation both to fight for our rights as well as to raise the rights consciousness of our people.” (Kampala Declaration 1990)

The *Kampala Declaration* then proceeds to enumerate the various “Intellectual Rights and Freedoms”, beginning with

“1. Every person has the right to education and participation in intellectual activity. ...”

and extending to

“22. The intellectual community has the responsibility to struggle for and participate in the struggle of the popular forces for their rights and emancipation.” (Kampala Declaration 1990)

In the politicised context of African democratisation at the time, this focus was important and entirely understandable (cf. Oloka-Onyango 1994: 339, 342-343), but it would be a serious mistake to equate the *intellectual freedom* with which these Declarations were concerned with academic or scholarly freedom. While scholars are presumably also intellectuals, not all intellectuals are necessarily academics or scholars, and intellectual freedom cannot be limited to the universities or scholarly circles only. Indeed, like general freedom of speech, *intellectual freedom*, in this sense, has an inclusive logic contrary to the exclusionary and disciplinary restrictions of scholarly “communities of the competent”. We must thus conclude that *intellectual freedom*, in the sense of the *Kampala Declaration*, is not synonymous with academic or scholarly freedom, and should rather be taken as equivalent to general political freedom of speech and opinion.

The question of a distinctive right to scholarly or academic freedom in the context of a liberal and democratic society still remains. Once the basic civic rights of free political speech, along with freedom of opinion, etc., have been assured, why should there be any further need for recognition of a distinctive scholarly freedom? This is the key problem posed by Moodie:

“It is arguable that academic freedom signifies only that academics share the personal and civic freedoms characteristic of liberal society. ... In a liberal society, it might follow, academic freedom requires no special justification.” (Moodie 1996: 129-130)

The same problem is posed by de George:

“Some have claimed that if freedom of speech were truly available to all, there would be no need for academic freedom. Academic freedom according to this view is simply a subset of freedom of speech.” (de George 1997: 55)

Both authors go on to explain that such views amount to a serious confusion of free speech with academic freedom, a confusion that entirely misses the distinctive nature of scholarly freedom. Somewhat ironically, the need for a special protection of academic freedom even in a democratic context where basic civic and political rights are constitutionally recognised, may appear from a closer look at the way in which the 19th century German ideal of *Lehrfreiheit* was modified and developed when transplanted to the democratic context of early 20th century America. As we already noted, in the context of the autocratic Prussian state, *Lehrfreiheit* did require a special recognition, though also one that was specifically limited to scholarly contexts and academic settings only: that German professors enjoyed scholarly freedom did *not* mean that outside the classroom and apart from their scholarly discipline they had general rights of free political speech. We might perhaps expect then that, transplanted to the political context of a democratic society like the US, where the right to freedom of speech is constitutionally entrenched under the First Amendment, the need for a special justification of scholarly freedom would fall away. Certainly one would not expect any special concern with assuring the right of professors to political free speech over and above their scholarly freedom in the classroom and in pursuing scholarly publications. Yet this was precisely a notable feature of the transplantation of the German ideal of *Lehrfreiheit* to the early manifestos of the AAUP from 1915:

“They expanded the boundaries of *Lehrfreiheit* to include not only the freedom of the faculty to teach and do research without fear of censorship – the German two-part convention – but also the freedom of the faculty to talk and write about matters outside their certified area of competence and unrelated to their professional duties.” (Metzger 1990: 15)

In other words, it was in democratic America that the political free speech of professors beyond the specialised areas of their scholarly competence was to be accorded special protection (Altbach 1991: 32). This appears to be counter-intuitive, even dangerous. While it would have amounted to a major breakthrough for professors in autocratic Prussia to have extended their scholarly freedoms to public free speech, it both appears as unnecessary and invites confusion of academic freedom with free speech to insist on this in the context of democratic America. On closer examination, though, the position turns out to have been more complex and a more specific rationale emerges. On the one hand, it soon became clear that in practice significant cases regarding academic freedom seldom arose from direct interference with scholarly freedom as such:

“Most AAUP leaders ... thought it had become more necessary than ever to protect the citizen in the academic. The passing years had only reaffirmed what the founders had discovered: that academic freedom was most vulnerable to attack not in the laboratory or in the lecture hall but in the civic forum ... The typical cause of an academic freedom violation was the dismissal either of a faculty member accused of riling an important public and thus bringing the institution into disrepute or else of a faculty member held to be insubordinate by administrators who equated loyalty to Alma Mater with subservience to themselves.” (Metzger 1990: 54; cf. Shils 1995: 251)

On the other hand, this was precisely what, for their part, the AAC University Presidents were most concerned with: while they had little difficulty in recognising the principle of scholarly freedom as such, it was the extra-curricular pronouncements of academics as university

employees which they determinedly sought to limit. Accordingly, this became one of the major bones of contention in the protracted negotiations between the AAUP and the AAC that eventually resulted in the pact of the 1940 *Statement* (Metzger 1990: 51f). The underlying issue here specifically concerned the position of academics, not just as scholars in their specialised disciplines but as employees of the university. At the time, during the opening decades of the 1900s, the US Supreme Court's First Amendment jurisprudence ruled that the protection of free speech was entirely consistent with contractual forms of prior restraint common in the business world:

“All employers were deemed to be unconstrained by the Constitution insofar as they might require that one suspend one's freedom of speech as a condition of holding an appointment or job ... [W]hen a speech restriction limiting what one might say or write was set forth in advance as a condition of one's employment, it was not thought to raise a first amendment question at all.” (Van Alstyne 1990: 83-84)

This meant that, if it was justifiable in a democracy and consistent with the constitutional protection of political free speech for business firms to bind their employees contractually to confidentiality agreements and even to dismiss them if their public statements or actions brought the firm into disrepute (Moodie 1996: 130), it was similarly justifiable for university administrations to impose the same constraints on the extra-curricular public speech of their academic employees. The question at stake was not why academics needed special protection for academic freedom in a democracy where everyone, academics included, already had equal civic liberties and the right to political free speech; rather, the more specific question was why the limitations on employees through contractual confidentiality agreements common and legitimate in the business world should not also apply to academics as employees of the university. More generally, the question was whether the university as an institution differed fundamentally from the business firm or corporation in that its employees, as academics and scholars, could not be legitimately constrained in their public speech, and that this was part of their academic freedom. It was the signal achievement of the pact underlying the 1940 *Statement* that the AAUP managed to get the AAC University Presidents to agree to the notion that the university was a different kind of institution, the academic employees of which had to be allowed free public speech, even if they tried to constrain this with vague notions of 'special obligations' incumbent on scholars:

“College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations.” (AAUP & AAC 1940)

Only by the late 1950s and in the 1960s was this distinctive and wider interpretation of public free speech rights for academics incorporated into the US Supreme Court's constitutional jurisprudence through such cases as *Sweezy* (1957), leading to Justice Brennan's celebrated pronouncement in *Keyishan* (1967) that

“Academic freedom ... is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom ... The classroom is peculiarly the marketplace of ideas. The Nation's future depends upon leaders trained

through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, [rather] than through any kind of authoritative selection.” (cited in Van Alstyne 1990: 113)

If this elevated academic freedom to a core principle of American constitutional law, it also bound it more tightly to the jurisprudence of freedom of speech (Fossey & Wood 2004: 54-55). On the one hand, the constitutional protection of academic freedom rights under the First Amendment actually applies more to the institutional autonomy of the university than to individual faculty members (Brown & Kurland 1990: 335; Van Alstyne 1990: 81). On the other hand, it is an open question whether the Supreme Court’s notion of the classroom as a “marketplace of ideas” combined with its rulings that “students do not lose their political freedom of opinion at the school doorstep” in cases like *Tinker* (1969) (cited in Richter 1992: 1838) is fully consistent with the distinctive qualities of scholarly freedom in learning and teaching – even if the *Lernfreiheit* of students is recognised, it does not follow that they have unconstrained free speech rights in the classroom equal to those of the lecturer or professor. From a free speech perspective, it is far from clear how the intellectual formation and disciplinary induction that takes place in academic teaching can be justified:

“There are many ways in which professors coerce their students into accepting their own point of view, or into ‘thinking like’ a critic or a scientist or a lawyer, and it is not always easy, as a theoretical matter, to explain why one type of coercion is permissible while another is not.” (Menand 1996: 15)

From a scholarly freedom perspective, though, the problem looks very different: it is accepted as intrinsic to scholarly activities that they will involve disciplinary restrictions on teaching and learning. In effect, scholarly freedom requires distinct limitations on general freedom of speech in the classroom and for purposes of scholarly discourse.

For our purposes, two different conclusions follow from this brief review of the relation between scholarly freedom and freedom of speech. Firstly, apart from the core notion of scholarly freedom as such, there are also more specific issues of academic freedom pertaining to the position of modern academics as employees of the university regarding their public free speech rights in extra-curricular contexts. In South Africa, too, this needs further clarification. As employees, academics now also fall under the new 1995 labour legislation in the same way as everyone else, while the spread of the ‘managerial revolution’ has inspired university executives to run these institutions more and more on strict business lines. Even though academic freedom has been enshrined in the new South African Constitution, it is not clear how this will protect academics whose controversial public statements may be deemed to bring their institutions ‘into disrepute’ or whose ‘line-managers’ may consider them guilty of ‘insubordination’ any more than the employees of business firms in similar situations. University management’s actions against Caroline White at the former University of Natal in Durban and Rob Shell at Rhodes University are obvious cases in point. In the new South African context as well, it may be necessary to find more effective ways not just to recognise the core principle of scholarly freedom, but to find effective ways of protecting ‘the citizen in the academic’, i.e. the extra-curricular free speech rights vital to an institution like the university unlike a business firm.

The second set of conclusions relates to the identification of internal and external threats to academic freedom. At the beginning of this section we posed the following two questions:

Can scholarly freedom be a threat to academic rule or institutional autonomy? and

Would that also necessarily constitute a threat to academic freedom itself?

The answer to the first of these questions must be that it is in principle always possible that the exercise of scholarly freedom may result in findings and publications which are embarrassing, unpopular or even harmful to a particular university department or its head, and to the university as an institution. But that does not mean that these therefore constitute a threat to academic freedom, or may legitimately be suppressed by the institution for such reasons. Indeed, it is not clear that the bona fide exercise of *scholarly freedom* could ever of itself amount to a threat to academic freedom. Consider the kind of cases alluded to above, where the university executive censures or dismisses an academic on account of the publication of his scholarly findings, or even for extra-curricular public statements and activities. These would be applications of *academic rule* or *institutional autonomy*, and in particular cases may amount to violations of academic freedom internal to the university. Now consider the kind of case where the peer review for a scholarly journal or disciplinary association deems the work of a colleague not of sufficient scholarly standard to be worthy of publication, or for the colleague to be admitted as member of the disciplinary association. Could these be considered possible threats to academic freedom? This would be a contradiction in terms, since such disciplinary restrictions are at the heart of *scholarly freedom* itself. This does not mean that scholarly associations never make mistakes, cannot be corrupt or do not need to observe due process requirements. But these are matters of professionalising the exercise of scholarly freedom itself, and not of external or internal threats to academic freedom. That follows from the autonomous nature of scholarly freedom in which only the in-group of scholarly peers can take responsibility for the quality of its exercise. We will return below to the issue of in what sense, and to whom, there can be any external accountability for the exercise of scholarly freedom consistent with its autonomous nature.

1.3.3. *Academic rule as protection of, and threat to, scholarly freedom*

While scholarly freedom does not necessarily require the institutional context of the university, and historically had other important roots, the modern university has developed as the workplace for the vast majority of academics and scholars. Even if they owe their primary loyalty and professional identity to the specialised disciplinary associations which together constitute the national and international communities of scholars, these cannot provide them with academic jobs, tenured employment and adequate salaries. In practice, academics spend the major part of their working lives, including their scholarly research, writing and teaching in the employ of universities. At the same time, modern universities are by no means scholarly enterprises only, but highly complex institutions with diverse interests, functions, stakeholder constituencies and governance structures. Since medieval times, traditional universities had functioned primarily as small-scale and close-knit teaching institutions (as some still do, whether as liberal arts colleges or community colleges) with little serious interest in, or provision for, research and original scholarship; the modern research university emerged by the late 19th

century in Germany and the early 20th century in the USA; by the mid-20th century what Clark Kerr called the “multiversity” (Kerr 1963), with massive enrolments spread over many campuses and a range of faculties, established quite different parameters; recent decades saw the rise and integration of polytechnics, institutes of applied science and universities of technology. It was by no means natural or obvious that scholarly freedom would automatically be recognised and maintained as the core institutional value of the modern university. But with the rise of the modern research university, that became the paradigmatic form of the university. *Academic rule* refers to the range of internal governance structures designed to ensure that scholarly freedom in teaching and research will effectively prevail within the modern university and be recognised as its core business. For academic rule, the nub of the matter, Moodie writes, is that “certain of the most important decisions about the work of academics – about, for example, the syllabus of a course, individual staff appointments, the admission or graduation of individual students, standards of academic performance, and the detailed allocation of resources between competing uses within a department or faculty – should be taken by or on the virtually mandatory advice of academics” (Moodie 1996: 131). As Epstein pointed out in the 1970s at the height of the professoriate’s ascendancy, academics are “far short of representing the whole of the university’s staff. Rather, [they are] an elite segment, although a large one, within that staff” (Epstein 1974: 116). But the chief justification for academic rule within the university is precisely that this is needed to protect scholarly freedom in teaching and research as the core business of the university more generally.

Academic rule does not consist in a single or even coherent set of governance structures within the university. Ever since the medieval origins of the university the professor-dominated Paris model (as against the student-dominated Bologna model) remained influential as exemplifying a core mode of academic rule: “The faculty should determine the curriculum, the process of admitting students, the requirements for degrees and the appropriate standards for awarding those degrees, and the internal governance of the institution” (Altbach 1991: 29). Over time, though, particular forms of academic rule have mutated or had to make way for alternative governance arrangements. Thus the professorial ‘chair’, as the seat of disciplinary authority and organising principle of scholarly and teaching activity, long held sway but increasingly gave way to more collegial forms of governance in academic departments now headed, more likely than not, by a rotating ‘chairman’ for a fixed period only. Graeme Moodie has charted “the disintegrating chair” as a conspicuous feature of academic rule in contemporary British universities (Moodie 1986), and not of them only. Nor does academic rule have any intrinsic relation to scholarly freedom. Rhoades, following Burton Clark, points out that while professional expertise and impersonal standards are the basis of the disciplinary authority in the modern scholarly community, key forms of academic rule in the university are actually rooted in more traditional types of authority structures. Thus “the personal rulership of the individual chair [is] a variation of Weber’s patrimonial type of traditional authority” while the collegial leadership of departments and faculties might be seen as a legacy of “guild authority”, another form of traditional authority (Rhoades 1990: 1378). A comparative survey of higher education systems internationally soon demonstrates that particular forms of academic rule in the university, taken as crucial to the preservation of academic freedom in some contexts, tend to

be missing or peripheral in other equally reputable systems. Thus the academic Senate, hallowed in the Anglo-Saxon tradition as the final seat of authority for academic matters within the university, does not have the same pivotal significance in either American or continental European universities. This does not necessarily translate in the loss of academic freedom (in the American case departments actually have a correspondingly greater and more direct authority in academic governance). It is thus ill advised to elevate a particular form of academic rule – whether the department, the professorial chair or the academic Senate – into the be-all and end-all of academic freedom: “the banner of academic freedom should not be waved too readily” (Moodie 1996: 145). Different forms of academic rule may be regarded as alternative ways in which academics have sought to achieve an effective measure of autonomy in academic affairs within the university: “The crucial argument for academic rule, and one which underpins the others, is that there are important decisions which academics alone, by virtue of their expertise and commitments, are competent to take – or that no one else is more competent to take” (Moodie 1996: 145). But effective autonomy through a particular configuration of academic rule does not of itself ensure scholarly freedom for academics more generally. “Powerful academics could impose improper constraints upon colleagues with whom they disagree” (Moodie 1996: 143). The abuses of power and patronage associated with the traditional German professorial chair system are legendary. Collegial and consensual departmental practices may be conducive to cronyism and self-regarding group-thinking, systematically prejudicing the dissenting individual academic. Professorialism, as Epstein observes, is inherently an elitism (Epstein 1974: 117). The sociologist Diego Gambetta provocatively analysed the Italian professoriate as a functioning *kakistocracy*, a paradigm of corruption designed to further and protect the interests of incumbent academic mediocrities against rivals of greater merit (Gambetta 2002). The vital questions must be whether any particular form of academic rule in practice does, or does not, serve to protect and enhance the scholarly freedom of academics within the university, and how that can best be assured.

For our purposes, the key issue is that “scholarly freedom neither depends upon nor necessarily requires academic freedom in the sense of self-government or rule by academics” (Moodie 1996: 143). Historically that linkage was effectively brought about through the process of professionalisation which enabled the emergence of the modern academic by requiring, on the one hand, that the academic should be a professionally qualified scholar and, on the other hand, that as professionals academics should have autonomous self-governance. Even if universities are amongst the oldest enduring institutions, with roots going back to medieval times, the academic profession is a comparative newcomer. While law and medicine have been established as self-governing professions for centuries, academics have by and large remained unprofessionalised until the early 20th century. During the 19th century, British teachers generally found only part-time and occasional employment: “In England (though not in Scotland), even for professors, a chair was not a career post” (Ashby 1974: 75-76). And while American universities go back to colonial times, ‘modern’ academics only emerged by the late 19th century; until then academics “were essentially amateurs: predisciplinary, preprofessional, and predisposed to accepting their lot as employees who could be hired and fired at the pleasure of the president and board of trustees” (Wagoner & Kellams 1992: 1680, 1682). From the perspective of an aspiring

academic profession, this posed a double problem: on the one hand, the body of academics at universities included large numbers of the professionally unqualified; it was riddled with “dead wood”, sinecures and cronyism; on the other hand, academics at universities lacked in professional self-governance or independent tenure. (As late as the 1930s close to half of American academic institutions still appointed all their faculty members on an annual basis [Metzger 1990: 64]). This was the context in which the founders of the AAUP, inspired by the model of the German research university and “filled with a blossoming sense of professional self-importance” (Metzger 1990: 38), in 1915 launched what was effectively a project for professionalising the position of academics in the university context. That project was concerned equally with upgrading the scholarly requirements and credentials of the academic profession, on the one hand, and with securing a proper system of independent tenure and academic rule, on the other. Professionalisation requires autonomy: “a basic drive of every profession, established or emergent, is *self-government* in deciding policies, criteria, and standards for employment and advancement” (Mosher 1968, cited by Epstein 1974: 128). Applied to the academic profession, this requires academic rule as the relevant form of collegial self-governance within the university. Professionalising the position of academics at universities would thus mean that they, too, would be entitled to the same kind of

“professional self-regulation as enjoyed by doctors, lawyers, architects and members of other major professions. Here the essential justification has to do with the setting and maintaining of standards, a role with social functions such as protecting the public from fraud and incompetence, as well as defensive ones for the standing and welfare of the profession’s own members, and one widely claimed to require the sorts of knowledge and experience possessed only by insiders ... self-regulation still characterises all the major professions.” (Moodie 1996: 144)

More specifically, in the case of the academic profession, this accounts for

“all the special peculiarities of academic life: doctoral programs, peer review, tenure. Academics decide who is to be permitted to enter the profession by requiring candidates to complete doctoral degree granting programs. They certify the legitimacy of scholarly work by requiring that it be submitted to peer review before it is published. And they create permanent members of the profession by requiring junior professors to submit their work to the approval of senior professors before awarding them tenure – which is regarded, of course as the ultimate protection of their freedom to pursue their research interests as they see fit.” (Menand, 1996: 8)

However, if academics are to be an autonomous profession then, within the institutional context of the university, they are atypically also salaried employees. Professionals are typically self-employed, in which case self-governance goes with their de facto position. But, as Altbach comments, combining professional status with a salaried position is somewhat anomalous (Altbach, 1991: 25). From the university’s perspective, as well, employment of professional academics who insist on autonomous control of their academic working conditions has significant implications:

“By employing professors whose work is largely of an independent professional character, the university surrenders de facto a large portion of the conventional employer’s role in determining the value of a staff member’s contribution to the institutional enterprise.” (Epstein 1974: 124)

Epstein goes on to explain that, while many academics at a university may tend to feel that they have little power or authority in relation to general university policies, the professional character of their position actually involves significant *negative* power, and not only in that they can make it difficult for anyone else to govern effectively:

“The acknowledged and self-protected freedom of the professor is itself a kind of power. It represents a large measure of self-government, in the literal sense, and it imposes severe limits on the governing authority of everyone else. Moreover, it provides the basis for the building of collective faculty power.” (Epstein 1974: 122)

Here we get back to particular governance structures as forms of *academic rule*, for example the department, which Epstein characterises as a leading example of professional self-government within the university:

“[The department] is the level where professors are effectively organised to exercise collective power ... Just as the individual professor has established his power to decide what he ought to teach or study, on the grounds of his professional competence, so the department asserts the similar power for its professors to make collegial decisions within an academic field.” (Epstein 1974: 126)

Provided that academics have been professionalised in the sense that they have to meet strict requirements of scholarship to be appointed as tenured professors, such forms of academic rule should serve to sustain and protect scholarly freedom. This does not mean that academic rule needs to be extended to all aspects of university affairs, only to the strict academic domain (falling under Senate in the Anglo-Saxon tradition). Indeed, in practice, academic rule within the university tends to be deliberately self-limiting in its application, leaving non-academic matters to the administration, executive and Council. To highlight the restricted range of such self-limiting academic rule, Epstein hypothetically proposed a radical model exemplifying “the full reach of professorialism. It would give professors the same power at campus and university levels as they now have in their departments. Presidents, chancellors and deans would become professorial agents ...” (Epstein 1974: 140). Radical professorialism taking over the whole university has not been the case in even the strongest versions of academic rule. Academic rule within the university has in practice been limited to the academic domain only; the rationale and objective is specifically to enable and protect scholarly freedom and professional self-governance.

The question remains as to whether academic rule may also hold threats to academic freedom, to individual academics or to scholarly freedom more generally. On the first count, the answer must evidently be yes, and we have already alluded to the ways in which particular forms of academic rule, such as the personal professorial chair or collegial rule in the department, may stifle, discriminate, exploit, abuse or exclude other academics in their scholarly work. Whatever the particular configuration of academic rule, it serves to empower some academics within the university in relation to others and it is only to be expected that “powerful academics could impose improper constraints upon colleagues with whom they disagree” (Moodie 1996:143). The counterpart of the effective ways in which the departmental structure of governance in the university may serve to protect the autonomy and integrity of particular scholarly disciplines is the equally effective ways in which it may serve to block and obstruct the development of

interdisciplinary approaches to research and teaching. More generally, academic self-governance, like all forms of professional self-governance, is inherently self-interested; in particular cases this may give rise to serious conflicts of interests. As Brown and Kurland comment, the autonomy of academic rule has its dangers in that threats to academic freedom are not necessarily external only:

“The dedication to judgement by one’s peers, that is by one’s colleagues, ... may pose a special problem ... A tribunal of peers might be expected to stand up against the administration; but suppose the demand for removal came from other peers?” (Brown & Kurland 1990: 345)

Indeed, the very rhetoric and mythology of autonomous academic self-governance may serve to dissemble the reality of such internal threats to academic freedom. Metzger refers to the “high degree of professional self-romanticization” which characterised the early days of the AAUP and probably accounted for their relative insensitivity to “the dangers of collective oversight” and inadequate attention to due process protections (Metzger 1990: 67, 52).

In short, particular forms of academic rule within the university may well pose definite threats to academic freedom in the core sense of scholarly freedom. But if these internal threats to academic freedom are real, there are also suitable remedies available. In large part these may consist of further professionalising academic rule, for example by making provision for more adequate due process protections (over time this is what happened in the American context as the AAUP’s tenure regime became incorporated in the US Supreme Court’s First Amendment case law [Van Alstyne 1990: 109ff.]). And if particular structures of academic governance in the university, such as that of the department, impede the free development of interdisciplinary teaching and research, then it may be possible to devise alternative and more flexible structures such as ‘schools’ or ‘programmes’ consistent with the practice of academic rule. Still, the difficulties as well as the dangers involved in dismantling established governance structures, such as that of the university’s departmental organisation, should not be underestimated. Menand perceptively comments that

“Academic freedom, as it is now structured, depends crucially on the autonomy and integrity of the disciplines. ...When disciplines and departments dissolve, the machinery of self-governance becomes more difficult to sustain.” (Menand 1996: 17-18)

From an academic freedom perspective, the ideal arrangement must be when the different kinds of professional autonomy involved in *scholarly freedom*, on the one hand, and in professionalised *academic rule*, on the other hand, not only complement but are designed to mutually reinforce each other. Even then, at least within the context of the university, it is a vital consideration whether they can also rely on protection by the institutional autonomy of the university and, if so, what kind of institutional autonomy that might be.

1.3.4. Institutional autonomy: external and internal threats to academic freedom.

Universities are not only themselves complex institutions but also exist in a range of external contexts – cultural, social, economic, and political. Despite the long-standing tradition and myth of the university as an ‘ivory tower’, separate from the ‘real world’ and an autonomous scholarly

world unto itself, this has never detracted from the many concrete ways in which the university interacts with society and is dependent on the state and/or private donors. In the larger historical perspective, writes Olsen,

“the University has never fully controlled the direction, substance or speed of its development. Large-scale processes such as the industrial, democratic and scientific revolutions and the development of the nation-state have fundamentally affected universities.” (Olsen 2005a: 27)

This general dependence on and interdependence with the state and society may still allow for a measure of institutional autonomy of the university; indeed the state and/or society may agree to confer a substantial amount of autonomy on the university to manage its own internal affairs as an institution without significant external interference (that is precisely part of the social pact for autonomy with which this report is concerned). Especially in the Anglo-American world, such institutional autonomy for universities has often been taken as equivalent to academic freedom itself (Ashby 1974; Moodie 1996: 147). But as shown by the different continental European traditions – where universities typically function as part of the state apparatus with little or no institutional autonomy in the Anglo-American sense – institutional autonomy is not a necessary condition for academic freedom in the university (Pritchard 1998: 10; Richter 1992: 1844). Indeed, in the continental European tradition tenured appointment as part of the civil service by the minister is taken to protect the academic freedom of professors from interference by university administrations as well as by outside forces, while in some cases students and faculty have protested against government proposals to grant universities more institutional autonomy since this was perceived as holding threats to their academic freedom! (Olsen 2005a: 33; Richter 1998). In the South African context, too, University Statutes formerly used to provide for the possibility of appeal to the Minister, a potential protection against abuse of the University’s institutional autonomy directed against its own academic employees. Still, by and large, the *institutional autonomy* of the university tends to be regarded and valued as the ultimate protection of academic freedom, the capstone of *scholarly freedom* and *academic rule* within the university. On closer examination, though, the relation of institutional autonomy (in the external context of the university) to scholarly freedom and academic rule (in the internal context of university governance) proves to be much more complex: while institutional autonomy may provide an effective bulwark for protecting academic freedom against external threats, it may also develop into a powerful internal threat against academic freedom itself.

Within a broader perspective on current developments in relations between university, state and society, Olsen (2005a) has developed a helpful schema of four different “visions of university organization”:

- 1) *the University is a community of scholars;*
- 2) *the University is an instrument for national purposes;*
- 3) *the University is a representative democracy;* and
- 4) *the University is a service enterprise embedded in competitive markets.*

More generally the four models can be interpreted as 1) a *constitutive*, 2) an *instrumental*, 3) the *political* and 4) a *market* conception of the university. For our purposes, it is the implications for the possible function and significance of institutional autonomy in terms of each

of these four 'visions' of the university which is of particular relevance, and which we may briefly consider in turn:

1) The *constitutive vision of the university as a community of scholars*: Olsen characterises this vision of the university as that of

“a Republic of Science and the *Gelehrte*. There is *Lern-* and *Lehrfreiheit* and the University's corporate identity and integrating self-understanding is founded on a shared commitment to scholarship and learning, basic research and search for the truth, irrespective of immediate utility and applicability, political convenience or economic benefit ... All activities and results are assessed by the internal norm of scholarship and truth is an end in itself.” (Olsen 2005a: 8, 10)

He evidently has the 19th century Humboldtian research university in mind, but more generally this vision exemplifies scholarly freedom and academic rule as constitutive principles of the university. Significantly the constitutive vision does *not* exclude the university also serving the general and public good of state and society:

“The University is committed to serve society as a whole and not specific 'stakeholders' or those able and willing to pay, and education is to be free.” (Olsen 2005a: 8)

If the university as a community of scholars requires substantial institutional autonomy, ruling out direct or indirect interference in its affairs as illegitimate, this must assume that state and society will agree to a basic compact for such university autonomy:

“Protection and funding from the state, together with autonomy from government and powerful economic and social groups, is justified by the assumption that society values objective knowledge, that knowledge is most likely to be advanced through free inquiry and that 'claims of knowledge can only be validated as knowledge ... by being subjected to the tests of free enquiry'.” (Olsen 2005a: 10, citing Searle 1972)

On this vision, then, the university's institutional autonomy is based on, and expressive of, scholarly freedom and internal academic rule, while it is also assumed to be serving the general good of state and society through scholarly teaching and inquiry and scientific research producing knowledge and truth.

2) The *instrumental vision of the university as instrument for national purposes*: “Within this perspective”, Olsen writes,

“the University is a rational tool for implementing the purposes and policies of democratically elected leaders. It is an instrument for achieving national priorities, as defined by the government of the day.” (Olsen 2005a: 10)

From his characterisation, it appears that Olsen is primarily thinking of cases, both in Europe and elsewhere, in which the modern university has been closely associated with the rise of the nation-state. This can take specifically nationalist forms, as with the Afrikaner nationalist notion of a “*volksuniversiteit*” (Thom 1965), with the university essentially conceived as an instrument or expression of the Afrikaner *volk*. But the instrumental vision of the university is equally compatible with the conception of a *development university*, serving the purposes and policy objectives of social and economic development rather than those of national identity and culture. This version of the instrumental vision of the university as a development university

became dominant in post-independence Africa (Mamdani 2006). In either case, it is not the university's constitutive principles of scholarly freedom and academic rule which are decisive but the university's pragmatic and strategic uses for externally defined social, economic and political ends. For Olsen, this instrumental vision of the university rules out any notion of a social pact for autonomy:

“The University cannot base its activity on a long-term pact and a commitment to cultural development. Instead research and education is a factor of production and a source of wealth and welfare.” (Olsen 2005a: 10)

It follows that the instrumental vision of the university is fundamentally predisposed against allowing institutional autonomy to the university:

“Leaders are appointed not elected. The administration, with its hierarchies, rules and performance statistics, become the core of the University. Autonomy is delegated and support and funding depend on how the University is assessed on the basis of its effectiveness and efficiency in achieving political purposes, relative to other available instruments.” (Olsen 2005a: 11)

It also follows that the instrumental vision of the university, so far from seeking to protect scholarly freedom and sustain academic rule in internal structures of governance, makes these subservient to external social, economic and political objectives:

“The University's purposes and direction of growth depend on political support and funds for scholarly purposes. A key issue is the applicability and utility of research for practical problem solving such as defense, industrial-technological competition, health and education. The University is a multiversity, and “the multiversity serves society almost slavishly” (Kerr 1966, 19), or, in other words, the University is ‘for hire’ (Wolff 1969, 40) ... Individual research is replaced by team-work and the disciplinary organization of knowledge is supplemented with or replaced by cross-disciplinary, application-oriented research and institutes.” (Olsen 2005a: 11)

The instrumental logic of national policy and development is fundamentally at odds with the constitutive principles of autonomous scholarly freedom and internal academic rule with no place or function for institutional autonomy in external relations.

3) The *political vision of the university as a representative democracy*: Here Olsen primarily has in mind the radical democratisation of European universities in the wake of the 1968 ‘student revolution’, which had in large part been directed against traditional forms of academic rule – such as the hierarchies and patronage associated with the professorial chair – as well as the power and privileges of the elitist professoriate generally, as distinct from the marginalised position of non-professorial staff and students in the university. Democratic reform of the universities aimed to end the exclusive hierarchies of academic rule in internal governance structures. According to this vision, then,

“the University is an interest group democracy allowing representation on governing boards and councils to all categories of employees as well as students [and unions].” (Olsen 2005a: 11)

In principle the internal democratisation of the university is not concerned with the institution of the university or the academic domain only; rather it is conceived as an integral part of a

more general project of democratisation extending to state and society:

“Democratization of the University is linked to enhancing democracy in society at large.”
(Olsen 2005a: 11)

As a *political* vision of the university, though, it need not be limited to this particular agenda of democratisation only but could also be extended to the implications of more general processes of academic unionisation and the rise of faculty participation in collective bargaining in a range of American universities as well (Epstein 1974: Ch.7; Garberino & Aussieker 1975). As against traditional forms of academic rule in the university’s internal governance structures, these are not primarily concerned with securing and protecting the autonomy of scholarly freedom:

“Focus is upon formal arrangements of organization and management, more than on the special characteristics of work processes in the University ...The basic mechanism of University change is internal bargaining and shifting coalitions.” (Olsen 2005a: 11-12)

Olsen comments that this, too, is basically an *instrumental* vision of the university, though for internal groupings rather than in relation to external purposes (Olsen 2005a: 11). As such it has no necessary connection to the constitutive principle of scholarly freedom while it fundamentally objects to traditional forms of academic rule and does not require substantial institutional autonomy for the university in its external relations.

4) The *market vision of the university as a service enterprise*: “Within this perspective”, Olsen writes,

“the University is an economic enterprise or a service station operating in regional or global markets. Research and higher education are commodities, bundles of goods to be sold in a free market ... Information is a strategic resource for competitiveness and survival, not a public good. The University provides any research and teaching that can be sold for profit, and quantity, quality and price are determined in competitive markets.”
(Olsen 2005a: 12)

This evidently refers to what others have characterised as the ‘managerial revolution’ in university governance in different parts of the world, including South Africa, over recent decades (Epstein 1974: Ch.5; Webster & Mosoetsa 2002). This is concerned with the more efficient executive management of universities on similar principles to those applying to business firms and corporations, giving rise to the ascendancy of the “enterprise university” (Marginson & Considine 1993). Significantly, though, Olsen emphasises that the market vision of the university is not only consistent with, but also actively requires institutional autonomy of the university as a condition for effective management in the service of market competitiveness. However, he is careful to stress that this applies primarily to the university’s external context, especially in its relation to the state though not with regard to civil society:

“Market competition requires rapid adaptation to changing opportunities and constraints which again requires strong, unitary and professional internal leadership with a responsibility for the University as a whole. The University has more freedom from the state and political authorities. Government involvement is at arm’s length and there is regulation and incentives rather than government dictates. Simultaneously, the University is more dependent on ‘stakeholders’, donors, buyers, competitors and society at large and university leaders are market entrepreneurs.” (Olsen 2005a: 12)

In the internal context of university governance, though, the market vision of the university is hostile to forms of internal autonomy which might impede the efficient executive management of the institution; more specifically, it is hostile to the traditional practices of scholarly freedom and academic rule:

“Collegial, disciplinary and democratic organization and individual autonomy are viewed as hindrances to timely decisions and good performance, to be replaced by strong management and inter-disciplinary organization.” (Olsen 2005a: 12-13)

The market vision of the university (in contrast to the instrumental and political approaches) thus positively values the institutional autonomy of the university, but for opposite reasons and purposes to the constitutive vision of the university. While the latter values institutional autonomy for the protection it should provide to academic freedom against external threats, the former is concerned with the internal uses of institutional autonomy to do away with dysfunctional vestiges of scholarly freedom and academic rule.

Olsen readily admits that his four alternative visions of the university are “abstractions” or *ideal types* which should not be expected to capture current university practices more specifically. Actual cases are likely to be rough approximations and hybrid variations of various kinds (Olsen 2005a: 13). Still, for our purposes, this schematic typification of basically different approaches to the external relations of the university to state, economy and society may help to clarify the issue of the university’s institutional autonomy. What Olsen’s schema shows, is that within certain approaches (i.e. the *instrumental* and the *political* visions of the university) institutional autonomy has no particular significance or function, and may well be valued negatively, while within other approaches (i.e. the *constitutive* and the *market* visions of the university) institutional autonomy is positively valued, though for opposite purposes and reasons. This has important implications for the function and significance of institutional autonomy in relation to scholarly freedom and academic rule.

In this connection it may be relevant to distinguish between merely *functional* and more *substantive* conceptions of the university’s institutional autonomy. On the *functional conception* of institutional autonomy, what matters is whether the university, taken as an institutional whole, is able to function independently without undue interference by external parties or forces. Functionally it is irrelevant whether the university, in its internal governance structures, maintains academic freedom, in the sense of scholarly freedom and academic rule, or not. In other words, a university might well have functional institutional autonomy while internally dismantling academic rule and restricting scholarly freedom in various ways. On a *substantive conception* of the university’s institutional autonomy, though, academic freedom is viewed as an intrinsic feature of institutional autonomy itself; the substantive significance of institutional autonomy lies precisely in the extent to which it is used to sustain internal academic rule and protect scholarly freedom. The functional and substantive conceptions of institutional autonomy do not differ only in that the former provides a ‘thin’ conception of autonomy compared to the latter’s more ‘thick’ version. Rather, the difference may more accurately be described by saying that while the substantive conception is a ‘bottom-up’ view of the university as an institution – i.e. it builds on the internal foundations of scholarly freedom and academic rule and seeks to

sustain and protect these with the capstone of institutional autonomy – the functional conception typically is a ‘top-down’ view of the university, in which executive management avails itself of its opportunities for autonomous action in order to restructure internal governance structures, if need be by doing away with traditional forms of academic rule and scholarly freedom.

The particular arena where these rival conceptions come into conflict is that of the qualifications required for executive and senior administrative appointments in the university. We have already noted the tendency, closely associated with the tradition of academic rule, of a distinctive “collegial thrust toward amateurism” (Epstein 1974: 103) in such appointments. Why this insistence that (former) academics be appointed to senior and executive positions in university management and administration, rather than those who might actually claim professional expertise in management and administration? What is at stake here, is not a preference for amateurism as such (after all, the scholarly enterprise itself is founded on the need to demonstrate relevant expertise), but a more fundamental concern with whether the university leadership and management, as academics themselves, can be trusted to be fully committed to the core values of scholarly freedom and academic rule. On the ‘bottom-up’ approach to substantive autonomy it is more important that the university Rector/Principal and top leadership should be (former) academics, than that they should have the specialised expertise in executive management actually required for these positions. Moreover, the role of senior management should be as much to represent and protect full-time academics as to administer them: the function of deans, for example, should be to represent and defend the academic interests of their faculties in relation to the university executive and not just to serve as ‘line-managers’ for administering policies imposed from the top. It is this traditional approach to university governance that has been seriously threatened by the ‘managerial revolution’ as universities themselves have responded to the new demands of the global academic marketplace by recruiting expert managers into top leadership positions and refashioning their internal governance structures to facilitate more efficient top-down executive management. In terms of the *functional* conception of institutional autonomy, these developments need not pose any particular threat; indeed, they could well serve to increase the ability of the university to hold its own as an independent institutional agent in the wider social, economic and political context. But within the university itself, academics may increasingly find themselves under the sway of an executive management no longer fully committed to the core values of the academic and scholarly enterprise and with different imperatives from those of scholarly freedom and academic rule. To the extent that this happens, the more serious threats to academic freedom are not external but internal to the university; to the extent that institutional autonomy is *functional* only, especially with a top-down internal governance structure, and not a bottom-up *substantive* expression of academic rule, such institutional autonomy itself may serve as a threat to, and not a protection of, academic freedom.

Another way of describing these developments associated with the impact of the ‘managerial revolution’ on the governance structures of the university would be to refer to an internal breakdown of *trust* between the academic faculty, on the one hand, and executive management, on the other hand. In a sense, this is not at all new. We may recall that the crucial pact which

founded the American system of academic tenure as an institutionalised protection of academic freedom came about through a protracted process of negotiation between the AAUP, representing the academic profession, and the AAC as an organisation of university presidents (Metzger 1990; Van Alstyne 1990). What this involved was not so much an external social pact between the university and extraneous forces in state and society, but an internal pact within the university sphere itself. The current breakdown in internal trust within the universities due to the 'managerial revolution' and attendant processes is a world apart from the context in which the AAUP and AAC operated in the early part of the 20th century, and it is very difficult to see how anything like the AAUP/AAC pact may be replicated in current South African conditions. Still, if the problem involves an internal breakdown of trust, then the remedy might require some appropriate way of (re-)negotiating an internal pact concerning the protection of scholarly freedom and academic rule in conjunction with the imperatives of executive management. In later parts of this report, we return to the need for, and prospects of, such a possible new internal pact.

1.4. Methodological considerations: social compact as an analytical framework and as social reality

Before proceeding to a more specific analysis of the different aspects and dimensions of academic freedom, institutional autonomy and accountability in terms of a social compact approach, some methodological reflection and clarification is needed. A social compact approach need not assume or imply that all (or even any) universities are, or have been, involved in actual social compacts for autonomy – that is a matter for historical and empirical investigation from case to case. If the concept is to have informational import, then it cannot simply be true by definition that academic freedom assumes some underlying social compact. This means that we must be able to specify what would count as evidence for the presence or absence of a relevant social compact for autonomy in different cases and contexts, thus leaving it open that in particular cases we may find that there is insufficient evidence to talk of any such actual compact for autonomy. At the same time, this is consistent with applying the notion of a social compact for autonomy to a wide variety of cases, and in different senses, e.g. as an explicit and formal pact, as an underlying informal agreement or as implied by other practices and arrangements. What is at stake, is a clear understanding of the difference between the social compact approach *as an analytical framework* for considering issues of academic freedom, institutional autonomy and accountability as distinct from the related but distinct investigation of the *historical development and social reality* of compacts for autonomy in particular cases. Thus, for our purposes, the 1940 AAUP/AAC *Statement* is of considerable significance, since it represents an actual historical case where relevant parties, following an extensive and sustained process of negotiation, came to an explicit agreement about key issues of academic freedom in the internal governance of universities which was then incorporated into the statutes of many American universities and which, more than 60 years on, still provides the effective foundation for prevailing academic tenure practices. At the same time, the AAUP/AAC Pact is obviously an exceptional case, and unlikely to be replicated elsewhere at different times and in different contexts. Likewise, for our purposes it is relevant and instructive to take note of Pritchard's

comparison of the different political cultures at work in the British and German university traditions. The former represents a longstanding but informal commitment to the institutional autonomy of universities as vital to the protection of academic freedom; the latter is notable for the absence of key aspects of institutional autonomy but is historically committed to a definite and explicitly theorised notion of academic freedom. (The comparison is instructive more especially when both the British informal agreement and the explicated German theory come under pressure due to changing social and economic realities [Pritchard 1998].) Again, these two cases are obviously peculiar to their respective circumstances and we cannot simply extrapolate either to the very different conditions of African and South African universities. What we can glean from these cases, though, is a better understanding of the different ways and senses in which social compacts for autonomy can be said to operate: (i) as actual formal pacts between particular parties, (ii) as long-standing informal agreements governing the interaction of relevant institutional sectors, or (iii) as explicitly articulated 'theories' of the nature of the university and academic freedom subscribed to by state actors as well as the professoriate. It may be necessary to take on board other kinds of cases and developments as well. Thus Shils's 1975 account of the rise of the academic ethos and profession in its general social standing and public recognition to achieve a remarkable hegemony by the mid-20th century – though one that would come under increasing strain in subsequent decades – does not include the elements of any actual or underlying 'compact' between identifiable parties, but is evidently directly relevant to the conditions under which such social compacts are possible. More generally, the features of various historical and comparative cases of social compacts for autonomy may be explored not only in their own right, but also with a view to developing a more general analytical framework for understanding the elements and dynamics of, as well as the enabling conditions for, such compacts for autonomy.

It is important to note that not all historical and comparative cases of 'autonomous' universities or other institutions of higher education and/or scholarly learning necessarily indicate the presence of underlying social compacts for autonomy. Consider the famed (or notorious) 'ivory towers', i.e. the distinctive communities of scholars and/or teaching colleges which emerged in late medieval times in Europe and reproduced themselves over many generations during the early modern period. To what extent did these establishments reflect the presence of more general social and political compacts, or were they rather rooted in the particularities of certain distinctive text-based religious traditions, monastic institutions, itinerant fraternities and/or scholastic practices and disciplines? In so far as these were small-scale and localised developments, peripheral to the major centres of political rule, social power and cultural authority, they need not have reflected more general social compacts for autonomy any more than did the many diverse vocational guilds, sectarian groupings, mystical gatherings, cabbalistic traditions or utopian communities of that period. As effectively self-supporting and self-governing inward-looking communities, the ancient universities and colleges were by no means unique, nor did they have a notably wider social and political importance at the time. To the extent that they were perceived neither as posing major threats to the political rulers or social elites of the day, nor as potential resources for important economic, social or military developments, there was no particular need for external parties or authorities to concern themselves with the internal scholarly

activities of such institutions. Rather than a positive social compact for autonomy, the social and political toleration of these scholarly 'ivory towers' in medieval or early modern Europe by the powers that be may be considered as evidence of a certain benign neglect. As Altbach has observed,

“In a sense, when universities have been least central and important, their autonomy has been safest. Institutions that are pure ivory towers are of little relevance to the society and external authorities are often content to leave them alone. When academic institutions and the professoriate are at the center of societal development and when the universities require significant social resources, many forces seek to challenge traditional autonomy.”
(Altbach 1991: 25)

In general, we could expect a positive correlation between the general social and political importance of universities – in the sense of requiring substantial public funding and resources or in the sense of providing indispensable knowledge, skills and technology needed for social, economic and industrial development - and the level and extent of external concern and involvement with university matters. During the period when universities were still privately-funded institutions, whether under the auspices of the church or established by local benefactors and trustees, and mainly functioned as teaching colleges for limited social elites, it should not be surprising that public authorities and society at large were content to leave them largely to their own devices. It is a different matter when universities become dependent on substantial amounts of direct and indirect public funding, when higher education is no longer an 'elitist' preserve but a generally recognised democratic right, and when the contribution of the research university has been identified as a vital component of economic growth and technological development for the emergent 'knowledge society'. In this kind of context we may speak of a 'high stakes' compact for autonomy (subsection 2.5.3). It would be surprising, and require some special explanation, if state and society continued to allow universities the same autonomy in these circumstances. However, in broad terms this is indeed what happened with the rise of the modern research university from the late 19th century to the mid-20th century: the university developed into a vital institution for modern industry, state and society but somehow also managed to carve out and preserve a substantial degree of autonomy in the name of academic freedom. This counter-intuitive development makes it relevant to consider whether the continuing autonomy of modern universities, in the sense of respect for scholarly and academic freedom by parties outside the academic world itself, did not reflect some kind of underlying social compact for autonomy. From this perspective, it is easier to understand the late 20th century demands by various forces in state and society for universities to become more accountable – such challenges to its traditional autonomy are in effect only to be expected as “the price of success” for the modern university (Shils 1975: 117f). There is no need to invoke any kind of social compact to account for such inevitable developments. In other words, it is not the growing insistence on accountability, but rather the persistence of university autonomy beyond the historical conditions in which it originated, and even more with regard to the prospects for re-establishing it now that it has increasingly been challenged, to which the notion of a social compact is relevant. More generally, it is the extent to which universities are accorded, or manage to maintain, substantial autonomy in circumstances where that would *not* be expected, that it becomes relevant to consider the possible role of some kind of social compact for autonomy.

For the purposes of our investigation of the issues of academic freedom, institutional autonomy and accountability, both in a comparative context and with specific reference to the South African case, we will thus adopt the following as analytical framework for a social compact approach:

- 1) The possible relevance of social compacts for autonomy needs to be explored in the different *contexts* of academic freedom, i.e.
 - with reference to scholarly freedom in the *general context of scholarly disciplines*;
 - with reference to academic rule in the *internal context* of university governance; and
 - with reference to institutional autonomy in the *external context* of the university's relations to the state, economy and society.

- 2) In each case, the specific *sense* in which some sort of social compact for autonomy could be relevant needs to be specified and explored, e.g.
 - as an *explicit and formal pact* entered into by particular parties;
 - as an *informal agreement* or *underlying social compact* governing the interaction of relevant parties or institutional sectors; and
 - as explicitly *articulated 'theories'* of the nature of the university and academic freedom subscribed to by state actors as well as the professoriate.

- 3) With regard to possible social compacts for autonomy, whether explicit or informal, their *terms*, *scope* and *objectives* need to be indicated, i.e.
 - who* the relevant parties to the social compact are and *how* they arrived at it;
 - what* the agreed autonomy involves, within which limits or subject to what conditions; and
 - for what *general purpose* the autonomy compact is supposed to function.

- 4) With regard to the historical origins, effective functioning, breakdowns or demise, and possible re-establishment of particular social compacts for autonomy, *relevant causal factors* or *conditions* need to be identified, e.g.
 - the *specific historical circumstances*, *particular social conditions* or *general social processes* which could account for the persistence of substantial autonomy of universities and respect for academic freedom when that would not otherwise have been expected;
 - the combination of *external challenges* and *internal threats* which might account for the breakdown and possible demise of social compacts for autonomy in cases where these had previously functioned; and
 - the *enabling conditions* or possible *social and political processes* through which such social compacts for autonomy might be re-negotiated or established.

It would, of course, be inappropriate to apply this analytical framework in some literal or mechanical fashion to a systematic range of particular cases. Rather this will be borne in mind, with different kinds of considerations brought to bear in an integrated and flexible manner in the course of more substantive accounts and discussions as required and relevant. Accordingly, the structure of the rest of this report will be as follows –

Part 2 will attempt to outline the key elements in the conceptualisation and theorisation of a social compact approach to academic freedom, institutional autonomy and accountability. The general purpose will be to investigate the meaning and relevance of conceptualising academic freedom as a social compact in line with the analytical framework just outlined and with reference to the historical experience of comparative academic cultures. More specifically, the different sections of Part 2 investigate:

- (i) the relevance of the rise of the academic profession from the end of 19th century, its remarkable hegemony by the mid-20th century as well as the subsequent strains and challenges to the sense in which the practice of *scholarly freedom* might be conceptualised in terms of a general social compact for autonomy;
- (ii) the relevance of different forms of *academic rule*, both those characteristic of Anglo-American traditions and those found in continental European academic cultures, as well as in the different conditions of post-independence African universities, to the development of internal compacts in university governance; and
- (iii) the relevance for a social compact approach of the different trajectories through which universities were incorporated into the public realm and the consequent contrasting patterns of *institutional autonomy* for universities in the Anglo-American and continental European traditions as well as in colonial and post-independence Africa.

On this basis, Part 2 will then analyse the general implications of a social compact approach for the key issues of autonomy, academic freedom and accountability and apply these to the South African case in particular.

As originally conceived this report would have included two further parts. Owing to constraints of time and space it has not been possible to complete these as parts of the present investigation. (They will be undertaken as separate follow-up investigations.) It may, however, be helpful to provide some brief indication of the scope and objectives of these still missing parts of the overall project. Part 3 will be concerned with a particular concrete issue relating to academic rule in the internal governance structures of the university, that of *the professionalisation of academic tenure* as the basis for a new internal pact to secure academic freedom. This corresponds to the core issue of ‘who shall be free to teach?’ in the liberal TB Davie formulation of academic freedom and will involve an investigation of comparative tenure practices in different academic traditions and cultures. It will *not* primarily be concerned with academic tenure in terms of its function of providing job security to academics; rather it will consider tenure from an academic freedom perspective. In this sense, it will be concerned with the ways in which tenure can legitimately be *denied* to both aspiring and practising academics, in order that it can be ensured that the protections of academic freedom are extended to *bona fide* academic scholars only. Essentially this concerns the process of *professionalising* academic tenure as a means to transforming the institutional culture of universities. As in the legal and medical professions, those in academe aspire to professional self-determination in the sense that only specialised peers are qualified to assess their work for purposes of accreditation, appointment, promotion, publication, etc., and, like lawyers and medical practitioners, academics also want to be able to control the content and conditions of their own work as teachers and scholars. But unlike members of the other liberal professions, they are typically not

self-employed but salaried employees of universities (Epstein 1974: 123). This combination of independent professional autonomy within a bureaucratic setting is highly unusual (Altbach 1991: 25) and requires some special explanation, e.g. with reference to underlying social compacts. Part 3 will thus be concerned with such questions as:

In what ways can the professionalising of academic tenure ensure that tenure systems better serve the ends of academic freedom?

To what extent can different academic tenure practices, e.g. the formalised American tenure system or the continental European tradition of linking professorial tenure with civil service status, be taken as indications of different underlying social compacts for autonomy?

What are the changing roles of different parties such as academic staffing associations (or unions) and representatives of university management in the politics of the internal pacts underlying current academic tenure systems?

What is the impact of the recent 'managerial revolution' and the introduction of business and market-oriented approaches in university management on traditional practices of academic tenure, and what is the significance of the legacies of 'collegialism' and academic rule in this context? and

What could be the contribution of professionalising academic tenure to the transformation of the university's institutional culture in the South African context?

Finally (the also still to be completed section), Part 4 will be concerned with a different issue relating to the external context of the university's institutional autonomy, that of the basis for student access to, or exclusion from, the university as a matter of academic freedom. This corresponds to the core issue of 'who shall be admitted to study?' in the liberal TB Davie formulation of academic freedom, though with the classic German notion of *'Lernfreiheit'*, i.e. the students' right of access to higher education, very much in mind. The problem is precisely that in the Anglo-Saxon tradition the priority accorded to the university's institutional autonomy includes decisions on student access. In principle, this is not compatible with the recognition of *'Lernfreiheit'* or of a basic student *right of access* to higher education characteristic of continental European systems of higher education. As such, these differences may be investigated as indications of different underlying social compacts concerning the relation between university and society in the respective social and political cultures. Part 4 will thus be concerned with such questions as:

What are the principles underlying student access to higher education in different academic cultures, and how does this relate to academic freedom and institutional autonomy?

What are the relevant patterns of student access in countries which have traditionally recognised a general right to higher education compared to those with selective and limited higher education systems?

What are the prospects for a possible social compact on universities' social responsibility in relation to student access, and what would be required for this?

What are the underlying assumptions of different approaches (student loans, bursaries, voucher systems, etc.) for providing effective student access to higher education?

To what extent is a market-based approach to higher education consistent with the constitutional right to higher education, and on what basis can 'financial exclusion' of students from higher education institutions be reconciled with a general right to higher education? and

What are the major developments in the South African context affecting student access to higher education, and what are the prospects of, and the conditions for, a possible social compact relating to student access to higher education?

The conclusion (see subsection 2.6 on "Autonomy, academic freedom and accountability") will attempt to bring together the main arguments of the preceding analyses by way of a general assessment of the relevance of a social compact approach to the issues of academic freedom, institutional autonomy and accountability in the current South African context.

2. TOWARDS THE CONCEPTUALISATION AND THEORISATION OF A SOCIAL COMPACT APPROACH TO ACADEMIC FREEDOM, INSTITUTIONAL AUTONOMY AND ACCOUNTABILITY

2.1. *Problematizing academic freedom as a social compact*

It might appear that to conceive of academic freedom as involving some kind of social compact for autonomy is paradoxical, if not incoherent. At the outset of our discussion of the concept of academic freedom (subsection 1.2) we cited Louis Menand to the effect that academic freedom is the legitimating concept of the academic enterprise, the constitutive principle for the modern research university, positing an autonomous zone of protection and self-regulation of teaching and inquiry as its *sine qua non* (Menand 1996: 4, 6). Such an assertion of autonomy as nothing less than a constitutive principle seems incompatible with also conceiving it as the product of some underlying negotiating process issuing in a social compact.

Remarkably, though, seminal articulations of academic freedom have stressed precisely its paradoxical nature as a social compact for autonomy. Thus Von Humboldt's reforms of the university in Prussia at the outset of the 19th century sought to set up higher education institutions, even if they were still institutions of state, which should dedicate themselves to research and teaching in "*seclusion and freedom*". However, as Richter notes, "seclusion and freedom' was not to be an end in itself; rather this was to serve the quality of science and the training of state servants" (Richter 1992: 1837). The state was to allow substantial and effective autonomy to the university since it should recognise that independent research and teaching would in the end be in the best interest of – the state! Likewise, the 1915 statement of the AAUP, as an effective manifesto claiming the autonomy due to the academic profession, presented this as a pragmatic and utilitarian cause serving the public good: "it is for society's sake, not for their own sakes, that professors must be academically free" (Metzger 1990: 14). Even Michael Polanyi, in his classic 1962 account of "the Republic of Science", not only argued that the practice of science inherently had to be an autonomous, self-regulating enterprise, but also that this needed to be recognised and respected by society at large:

"Only by securing popular respect for its own authority can scientific opinion safeguard the complete independence of mature scientists and the unhindered publicity of their results which jointly assure the spontaneous coordination of scientific efforts throughout the world..." (Polanyi 1962: 61)

Perhaps the most trenchant formulation of this Janus-faced character of academic freedom, as an effective assertion of autonomous self-regulation but one which also requires wider societal recognition, is that provided by Menand. Menand spells out the distinctive features of academic freedom as a form of autonomous, professional self-regulation in concrete detail. Although it has been quoted in part, it is worth citing again and at some length:

"What makes universities different from other places in which people work with their brains? The answer is that so far as the content of the work that goes on in them is concerned, universities are essentially self-regulating. The university professor is a professional. He or she works in a business whose standards and practices are, to every extent possible, established and enforced by its own practitioners. In the case of the

academic professional, interference by outside political or economic interests is considered repugnant to a unique degree, and elaborate measures are taken to insulate the university teacher and researcher from them ... The protections that have been erected with the intention of guaranteeing this freedom are embodied in all the special peculiarities of academic life: doctoral programs, peer review, tenure. Academics decide who is to be permitted to enter the profession by requiring candidates to complete doctoral degree granting programs. They certify the legitimacy of scholarly work by requiring that it be submitted to peer review before it is published. And they create permanent members of the profession by requiring junior professors to submit their work to the approval of senior professors before awarding them tenure – which is regarded, of course as the ultimate protection of their freedom to pursue their research interests as they see fit.” (Menand 1996: 4, 8)

At the same time, Menand stresses that all this is by no means a matter of unilateral self-assertion by academics, which they can somehow claim from society and are able to maintain against the wider world outside the university. On the contrary, it amounts to a social compact for autonomy:

“Universities have, essentially, a compact with the rest of society on this matter, society agrees that research which doesn’t have to answer to some standard of political correctness, economic utility, or religious orthodoxy is a desirable good, and agrees to allow professors to decide among themselves the work it is important for them to undertake.” (Menand 1996: 8).

These formulations of academic freedom as involving a social compact for autonomy can be taken in different ways, as normative justifications (i.e. *if* autonomous self-regulation by universities is recognised and supported by the wider society, then it is also legitimised by that) or as historical descriptions (i.e. as a matter of historical fact and social reality the modern research university was accorded substantial and effective autonomy by 20th century society and state alike in major Western countries). Either way, though, the problem of accounting for such social compacts for autonomy remains. As already indicated in the opening section of Part 1 the paradoxical conception of a social compact for autonomy must pose the basic question:

Under what conditions would state and society be prepared to subscribe to a compact allowing a basic and significant measure of autonomy to universities in academic affairs? (subsection 1.1)

At this stage we will not so much provide an explanation in answer to this question, but rather attempt to locate and specify the question more precisely. Making use of the respective analytical frameworks introduced in 1.3 and 1.4, it becomes possible to show that the emergence of a social compact for autonomy in university affairs by the 20th century involved a double shift: (i) *an institutional shift* from elitist teaching colleges to the emergence of the modern research university and (ii) *a conceptual shift* from a constitutive conception of scholarly freedom to a social compact conception of university-based academic freedom.

On the one hand, we need to remember that just as ancient and early modern universities were not necessarily always bastions of academic freedom (de George 1997: 53), they were also not particularly closely associated with the beginnings of the modern scientific revolution (Wagoner

& Kellams 1992: 1677). The primary mission of traditional colleges and universities was not that of research but of teaching, and moreover teaching was conceived of as essentially a form of moral education (or, in the German tradition, of *Bildung*). In the words of Eric Ashby,

“in Britain, up to the First World War, the paradigm of a university teacher – at any rate in the humanities – was not the research-centred German professor; it was the reformed Oxbridge college don whose aim (as Mark Pattison put it) was to produce ‘not a book but a man’” (Ashby 1974: 78).

In America too, during the colonial period and until after the Civil War, college teaching was based on an underlying consensus regarding the moral bearing of knowledge and the moral purpose of education. In Altbach’s words,

“The masters of America’s earliest colleges followed the English collegiate tradition, with its emphasis on the moral and religious as well as the intellectual formation of students. From this tradition came *in loco parentis*.” (Altbach 2005: 148)

While teaching establishments of this kind played an important part in reproducing cultural and social elites, often under the auspices of the church, they did not depend on substantial public funding, nor did they significantly relate to more utilitarian aims of social and economic development. Under these conditions, institutional claims to autonomy could readily be accommodated. In the words of Eric Ashby again:

“If academic freedom was not often questioned in nineteenth century England, it was because no one cared much what professors taught or wrote; academic freedom was of little concern. And the concomitants of academic freedom – security in the profession and control of its standards – were correspondingly ill defined outside the ancient universities.” (Ashby 1974: 76)

In short, if these traditional colleges and universities enjoyed a measure of autonomy, this was not something in which state and society had a critical stake such that it required a social compact. That would change with the emergence of the modern research university along with the democratisation and massification of higher education in the course of the 20th century.

On the other hand, we need to be reminded of the inherently restrictive nature and exclusionary functions of scholarly disciplines involved in the notion of scholarly freedom (subsection 1.3.1). From an internal perspective, the claim to specialised epistemic authority, serving both to empower and to exclude, amounts to positing it as nothing less than a *constitutive* principle of scholarly disciplines as self-defining “communities of the competent” (Haskell 1996: 44). From a broader and external perspective, though, this assertion of autonomous scholarly freedom cannot simply be accepted as self-justifying. In a broader social perspective, as well as in political and democratic terms, as already noted in Part 1, the questions must arise:

Why should the lay public agree to their exclusion from and by the ‘communities of the competent’? and

Why could or should a democratic society and state agree to such autonomous in-group empowerment of the scholarly community? (subsection 1.3.1)

As long as the emerging scholarly disciplines remained largely amateur and recondite enterprises, of concern mostly to scholarly insiders themselves, these were not particularly vital questions. This had changed by the late 19th and early 20th centuries with two related developments, the

professionalisation of scholarship and the rise of the university-based academic profession. Based at the new research universities professional scholars became ever more concerned to assert the need for autonomous self-regulation, but now in a context where they required increasingly substantial amounts of public funding while pursuing research and producing knowledge that might be of general use to the economy, society and the state. It was in this kind of context that social compacts for autonomy, i.e. the need for scholarly freedom, not just as asserted by scholars themselves but also as recognised and respected by the state and society, became relevant. And so we may note the *conceptual shift* from a constitutive conception of scholarly freedom to a social compact conception of university-based academic freedom.

Of course, this account of the double institutional and conceptual shifts relevant to the conception of a social compact for autonomy is in important respects a gross over-simplification. The actual historical and intellectual developments were much more complex and varied. Thus it would be entirely wrong to suggest that the teaching mission, which had been constitutive for traditional colleges and universities, has somehow been replaced or superseded by the research mission of the modern university. Instead, teaching remained as a central function of the university but was now linked in specific and sometimes problematic ways with research. The *unity of teaching and research* was one of the core tenets of the Humboldtian theory of the modern university. In other cases, as in the British tradition, new notions of university-based scholarly research tended to be added on while older notions of the university's teaching mission still survived. As Eric Ashby observed, in practice this resulted in serious and unreconciled dilemmas:

“On the one hand universities are faced with a massive increase in student numbers, and the obligation to teach will not diminish; it will increase. On the other hand the emphasis on the prime responsibility of the academic profession is shifting from being student-centred ... to being subject-centred.” (Ashby 1974: 81)

Moreover, in the process of linking teaching with research, the university's teaching mission itself was transformed. Linking university-based teaching with research, both in theory and in practice, implied that its traditional conception as a form of moral education could be sustained only with increasing difficulty. Crudely put, a modern research university could hardly be expected to function as an institution of moral training, even if many academics, especially in the humanities, remained committed to some version of that traditional teaching mission while this was also expected by some sectors of the wider society. Ashby comments that in 20th century England “there has been and still is an uncertainty about the uses of academic freedom ... the uses to which academic freedom should be put have not been defined.” (Ashby 1974: 77). Presciently, already in the early 1970s, Ashby went on to anticipate the ways in which a market-oriented vision of the university would undercut the remains of any teaching commitment to the moral fashioning of students in contemporary approaches to teaching:

“To take this attitude is to withdraw from a responsibility which has traditionally been accepted by dons in Britain. If it were to become the accepted code of conduct in the academic profession, it could reduce the teacher-student relationship to one in which the teacher was simply selling knowledge and technique – a relationship which might become as impersonal as the relation between a customer and his grocer.” (Ashby 1974: 84)

What is at stake here, in relation to a social compact conception of academic freedom, is differences regarding the *content* of that compact. Ashby suggests that, at least as far as England is concerned, the social compact for autonomy which did come about in the course of the 20th century is marked by significant and continuing ambivalence about the nature of the university's teaching mission among academics themselves as well as among outside parties. Similarly, in the American context, works, such as Ernest Boyer's *Scholarship Reconsidered* (1990), have contended that "the emphasis on research that has characterised the top tier of American higher education may have gone too far ... [as part of a] movement to reemphasize teaching as the central responsibility of the academic profession" (Altbach 2005: 157). Altbach comments that in practice most academics actually produce little published scholarship or research while remaining strongly loyal to teaching, suggesting that it may in fact be the official view of the university premised on the research model that needs to be adjusted to reality.

For our purposes, though, the main point is that by the mid-20th century such a social compact for autonomy was an historical reality in major European as well as in Anglo-American societies. Here, at some length, is Edward Shils's authoritative overview of the position at mid century:

"In both depression and wartime ... universities were generally esteemed. They were considered to be among the important institutions of their respective societies ... By and large, the respect which universities received was accorded on the grounds of their dispassionate concern for truth, and of the contribution which they made to national well-being, by training young people for the practice of important learned professions ... In the United States, there was an approximate consensus between the expectations of the more serious part of the lay public and the beliefs of academics about what academic life should be about ... In most Western countries ... it was generally thought that the high status of the members of universities entitled them to freedom to pursue the truth in accordance with the rules and traditions of their various disciplines and institutions; indeed, it was thought that this freedom was integral to the effective performance of their calling ... In France, too, despite the high degree of centralization of governmental control over the budget and courses of study of the universities, the academic and civil freedom of university teachers was firmly established and immune from questioning. Scholars and scientists were respected by the wider public. In all the Western countries ... there was never any doubt within the universities about the definition of their fundamental and permanent tasks and the obligations of academics ... University teachers believed that they had a vital role in national life. This view was shared by influential parts of the larger public." (Shils 1975: 101-105).

In broad outline, a similar pattern of mid-20th century internal confidence, high status and social trust in the universities applied to the South African case, making due allowances for its colonial origins and the distortions due to apartheid.

The position was, of course, quite different in colonial and post-independence Africa. Under colonial rule only a handful of African universities had been established; these had been purposely modelled on imported institutional patterns and predominantly staffed by expatriate academics. Under the circumstances, an indigenous academic profession could hardly make the

barest of beginnings and had little connection with the needs and aspirations of local communities (Diouf & Mamdani 1994). This was exacerbated by the problems of under-development and socio-economic crisis in the majority of post-colonial African societies. Claude Ake points to the implication for justifying academic freedom:

“Why do we care about academic freedom in Africa? It is difficult enough to justify the demand for political freedoms where the limitations of poverty, illiteracy, poor health and the rigor of the daily struggle for survival seem to demand entirely different priorities. It is more difficult still to defend the demand for academic freedom, which is a very special kind of bourgeois freedom limited to a very small group of people. Why do we think we are entitled to demand academic freedom and why do we think that our demand deserves to be upheld by the rest of society? Academic freedom must somehow engage the interests, values, aspirations and potentialities of our people – and bearing in mind that ‘our people’ are typically peasants who are abjectly poor, malnourished, unschooled and in poor health ... How is our academic freedom justified by connecting to these people?” (Ake 1991: 20, 22)

It followed that there could hardly be any prospect for a social compact of state and society with the African universities inherited from the colonial period. In the words of Eric Ashby,

“every nation needs to have some concordat between the state and the university to safeguard the autonomy of universities, and in each nation the concordat is likely to be different. The concordat adopted for the colonial university colleges ... was, of course, the British pattern unchanged; it was assumed that the conventions would be exported with the formularies.” (Ashby 1966: 321)

With reference to the case of Nigeria, Ashby describes how the imported colonial model of academic rule, exemplified in the special role of the academic Senate in relation to a lay Council came to be counterproductive in (post-)colonial conditions:

“Africans had too little influence at the council table, they had still less at the table of the academic board ... The zeal of expatriate professors, anxious to establish in Africa British conventions of university autonomy, was interpreted by some as neocolonialism; their insistence on high standards as intolerance; their engagement with British patterns of education as pedantry. And so the distribution of interests and the mutual confidence between professorial senates and lay councils, which has made the ‘two-tier’ constitution so successful in English universities, was not reproduced in Nigeria.” (Ashby 1966: 307).

On Ashby’s analysis, the problem was both that the unwritten conventions that informed the relations between state, society and university in the British context were unfamiliar to the post-colonial publics of African societies and also that therefore the literal meanings of the university constitutions and procedures taken over from the imperial models tended to subvert practices of academic freedom rather than protect these (Ashby 1966: 335ff.)

But it was not only in post-colonial Africa that a possible social compact between state, society and the universities encountered serious difficulties. In the West as well the established compact for autonomy came under increasing stresses and strains from the closing decades of the 20th century, perhaps nowhere more strikingly than in Thatcherite Britain. Observers ascribed the unprecedented extent of government interventions in higher education, amounting to an

outright hostility to universities, along with the introduction of market-oriented reforms and ever-increasing demands for quality-assurance and accountability, to an underlying “withdrawal of trust” (Trow 2005: 8). The previous social compact for autonomy was coming apart. Even so, as Altbach remarks, in practice this did not quite extend to a denial of academic freedom as such:

“There has been remarkably little violation of academic freedom during this period of difficulty. By and large government authorities have remained committed to academic freedom for the professoriate even while placing fiscal and other restrictions on institutions of higher learning.” (Altbach 1991: 28)

In some sense, and at certain levels, the social compact for autonomy may thus still hold. The following sections of Part 2 of this report will investigate the significance and implications of different aspects of this contested situation more closely.

2.2. Comparative socio-political contexts and academic cultures

Though the academic world has similar origins and shares core institutions, such as the university, there are significant national variations in academic culture. The social status and functional roles of the professoriate, for example, differ strikingly from country to country, as Altbach observes:

“In Latin America, until quite recently, academics had no role in research, academic salaries were quite low, and the academic profession was seen as a part-time responsibility, supplemented by other jobs ... In sharp contrast, the British professoriate has traditionally been considered a full-time responsibility and the norms of the profession are well established.” (Altbach 1991: 24)

In Africa and other parts of the post-colonial world, too, conditions differ sharply from the Western European or Anglo-American patterns, though this does not mean that academics and universities do not face similar problems of academic freedom or institutional autonomy. In this regard, though, we need to note that certain features of the academic culture which tend to be regarded as indispensable components of academic freedom in our particular context may be absent, or very differently configured in other contexts, without thereby necessarily doing away with, or even radically affecting, the practice of academic freedom as such. Thus the institutional autonomy of universities, which often tends to be equated with academic freedom in the Anglo-Saxon tradition, is conspicuously absent in major continental European higher education systems. At a different level, key structures of internal university governance, such as the academic Senate or University Council, may be lacking in other systems, or have very different functions and significance. These differences concern us in so far as they may affect the conditions, nature and content of a social compact for autonomy. While we cannot possibly undertake a comparative survey of different academic cultures for its own sake, we need to be aware of such variations as might inform the very notion of academic freedom as a social compact. This will be the topic of the present section.

In his comparative analysis of the basic forms and levels of legitimate authority in the academic world, Burton Clark identifies three significant national modes, those of the continental

European, British and American academic cultures:

“The Continental mode combines strong faculty guilds and state bureaucracy. The British mode combines faculty guilds which emphasize collegial over personal rulership with modest trustee and bureaucratic authority at the institutional level. The American mode is marked by weak guild and bureaucratic forms at the lower levels with strong trustee and bureaucratic authority at the institutional level.” (Rhoades 1990: 1378)

We will first briefly consider the relevant trajectories and features of the Anglo-Saxon academic culture in contrast to that of major continental European traditions, and then compare these with key aspects of the American pattern of development in its academic culture. Of course, it cannot be denied that there are many exceptions and other variants. Thus in important respects the Scottish university system followed a different trajectory and developed various distinctive features (which played a significant part in the founding of the first South African universities), while continental European academic cultures come in many regional and local variations. In major respects, the trajectory of African universities, from their colonial origins to the post-independence context, also differed from the European and American patterns (subsection 2.2.1). We can only deal with some of the most pertinent and basic features relevant to our present topic of academic freedom as a social compact.

2.2.1. Underlying differences in Anglo-Saxon versus continental European academic cultures

As already noted (subsection 1.2) an especially striking difference between the Anglo-Saxon academic culture with which we in South Africa are familiar and some of the major continental European traditions concerns the way academics and universities relate to the state. Pritchard contrasts the fundamental differences in the British and German traditions as follows:

“German universities have close links with the state: their professors are civil servants (*Beamte*) with a special duty of loyalty towards the Constitution, and their appointments to chairs have to be ratified by the appropriate ministry ... By contrast, the British tend to be sanguine about their academic freedom and values because their universities are legally independent corporate bodies.” (Pritchard 1998: 101)

These differences have deep historical roots. Guy Neave relates the contrasting outcomes in the structuring of these academic cultures to their different historical trajectories, and more specifically to the different modes of incorporation of universities into the 19th century nation-states. Illuminatingly he distinguishes between the “Saxon” interpretation (applying to the British case) and the “Roman” interpretation (applying to such cases as France and Germany) (Neave, 2001: 37ff.). To this, according to Mamdani (2006), may be added the different trajectory of African universities from their colonial origins to their function as developmental instruments for the post-independence states. Each of these key features is briefly outlined in turn.

Neave’s “*Roman*” interpretation effectively highlights the combined long-term impact on the structuring of modern academic cultures of the *Code Napoleon* and the rise of the centralised nation-state during the 19th century in countries like France and Germany. Prior to the rise of modern nation-states, traditional universities in various European societies had been subjected to the authoritarian impositions of the absolutist state or local rulers:

“Universities were under the control of local rulers who imposed their own ideology and gave them the character of state corporations. There was no shared national identity, no common political culture and no homogeneous class system.” (Pritchard 1998: 122).

Under the Holy Alliance after 1815, universities were treated as threats to the established order and restricted by the Restoration state through such measures as the 1819 Karlsbad Decrees:

“State commissioners supervised instruction at universities and academic life in general. Students and professors who violated their duties were able to be removed from the university without legal process ... In 1834 the anti-university measures were stepped up. Professors were only able to be appointed with the approval of the state administration” (Richter 1992: 1837)

In this context Humboldt’s reforms, associated with the founding of the University of Berlin (1810), represented a different project, one rooted in Enlightenment ideals and complementary to the meritocratic reform of the administrative state introduced by the *Code Napoleon*. The Humboldtian reforms amounted to

“the final incorporation of the university as a public service institution ... [and] liberalized the curriculum, created within the university the formally recognized freedoms to teach and learn, granted the freedom of the arts and sciences, not to mention the autonomy of university research and teaching programs.” (Neave 2001: 25)

However, effectively these could only be realised after the 1848 revolutions and along with the unification of the German nation-state in the second half of the 19th century. The Reich Constitution adopted in Frankfurt in 1849 formally recognised academic freedom: “Science and its teachings shall be free” (cited by Richter 1992: 1838). Crucially it applied to the university as a state institution. (Recognition of instructional freedom also enabled the establishment of confessional or church universities as a distinct sub-tradition [Richter 1992: 1838], but we are concerned with the secular mainstream.) In effect this brought about an intrinsic linkage between academic freedom and the rational administrative state, which was also a *Kulturstaat*, an enlightened state that protected and promoted culture, and was committed to the general interest (Pritchard, 1998: 104). The unified nation-state and its legal-bureaucratic order, in Germany as much as in France, represented the rational, disinterested values of the public sector as against all sectional and local interests or irrational social forces:

“When unified statehood was achieved, law was developed as a distinctive, binding, enforceable system which was the very articulation of the state.” (Pritchard 1998: 122)

In Neave’s conception, the functioning of universities as essentially public-sector institutions was at the heart of the “Roman” mode of their incorporation into the 19th century nation-state:

“The concomitant of the rise of the Nation-State in Europe was the incorporation of the university into the coordinating ambit of the state ... [this] placed higher learning firmly within the public domain as a national responsibility ... It opened the way to the public financing of universities via the state budget ... placing upon [academia] the implicit obligation of service to the *national* community.” (Neave 2001: 25)

Universities were national institutions, and professors as scholars and teachers were public servants. In practice it also followed that basic certification took the form of National Diplomas rather than degrees awarded by local universities:

“The nationalization of certification, validation and close administrative oversight ...

effectively brought universities into the national ambit – and in doing so forged a *national system* of universities, accountable to central government in the place of the individual, property-owning self-governing corporations which had preceded them.” (Neave 2001: 29)

The political project of building the nation-state required the assimilation of regional cultures and local communal identities under its sway, a process in which institutions of public education like universities played a crucial part.

“The extension of the ‘educating state’ [Neave explains] involved the imposition of a common identity through the supremacy of a common tongue ... an imposition largely ensured by a central interdict on minority languages having access to the public institutions of education ... a very specific form of ‘cultural imperialism’ within the Nation-State.” (Neave 2001: 36)

Neave stresses that this “Roman” state had necessarily to be heavily centralised and did not allow for intermediary bodies to have crucial roles intervening between the central state and its local institutions. As far as the universities are concerned their incorporation into the rational state apparatus rested on two axioms with significant implications for the protection of academic freedom:

“First, that the center holds a monopoly over all information relevant to achieving a negotiated consensus that encompasses the myriad partial – and thus incomplete accounts that might have accumulated at the periphery ... Second, that the state alone possesses the necessary concentration of ability and technical expertise to permit such a view consistently to be upheld ... In effect, nationalizing the university within the ‘Roman State’ brought it most firmly within that sphere of administrative responsibility given over to the ‘general interest’, rather than as one of the subordinate and particular interests on the administrative periphery.” (Neave 2001: 37-38)

In this way, the Humboldtian vision of the university as an enlightened self-governing community of scholars found its logical home and effective protection of academic freedom by being incorporated as part of the rational administrative order of the nation-state. So far from requiring institutional autonomy, academic freedom at the university was to be

“protected by the Constitution and sponsored by the state in order to prevent the University from being corrupted by powerful actors and forces in politics, the economy, or religion ... Universities were part of the state apparatus and professors were civil servants (*Beamten*). The state kept the right to appoint professors and academic autonomy was linked to abstention from politics.” (Olsen 2005: 14)

Of course, this civic protection of academic freedom only applied to the extent that the state itself was committed to the constitutional principles of liberal or enlightened autocracy. If these had definite limits already in Imperial Germany (Weber 1917), the fatal consequences for universities in general and academic freedom in particular were notoriously demonstrated with the rise of the fascist order in the Nazi Germany from the 1930s. Arguably the lack of an independent social basis for the universities and the location of the academic professoriate in the civic apparatus of the state must account for the tragic ease with which so many of the illustrious German intelligentsia succumbed to the temptations of the National-Socialist ideology and even collaborated with official anti-Semitic purges. It should also be noted that, with the

centralised nation-state and its rational administrative-legal order as guarantor of the university's scholarly function and academic freedom, there was, in principle, no further or special need of a social compact for autonomy. Incorporation of the university into the "Roman" state is thus incompatible with conceiving of academic freedom as a social compact.

This is quite different with regard to Neave's "*Saxon*" mode of incorporating universities into the nation-state exemplified by the British case. Not only are universities formally founded as independent corporations by Royal charter, but the nation-state itself is conceived as a federal unity coordinating local communities which retain a certain primacy in a context of 'differentiated legitimacy':

"The Saxon valuation of the Nation-State afforded a high degree of legitimacy to local communities, whether administrative or self-defined ... The state was not conceived as the incarnation of the nation so much as an agency for ensuring coordination in those matters such as defense, foreign policy and taxation which required decisions above the local level" (Neave 2001: 39).

It followed that even in the context of a nationally coordinated system of higher education the university was not basically a creature of the state but an independently founded community of scholars with its own institutional integrity and autonomy. "State authorization to found a university did not imply that the university was a state institution" (Neave 2001: 42). Rather than expressing the rational order of the public sector or the administrative state, universities were rooted in local communities, served regional needs and reflected local communal identities. On the "Saxon" interpretation, according to Neave (2001: 41-42), "the university ... was an emanation of that [local] community and reflected, in its study programs and its specialities, the community's educational and technical needs".

Inter alia this is typically reflected by the "total absence of national diplomas on the one hand and the right of the individual university to validate its own degrees on the other" (Neave 2001: 42-43). In this "Saxon" perspective, support and funding from the national state might become ever more necessary, especially with the massive growth in student numbers and increased social demands for university services, but the state tends to be viewed as a potential threat to the university's prized institutional autonomy. The proper role of the central state is to have a 'facilitatory' function and intermediate bodies, such as the British University Grants Commission, come to play crucial roles, representing the universities as much to the state as the other way round, implementing the national state's public policy in the sphere of higher education (Neave 2001: 40; Tapper & Salter 1995: 60). For obvious reasons, this "Saxon" tradition will be much more familiar from a South African perspective than the continental European "Roman" mode of state-incorporation. After all, it is the "Saxon" heritage, that was transplanted to South Africa as a (post-)colonial offshoot of the British university system. However, as already cited (subsection 1.2), Graeme Moodie perceptively observed that historically the South African version manifested some significant differences to which we will return in subsection 2.5.4 below. More recently, in the transition to the new democratic South Africa, all universities were integrated into a single national system of higher education under the *Higher Education Act* of 1997, and with academic freedom recognised as a fundamental right in the new Constitution. In some ways, this suggests a different role for the state

in relation to universities, perhaps not unlike that in Neave's "Roman" mode of incorporation into the nation-state characteristic of the Continental-European academic culture.

At this point we may do well to consider the anomalous position of post-colonial African universities and their distinctive path to incorporation in the public sphere. Significantly, we do not find a straightforward mirroring of either the "Saxon" or "Roman" modes of incorporation. While the constitutions of the university colleges of British tropical Africa were deliberately and literally modelled on the transplanted paradigms of the British civic universities (Ashby 1966), their relation to the post-colonial state and society proved of a quite different order. In large part this was due to a specific colonial legacy. Mamdani stresses the significance of the fact that tropical Africa was colonised during the late 19th and early 20th century period of indirect rule when the earlier confident imperial civilising mission had given way to a more defensive and conservative consolidation of ethnically defined local authorities:

"If the first period in which Britain claimed to be a civilizing mission was known as direct rule, then the second period in which it reversed claims, now championing tradition, was known as indirect rule. What had changed in the transition from direct to indirect rule? First and most obviously, there was a change in the language of rule, from a language of bringing civilization to one of conserving tradition. Second, there was a change in the local mediators of foreign rule. Direct rule was mediated through the educated strata, which were trained in Western schools and institutions of learning that were built as so many temples and monuments to Britain's civilizing mission. The proliferation of English-speaking strata, from lawyers to clerks, was said to be a visible benefit of colonial rule. In the era of indirect rule, however, the British looked with suspicion on the educated strata but looked with favour on traditional chiefs." (Mamdani 2006: 2-3)

Typically the colonial state had little or no interest in African higher education and by and large left any such initiatives to civil society or voluntary associations, especially the missions. The result was that when independence came by the 1960s, a bare minimum of African universities had even been launched. Mamdani writes how "many will remember that world media in the decade of the 1960s was full of stories of how one African colony after another – Tanganyika [Tanzania], Congo, Nyasaland [Malawi], Northern Rhodesia [Zambia] – was about to become independent with no more than a handful of university graduates in the population" (Mamdani 2006: 3). In consequence, the founding and growth of African universities became very much a project of the post-colonial state:

"The development of higher education in Africa is basically a post-independence phenomenon. The number of universities founded in the colonial period can be counted on two hands. In Nigeria, for example, there was only one university with 1 000 students at the end of the colonial period; by 1990 it could boast 31 universities with 141 000 students. East Africa had a single institution of higher learning – Makerere – during the colonial period; today it has over ten. Similarly, in Francophone West Africa, a single institution – the University of Dakar – serviced higher education in the colonial period, whereas each country in that constellation of states now boasts of at least a university." (Diouf & Mamdani 1994: 1)

At the most obvious level, this meant that African universities functioned as an integral part of

the post-independence African nationalist movement: “Most colonies had no universities as they approached independence. When they became independent, just as sure as the national anthem, the national flag, and the national currency, a national university became an obligatory sign of real independence” (Mamdani 2006: 3-4). Even more importantly, it followed that a decidedly instrumentalist vision of the university, that of a *developmental university* serving the developmental needs and objectives of the national state, would come to prevail, and in ways that ruled out a significant role for university autonomy:

“Seen as vital in fulfilling the manpower needs of the independent state, universities came to be considered a necessary ingredient in the ‘developmental’ logic of the period. ... Once the university was seen as a training ground for personnel that would manage the process of ‘development’ it was but a short step to the conclusion that the independent state must have a key role in the very management of the university. In this context, the demand for ‘autonomy’ seemed not only quaint, but even had the aura of a bygone era ... University autonomy came to sound like a figleaf for anti-national expatriate dominance, whereas the presence of state representatives in decision-making bodies appeared as a solid guarantee of national interest.” (Diouf & Mamdani 1994: 1-2)

When the economic crises from the late 1970s took hold, there was a shift from the ‘developmentalist’ emphases and justifications to a more repressive concern with ‘law and order’ and clampdowns on critical or dissident academics as potential subversives. Long before that, though, African universities had been firmly incorporated as part of the general state apparatus in ways far removed from the “Saxon” mode of incorporation and closer to the European “Roman” mode of incorporation though without the constitutional principles which had provided a different basis for academic freedom. In Mamdani’s characterisation,

“all assumed that the university would be run as a state apparatus, a parastatal, and the state would continue to be the sole funding source for the university. The crisis of the developmentalist university was part of the larger crisis of nationalism. The more nationalism turned into a state project, the more were the pressures on the developmentalist university to implement a state-determined agenda. The more this happened, the more critical thought was taken as subversive of the national project.” (Mamdani 2006: 5)

It was in this context that the Council for the Development of Social Science Research in Africa (CODESRIA), following the Kampala Declaration, initiated a serious debate on the prospects for academic freedom in Africa from the early 1990s.

To return to the basic contrasts between the British and continental European traditions of academic culture, it should be clear that it is specifically the “Saxon” mode of incorporating universities into a national system which is conducive to, indeed dependent on, some kind of formal or informal underlying compact. British political culture is, of course, notorious for its lack of a written Constitution or explicit Bill of Rights, relying instead on ancient but unwritten conventions and implicit agreements. This applies to the interaction of independently founded university communities and the national state in the higher education sphere as well. In Pritchard’s summary,

“in the United Kingdom there has been apparently little perceived need to afford legal

protection to university freedoms – or civic freedoms by a Bill of Rights ... There existed a consensus about a university-based, communal life-style which became the framework for the gentlemanly ideal of education later to be championed by Newman. From this consensus derived the British emphasis on character formation as an objective of university education.” (Pritchard 1998: 121)

The federal character of the “Saxon” political culture accounts for the striking degree of institutional autonomy maintained by British universities deep into the 20th century. Even after the Second World War, when universities became almost completely dependent on state monies due to the massive expansion in student numbers and the growth in research requiring large outlays of state funding, they could maintain their traditional autonomy with relatively high levels of state funding coming in block grants dispensed by the intermediate University Grants Committee (Tapper & Salter 1995: 59f). But that underlying compact was not formally or constitutionally entrenched, and in the end, when the market-oriented Thatcher government launched a hostile assault on the very institutional autonomy which universities traditionally enjoyed, that proved to be a weakness rather than an enduring strength. Pritchard argues that in this way British academic freedoms have been shown to be part of a greater complex of civic freedom, a facet of the freedom in the larger society:

“The fact that academic freedoms are implicit rather than explicit in the United Kingdom has now become a weakness rather than a strength ... The erosion of these freedoms in academe is merely a reflection of a constitutional crisis in the larger society.” (Pritchard 1998: 123)

It remains to be seen in Britain itself to what extent the “Saxon” mode of incorporating the universities, and the underlying social compact with which this has been associated, can be sustained or revived in current conditions.

The distinctive academic culture which developed in the different socio-political contexts of Continental-European societies like France and Germany has also not gone unchallenged by more recent developments. In the aftermath of the 1968 student revolts these universities experienced a wave of often quite radical initiatives primarily aimed at internal democratisation. In Olsen’s summary:

“during the 1960s and 1970s the vision of the University as a representative democracy was boosted by student revolts and their criticism of overcrowded universities with very limited access to professors and the repressive authority of universities and government, the younger faculty’s struggle against senior professor dominance, and democratic development in society at large, emphasizing work-place democracy and co-determination.” (Olsen 2005a: 15)

Radical as the student movement might have seemed at the time, it would appear, at least in retrospect, that its impact on the underlying structures of this academic culture was limited: externally it did not change the universities’ location within the educational and administrative apparatus of the national state while internally the special status and powers of the professoriate survived to a surprising extent. There is little indication that the radical student movements ever set out to fashion a new social compact, either within the university or in relation to state and society, with any particular allies or partners in mind; implicitly theirs was rather a (failed)

revolutionary movement. What has changed over time, with potentially momentous implications for the structural location of the universities, is the macro-political context of the former European nation-states themselves within the evolving European Union. Universities can no longer be viewed solely as national institutions (Olsen 2005a: 24). The full implications for universities of the supersession of the 19th century nation-states, in which the national universities played such a prominent role, by the new structures of European economic, political and cultural coordination and integration, are still unclear. What it certainly has brought about is an increasing emphasis on student and faculty mobility and exchange across national borders along with a process of standardising degree structures, university statutes, titles and examinations in order to facilitate joint programmes and exchange agreements. In significant ways these developments have been brought together since the late 1980s in the context of the Bologna process. On closer examination, though, it appears that there actually are two interrelated but different processes under way under the general “Bologna” banner. One process, initiated by the universities themselves, is represented by the *Magna Charta Universitatum* signed in Bologna in 1988 by more than 400 Rectors of European universities. This essentially amounted to a reaffirmation of the traditional humanist values of the university, reaching back to its medieval origins and encapsulated in the Humboldtian ideal of the unity of teaching and research for the modern research university:

“The charter laid out the principles seen to define ‘the university’. It celebrated the humanitarian values of university traditions and aimed to strengthen the bonds among European universities. The Rectors pledged loyalty to ideals such as the university’s moral and intellectual autonomy from all political authority and economic power, teaching and research in universities as inseparable, and cooperation across political and cultural borders ... Humboldtian ideals were not seen as hindrance for an active role for universities in the search for a new European political order and a European identity ... Reaching back to the early years of European university history, the Charter supported the mutual exchange of information, joint projects, improved mobility among teachers and students, and a policy of equivalent statuses, titles, examinations and award of scholarship.” (Olsen 2005a: 18-19)

In principle, this could also be taken as signalling a potential break with Neave’s “Roman” mode of incorporating the universities into the centralised nation-state, with the universities reverting to more autonomous roles as locally or regionally rooted scholarly communities independent of the state. However, there seems to be little indication of anything like such a wholesale re-orientation of established European academic culture. Moreover, anything of that kind could also be overtaken by the other Bologna process, that represented by the Bologna Declaration on the creation of a European Area of Higher Education by 2010. This Bologna process has not directly involved the universities or the academic community (except as consultative members) but proceeded at the level of the state:

“While the Charter was initiated by the academic community, the Bologna Declaration was a pledge taken by the ministers of education from 30 countries. The expressed aim was to reform national systems of higher education in order to promote mobility, employability, and European dimensions in higher education ... The Bologna process has primarily been an intergovernmental process.” (Olsen 2005a: 19-20)

While there is thus a considerable overlap in the concerns, at both levels, with promoting academic mobility across national borders by standardising institutional structures and formal requirements in higher education, it is also becoming clear that these are informed by fundamentally different conceptions of the nature and mission of the university itself. These differences have become more pronounced through the involvement of the EU Commission as a full member of the Bologna process. The EU Commission set out to develop a vision of the emerging knowledge economy over the next 15-20 years, but did so within an instrumental economic-technological framework:

“The Commission observed a trend away from the Humboldt model and towards greater differentiation and specialized institutions concentrating on core specific competences ... Consistent with the neo-liberal reform ethos, the University is an enterprise in competitive markets ... It presented higher education solely as an instrument of economic policy and gave a too narrow interpretation of the university’s basic mission.” (Olsen 2005a: 21-23)

Thus while the universities, for their part, are re-affirming the validity of their traditional humanist values and the continuing relevance of the Humboldtian vision, the EU Commission at state level is espousing a very different market-oriented framework for university reforms. For the time being these basic tensions and contrary visions remain unresolved. Olsen concludes that “today there is no ready-made model likely to address all current challenges” (Olsen 2005: 23). For our own purposes, this may be translated as an admission that, with respect to the current Continental-European academic culture in its socio-political context, the makings for a new social compact cannot yet be discerned.

2.2.2. The trajectory and model of modern American academic culture

Especially in the course of the 20th century, these features and different trajectories of development in Anglo-Saxon academic culture as contrasted to that of the major continental European traditions need to be complemented by tracing some key aspects of the development of American academic culture. Higher education in the United States is such a vast, complex, diverse and uneven enterprise – including both private and public universities, liberal arts colleges as well as community colleges, former land-grant colleges grown into state universities but also differentiated state-wide university systems or ‘multi-versities’, exclusive elite institutions along with non-selective open access colleges, a strong tradition of oversight by lay trustees as well as support from state governments and substantial federal involvement – that it would be impossible to attempt reliable generalisations about American academic culture in brief compass. As noted by an expert referee of this report, a more comprehensive account would have to distinguish among different kinds of universities and their origins as private universities (such as Harvard or Chicago), religious foundations (such as Northwestern or Fordham), state universities (such as Wisconsin or Texas), land grant colleges – often becoming ‘state universities’ (such as Michigan State University or Texas A&M), community colleges, etc. For our purposes, though, it will be sufficient to focus on certain key strands which have contributed to the growth of the academic profession and to the rise of the influential American model of the research university.

If the institutional roots of some premier universities, such as Yale and Harvard, can be traced back to the colonial period, the modern American university was only fashioned during the closing decades of the 19th century. “In the truest sense, neither genuine universities nor an academic profession existed in the United States before the Civil War” (Wagoner & Kellams 1992: 1678). Institutions of higher education were still little more than small elite lecturing colleges, mostly staffed by amateurs and part-time employees. They tended to be founded by churches, local communities or philanthropic benefactors and were governed by boards of trustees while the American nation-state functioned at a distant federal level. In this respect, the American socio-political context amounted to a more radical version of Neave’s “Saxon” mode of incorporating universities, given the “quite weak federated structures ... at the state and national level” (Rhoades 1990: 1380). So far from functioning as agencies of the ‘educational state’, like their European contemporaries, American colleges and universities adopted the principle of vesting sovereignty in boards of regents or lay trustees (Epstein 1974: 100). Still, it was the German model of the research university that had the greatest impact on the emergence of modern American universities by the end of the 19th century (Hofstadter & Metzger 1955: Vol 1, 367-406). While there had been some local initiatives towards academic professionalisation, e.g. those associated with the founding of the University of Virginia (1825), it was the experience of several generations of American students impressed by the scholarly rigours of PhD programmes at German universities that did most to transplant Humboldtian ideals to American soil. Over nine thousand American students studied in German universities in the 19th century, increasing from some 200 before 1850 to a peak of 2 000 in the 1880s (Hofstadter & Metzger 1955: Vol 1, 367-368). These included some of the most influential future college presidents like JB Angell, CW Eliot, DC Gilman and CK Adams. The exemplary founding of Johns Hopkins University (1876), explicitly designed as a research university on the German model, was followed by the establishment of fifteen major graduate schools or departments (including Clark University, Chicago and Stanford) by the end of the 19th century (Hofstadter & Metzger 1955: Vol 1, 375-379). A “new constellation of elite and imposing ‘United States research universities’” (Wagoner & Kellams 1992: 1681) began to emerge. Contrary to the long-standing practice of English universities and to the earlier patterns of American universities themselves, the PhD programme became a central feature of the new research-oriented American graduate schools: “Before 1861 not a single doctorate had been awarded by an American institution; in 1890, 164 such degrees were conferred; in 1900, more than twice that number” (Hofstadter & Metzger 1955: Vol 1, 378).

This did not mean that all American higher education institutions became research universities in consequence of some clear and agreed new social compact; on the contrary, as Hofstadter and Metzger emphasise, it served to increase the basic “eclecticism” that was the characteristic feature of the American scene, resulting from the disparate mix of moulding forces, public and private, local and national, lay and professional:

“Our post-war institutions were ... not merely motley, but mongrel; not only different from each other in size, quality, independence, and sophistication (which was a familiar American pattern), but eclectic in their character and purpose (which on the whole was something new) ... Our eclecticism was responsible for a confusion and ambivalence in

the relation of universities to its publics ..." (Hofstadter & Metzger 1955: Vol 1, 378-379) Under American conditions, there could be no general agreement on, or adoption of, a consistent Humboldtian theory of the unity of research and teaching; instead, older notions of the university's teaching mission in terms of providing moral education to the young *in loco parentis* became overlaid by and mixed up with newer visions of the university as a centre for theoretical (and applied) research in what Hofstadter and Metzger term "our hybrid university":

"In the public mind, the American university was not clearly defined as a center of independent thought, an agent of intellectual progress; it was also, perhaps primarily, a school of preparation for minors, a substitute parent for the young ... Our eclecticism ... blurred the public's picture of what a university was and ought to be ... As a culturally autonomous guild, the university was independent of all social groups and stood above the clash of their interests; as a serviceable folk institution, it was the instrument of all social groups and dared not rasp the interest of constituents." (Hofstadter & Metzger 1955: Vol 1, 380-383)

To a considerable degree, this confusion was shared by members of the American universities themselves at the time. It could not be expected that the diverse groupings which made up the academic faculty could or would agree on the nature of the university or the need for academic freedom:

"In the university, searchers, the seekers for truth wherever it led, hobnobbed with technicians, who were the purveyors of *ad hoc* techniques, and craftsmen, who were the executors of someone else's designs. In a faculty composed of accountants, home economists, sociologists, military scientists, physicists, physicians, physical educationalists, fashion designers, marketing experts, and mining engineers, there could be no unified sense of the need for academic freedom, no united front against attacks on university independence, no sure definition of the university." (Hofstadter & Metzger 1955: Vol 1, 383)

Under these circumstances the crucial moves in the struggle for academic freedom came from a particular sector of the wider academic world, the professoriate at the core of the new elite group of research universities and committed to the project of professionalising academic culture.

Not coincidentally, these elite universities provided the base for the American Association of University Professors (AAUP) eventually founded in 1915. Some of the most prominent of the new class of modern research scholars, such as Edwin R Seligman, a Columbia economist, and Arthur O Lovejoy, a Stanford philosopher, took the lead in articulating the principles of academic freedom on behalf of the academic profession. In so doing, they were effectively staking out the claims for academic rule by a newly professionalised professoriate within the internal governance structures of the modern American university. Implicitly and explicitly this challenged the prerogatives and powers of the boards of regents or lay trustees who had been overseeing university governance. The celebrated classic 'academic freedom' cases – such as that of Edward A Ross at Stanford in 1896 in protest against his unilateral dismissal by Mrs Jane Lothrop Stanford, widow of and successor to the founder of the university, who had been

offended by his public statements – pitted the professoriate against the university’s lay governors and provided “trial runs for the investigative modus operandi [and campaigns publicising issues of academic freedom] that the AAUP would later make its stock in trade” (Haskell 1996: 48-53). From this, it was only a logical step to the AAUP’s charter document, Seligman and Lovejoy’s 1915 *Report on Academic Freedom and Tenure*. “Out of this crucible of controversy”, writes Haskell,

“a tacit set of standards and expectations finally crystallized in 1915, with the founding of the AAUP and the publication of its first report on Academic Freedom and Tenure ... The central thrust of the 1915 report was to displace trustees as sole interpreters of the public interest and put forth a strong claim for the corporate authority of professional communities ... The proper relationship, then, between professors and trustees is not that of employees to employers. The relation should instead be analogous to that of the federal judges and the chief executive who appoints them but then has no authority over their decisions.” (Haskell 1996: 58, 60)

But if its 1915 Report served as the AAUP’s own professional manifesto, it did not rest its case there. Instead, this was only the first move in a prolonged process of negotiation, not so much with the lay boards of trustees, but with university presidents and top administrators, specifically in the form of the Association of American Colleges (AAC): “ ... no sooner was the [1915] Declaration received by AAUP members with much self-applause than the leaders sought to use it as a scaffold for a joint venture with administrators” (Metzger 1990: 15).

It was a long and protracted process, issuing first in the joint 1925 Conference Statement and eventually in the 1940 AAUP/AAC *Statement of Principles on Academic Freedom and Tenure*, henceforth the authoritative source and foundation for the academic profession’s self-understanding of its proper place within university governance. In effect, what had taken place was the making of a particular political pact (to which we shall return in more detail below in subsection 2.4.2) between representatives of the professoriate and those of university executive management and administration. This did not amount to anything like a general social compact on the place of the university in the overall academic culture; rather, it provided a limited but formal framework of the principles of internal university governance as agreed by key participants in the academic community. At the same time the significance of this particular pact on internal university governance, and of the principles of academic freedom it encapsulated, for American academic culture should not be underestimated, the more so once these were subsequently constitutionally recognised by the Supreme Court under its freedom of speech jurisprudence (subsection 1.3.3).

A fuller account of the development of American academic culture in its socio-political context would have to acknowledge a much more varied picture than this brief account of some of its mainstream developments, not least with regard to various persistent and serious threats to academic freedom in American universities. The best known of these was, of course, the experience of McCarthyism in the 1950s at the height of the Cold War, but it is by no means the only such case. As noted by an expert referee of this report, loyalty oaths still exist in many state universities and inappropriate interferences by University Trustees in internal academic affairs

are by no means unknown. A fuller treatment would also have to take account, amongst much more, of the significance for a social compact approach of the emergence of the multiversity as a major new configuration of university institutional structure and governance. Olsen's succinct reference hints at some of the relevant aspects:

"The successful American research university, the multiversity, was in many ways a new type of institution. And increasingly became dependent on federal support and its contributions to defense, industrial-technological competition and other national purposes ... Humboldt's philosophical-humanistic vocabulary and the idea of unity of purpose and homogeneity of constitution were gradually replaced with functionalism as the justification for the diversity of the American educational institutions." (Olsen 2005a: 14)

Of related and even more momentous significance was the evolution of mass higher education in the decades after the Second World War; amongst other things this brought about "the growth of more and more non-selective colleges to accommodate students of lesser ability ... [while] significant segments of the professoriate [did] not share fully in the function of research" (Wagoner & Kellams 1992: 1683). On both counts this means that the particular role of the elite research universities needs to be located within a highly differentiated higher education system. Much the same could be said of the impact of more market-oriented business-style management on the functioning of these institutions as well. Already in the early 1970s Epstein was noting the increase of managerial policy-making powers in university governance, even if their impact had been considerably ameliorated in the context of growth and expansion of the 1950s and 1960s:

"Every sensitive observer of the large contemporary university knows that the specialized administrative or business realm impinges on academic policy making and that increasingly influential decisions are made by experienced career administrators rather than by teacher-scholar administrators." (Epstein 1974: 106)

In subsequent decades these developments would, as elsewhere in the world, take much more pronounced forms and increasingly challenge what had seemed to be securely established understandings of the nature and function of the academic enterprise. Conversely, American universities have also been drawn into the 'culture wars' and ideological conflicts which have come to dominate public discourse in recent decades. Notably, some recent commentators have warned that these developments are posing important internal threats to academic freedom by undermining the very intellectual foundations of science and scholarship (Menand 1996; Shils 1995: 259). Taken together, the prospects for anything like a general social compact in American academic culture would appear more remote than ever.

2.2.3. Some tentative comparative conclusions

Our brief and partial survey of the development of academic culture in some comparative socio-political contexts may allow a few tentative conclusions. First, it should be noted that basic differences in the socio-political context profoundly shape how some of the more crucial elements of academic freedom are configured in different cases. Thus, depending on the mode of incorporating universities into the public realm – whether in Neave's "Roman" mode in which

universities come to function as part of the apparatus of the 'educational state' or in Neave's "Saxon" mode as independently established corporations based in local communities and only coordinated by a facilitatory state – the very possibility of *institutional autonomy* as precondition and expression of academic freedom appear quite differently. Likewise, while in one context, the rational administrative state functions as the ultimate guarantor of *academic freedom* itself, in the other context, the state more often than not appears as a threat to university-based academic freedom. Secondly, it must be of considerable importance for our purposes that both the need for, and the prospects of, a social compact for autonomy differs appreciably depending on the kind of socio-political context involved. Thus where a centralised nation-state is directing the sphere of higher education, including the functioning of universities, with or without constitutional guarantees for academic freedom, it is not clear whether or how some kind of social compact might be of any particular relevance. On the other hand, to the extent that a national or federal state allows independent corporations and/or local communities to operate more autonomously within a general framework of public coordination, the prospects for different kinds of pacts will also be of considerable relevance. Thirdly, it is of some consequence whether social compacts for autonomy operate as underlying and informal agreements or whether they are arrived at through deliberate processes of negotiation as formally agreed and even constitutionally entrenched pacts. This may be especially important as basic social and economic conditions come to change over the longer term. In the following sections we will investigate these provisional conclusions more closely in relation to the different levels of scholarly freedom, academic rule and institutional autonomy before turning to possible, more specific applications to the South African case.

2.3. Scholarly freedom as a social compact: the rise, hegemony and crisis of the academic profession

Scholarly freedom, as a distinctive component of the complex practice of academic freedom, necessarily involves an internal compact constitutive of scholarly discipline itself and possibly also an external social compact in relation to its wider social setting. The internal compact is that with other scholars as colleagues engaging in the same discipline of research and inquiry: scholarship may in practice often be a lonely or socially eccentric pursuit, but as an enterprise it inherently involves an intellectual self-governing collectivity. Robinson Crusoe on his desert island – without intellectual predecessors on whose shoulders he can stand and without competent peers to assess his own findings – can hardly set up as a scholar all by himself. This internal compact is a necessary condition of scholarly practice without which it cannot be conceived. The possible external social compact is a different matter. Political rulers and the larger society may ignore and tolerate the intellectual pursuits of scholarly communities as harmless and inconsequential, or they may suppress and interfere with them as politically subversive and socially harmful, or they may hold them in high social and cultural esteem and allow scholars intellectual autonomy in their own pursuits, since these are considered to be of general benefit. But this will depend on the particular context and conditions. When Pritchard writes that "it is because they, supposedly, have something of special value to offer – a product of their own unique research – that German professors have traditionally enjoyed *Lehrfreiheit*"

(Pritchard 1998: 111), then this applies specifically to the German tradition, and during a particular period, especially that of the late 19th century and early 20th century. On the face of it Menand makes much more general claims regarding a social compact for the professional autonomy of academic scholarship:

“The professionalist attributes of academic life – the doctoral dissertation and defense, refereed journals, procedures for tenure and promotion, and so on – were not established only to insure self-governance and to protect professors from the interference of outside authorities in the content of their work. They exist also because it was once assumed that it is through such procedures that genuine knowledge is produced.”
(Menand 1996: 11)

But on reflection it will be clear that this actually also applies in a particular context, that of the rise of the academic profession in America during the early and mid-20th century. As Menand also makes clear, by the end of the 20th century these assumptions no longer applied in quite the same way: scholarly freedom could no longer rely on the same social esteem and was under increasing pressures to demonstrate its supposed general benefits. The external social compact for scholarly freedom cannot be taken for granted. This section will consider the general trajectory of the rise and potential crisis of the academic profession during the 20th century for the light this may throw on the conditions under which a social compact for scholarly freedom is both needed and possible.

2.3.1. The professionalisation and hegemony of academic scholarship in the 20th century

Modern scholarship and the contemporary professoriate have an ancient lineage which can be traced back to the birth of the first universities in 13th century Bologna and Paris, or even beyond:

“There still continues a tradition, a set of assumptions, and a way of life that in actual as well as symbolic ways link the modern university and its diverse corps of professors to the academic guilds and clerical scholars that emerged out of the darkness of the Middle Ages ... In this initial sense of recognition of collegiality and shared identity and fate, the academic profession can be said to have been born.” (Wagoner & Kellams 1992: 1674, 1676)

During all that time the link between scholarship and the universities was not always equally close. As already noted above, the origins of the scientific revolution and the flowering of Enlightenment scholarship in countries like France and England was largely based outside the universities while the lecturing staff of British institutions were not only often part-time and amateur, but also did not conceive of scholarly research as part of their mission. The scholarly disciplines had not yet been professionalised or become specifically university-based. Shils refers to “traditions of the humanistic erudition of the nineteenth century [which] still prevailed. Research was largely conducted in the style of a handicraft” (Shils 1975: 101). Ashby comments that “compared with the professions of medicine, law, and the Church, the academic profession is – in modern times – a comparative newcomer” (Ashby 1974: 75). The 20th century brought two major and linked new developments: the professionalisation of scholarly research and teaching which also became largely university-based. Henceforth the career of the academic

profession and the developing functions of the university would become inextricably linked. In retrospect, from the vantage point of the end of the 20th century, it is possible to discern a definite trajectory in this intellectual partnership: from the origins of the professionalisation movement during the early 20th century, to the hegemony of the academic profession – also known as the “academic revolution” – by mid century, followed by the increasing challenges and strains, and potential crisis, of the academic profession and the university alike, during its closing decades. Consideration of an external social compact for scholarly freedom must be located in relation to the changing conditions of this trajectory.

In general, the origins of a self-conscious academic profession are closely linked to the Humboldtian ideals of the research university exemplifying the unity of research and teaching as these developed during the 19th century in Germany. In Altbach’s summary:

“The German ideals of *Lehrfreiheit* and *Lernfreiheit* contributed to the development of the academic profession by opening up the curriculum, entrenching the ideals of academic freedom, and ensuring the domination of the professoriate over the curriculum.” (Altbach 2005: 148)

More specifically, and especially in the American context and in the early 1900s, professionalising university-based academics developed as a deliberate project spearheaded by the AAUP. Wagoner and Kellams refer to the “professionalization movement” (1992: 1682), which would eventually issue in the mid century “academic revolution” (Jencks & Riesman 1968). Metzger comments that

“It was no accident that the AAUP was founded, not by the overworked and underpaid junior members of the profession, nor by their unrenowned seniors toiling away in the humblest places, but by an academic *corps d’elite* positioned in the cynosure institutions.” (Metzger 1990: 19).

It was the new generation of modern academic scholars, committed to the vision of the research university exemplifying the unity of research and teaching on the German model, who sought to professionalize the position of academics at universities more generally. The AAUP’s quest for securing academic freedom, including the introduction of a strong formal system of academic tenure, was by no means merely concerned with improving academic job security. On the contrary, the new system of academic tenure was specifically designed as an instrument to professionalise university-based academics: it was as much and more concerned with finding ways to upgrade the requirements for permanent academic appointments while legitimately getting rid of the academic ‘dead wood’ unproductively cluttering up higher education institutions. Haskell argues that there is indeed “a stronger linkage between academic freedom and professionalization than is commonly recognised today” (Haskell 1995:53). Our concern is with the consequences for the general standing of the academic profession by mid century. Edward Shils’s authoritative account of the hold of the levels of social trust in, and esteem for, the scientific and scholarly community in the aftermath of the Second World War in all the main Western societies has already been cited at some length (subsection 2.1). More specifically Shils continued to stress the professional self-confidence marking the academic community at this time:

“Despite economic depression, and then the loss of students and staff in the war,

powerful academic traditions in Great Britain and the United States still prevailed. ... The best academics believed in what they were doing, and a combination of tradition, intellectual power, and conviction produced impressive results ... The Second World War ... gave them an unprecedented material prosperity, and increased their confidence in the profession in which they were committed ... In all the Western countries ... there was never any doubt within the universities about the definition of their fundamental and permanent tasks and the obligations of academics ... University teachers believed that they had a vital role in national life. This view was shared by influential parts of the larger public ... To teach in a university or college was thought by those who did it to be an honorable and esteemed career.” (Shils 1975: 100-101, 105)

The post-war decades were also the period of massive expansion of higher education in the United States as well as Western European countries. Access to university education changed from being a privilege of a small social elite to becoming a much more inclusive capstone of the educational process generally. Following the massive investments in scientific research by Western states as part of the war efforts, there were further substantial and sustained increases in the levels of state funding to universities. Accordingly the 1950s and 1960s were a significant and sustained period of institutional growth and consolidation for universities and research centres which further boosted the professional self-confidence of the academic and scholarly community in their aspirations to autonomous self-governance:

“In the great period of expansion in the quarter century which followed the war, departments and faculties went on growing in all Western countries. Each member could lecture on whatever subject interested him most, he could pick and choose among the research students whom he could supervise ... Generally speaking, in most of the period after the Second World War, the prestige of university teachers and especially of professors was high, and their confidence in themselves, their intellectual powers, and their subjects was great. The pride of the continental professor was legendary.” (Shils 1975: 123-124)

In the American context, these developments were dubbed as nothing less than an “academic revolution” (Jencks & Riesman 1968) which could be traced in both quantitative and qualitative terms. In sheer numbers, the American professoriate increased from about 36 000 in 1910 to 190 000 by 1950, 280 000 by 1960 and some 500 000 by 1970 (Clark 1987). Qualitatively, Wagoner and Kellams refer to “the surge to power and hegemony of the professoriate ... [in] the climatic [period] in the growth and dominance of the professor as specialized expert” (1992: 1681). Shils, too, describes this period as one in which the university-based academic profession had achieved an effective social hegemony:

“University teachers believed themselves to be part of the center of their societies even in the United States. This was not denied on the outside. There were conflicts within universities ... but there was no challenge to the idea that universities, at least as far as teaching was concerned, existed for the cultivation and advancement of higher learning. All else flowed from that. Training for the professions, and even practical service, derived equally from the character of universities as institutions devoted to the disinterested and disciplined pursuit of understanding. This was taken for granted and not much discussed.” (Shils 1975: 119)

However, in retrospect, it has become clear that this considerable success would also have its costs; in due course the very achievements of science and scholarly research and of the university as an institution would generate contradictory social demands that would undercut its continuing hegemony.

2.3.2. The cost of success: increasing strains on the academic profession and scholarly freedom

We have already noted that the prospects of social compacts for, or toleration of, scholarly autonomy vary according to the perceived stakes involved. This apparent paradox is well expressed by Altbach:

“In a sense, when universities have been least central and important, their autonomy has been safest. Institutions that are pure ivory towers are of little relevance to the society and external authorities are often content to leave them alone. When academic institutions and the professoriate are at the center of societal development and when the universities require significant social resources, many forces seek to challenge traditional autonomy.” (Altbach 1991: 25)

The very notable successes of the academic profession and of the university as institution in the post-World War II period have thus contributed to some of the subsequent stresses and challenges. In general they led to greatly increased expectations of, and demands on, university-based scientific research to provide the answers to a range of social, economic and developmental problems. New ideals of a “knowledge economy” and of ‘a society based on science’ greatly increased the stakes involved in university-based research and teaching on the parts of society and state. Shils notes that for the first time universities now also came to be expected to function as instruments for greater social equality: “The new demand has been that the universities should promote substantive social equality ... [Universities] had never before been regarded as devices of equality of status” (Shils 1975: 110).

More generally, universities came to be viewed, on various sides, as instruments of progressive, rationalistic, scientific social utopianism. In practice, this meant that they were increasingly expected to serve multiple constituencies: “The upshot of all these demands is that the universities must recognize that they have many ‘constituencies’ and that they must serve them all at the same time and in the same place” (Shils 1975: 115).

In other ways, too, growth and expansion served to undermine the institutional integrity of the academic community. Shils notes that, as the pattern of increased state support of science spread throughout the world,

“one of the consequences was that scientists in universities became less centered on their universities. A university became a convenience which housed their research projects ... The university as a community, already weakened by specialization and by the growth and size of its constituent departments, lost coherence.” (Shils 1975: 108)

This dialectical pattern of the successes of the academic profession and scholarly research, leading to increased but contradictory demands on the university and thereby undermining both its intellectual and institutional coherence while increasing external challenges to scholarly autonomy,

is well summarised by Olsen:

“The University has in many ways been a success. It has developed into a key institution that impacts most aspects of democratic societies. The university has never before been asked to fulfill more roles, take on more tasks and solve more problems. It has never before attracted more students and resources and many organizations want to use the name in order to improve their status and effectiveness. Yet the success has also created problems ... A result has been work overload and institutional confusion ... There are many and inconsistent purposes, expectations and success criteria and it is unclear who has legitimacy to talk on behalf of ‘society’ and define what social needs are.” (Olsen 2005a: 38)

Above all this has meant that the scholarly aspiration to autonomy and professional self-governance can no longer be taken for granted or be confidently asserted in the face of growing demands from various sides for university-based academics to become more accountable. In his recent (2005) survey Altbach concludes that

“The profession’s ‘golden age’, characterised by institutional expansion, increased autonomy, availability of research funds, and growing prestige and salaries, at least in the industrialized countries, has come to an end.” (Altbach 2005: 147).

Over the past few decades these developments have taken their toll on the professional self-confidence of the scholarly community and the academic profession is showing increasing signs of strain and even potential crisis. In the early 1970s, Shils was already commenting on a loss of the sense of buoyancy which had characterised the American academic community in previous decades:

“Justifiably, or not, many social scientists have fallen into a state of dismay and diminished self-confidence about their own powers and that of their subjects, about which they were so overwhelmingly optimistic only some ten years ago.” (Shils 1975: 125)

At the same time Eric Ashby, with reference to the British context, observed that the academic profession was increasingly becoming “a profession of divided loyalties”: university-based academics found their teaching commitments in conflict with their scholarly research specialisation at the same time as new opportunities opened up to market these skills as paid consultants (Ashby 1974: 80). By the beginning of the 1990s, Altbach described a scholarly profession in a condition of general malaise and decline:

“In most industrialized nations the morale and commitment of the academic profession has significantly declined. More than in the previous decades, the professoriate has felt economic strain, loss of esteem from society, and a decline of funding. They seem to feel less secure and less self-confident.” (Altbach 1991: 28)

And at the outset of the 21st century Welch, in a global survey of the current state and recent trends of the academic profession, offers the following gloomy vision:

“The onset of the twenty-first century sees the fault lines from governments for higher education, a trend that has led many universities to substantial retrenchments, significant privatisation, a precipitous decline in academic salary relativities, and heightened perceptions of uncertainty among academics.” (Welch 2005: 1)

In short, the social hegemony, which the academic profession had enjoyed in the mid-20th century is no longer in place.

The crisis and decline of the academic profession and scholarly research should not be overstated. After all, it is the great and continuing success of science and of the university as institution which continue to generate the many and contradictory social and political demands. If these demands are the price of success, then they are also a testimony to what is at stake for state and society in the university-based scholarly enterprise. Perhaps the best summary of the implications of these developments for the prospects of a social compact for scholarly freedom in current conditions is provided by Shils's account of the extent of public ambivalence about the university in the late 20th century, which may be cited at some length:

“There is public ambivalence about the universities. They are on the whole greatly esteemed. They are esteemed for what is believed to be their practical value. ... They are also esteemed in part, [for the disinterested pursuit of truth] ... There is a real respect for truth in society and for those who devote themselves to it dispassionately. Not all parts of society are equally respectful ... [I]n the utilitarian mode of thought which is dominant, university teachers find it difficult to justify this reverence for disinterested learning and are not inclined to think that it exists in the broader public. The universities are the objects of all sorts of contradictory sentiments. They are nowadays disliked for being ‘elitist’, although they are supported because they are, in fact, ‘elitist’ ... This very much affects the university teacher’s conception of his obligations. Devotion to the academic ethos is rendered insecure by the complex situation in public opinion. All this attention and criticism is new in the history of universities in most West countries during the past 100 years...” (Shils 1975: 118-119)

It is in these ambivalent circumstances that both the need and the prospects for a possible social compact for scholarly freedom will have to be considered.

This account of the 20th century trajectory of the academic profession has made no specific references to the South African case. For our purposes, that would not make much of a difference. While there would certainly be variations in the details and even more in the scale, the overall pattern is broadly similar, if in an attenuated version. Some South African universities trace their genealogies back to the early or mid-19th century; however, modern universities only came to be established in the early 1900s. Such scholarly research as there was during the 19th century and early 20th century, from Herschell to Bleek or Theal, was rarely university-based; instead it was an enterprise of missionary or other independent scholars. The professionalisation of research and scholarship can be dated from the founding of the South African Association for the Advancement of Science in 1903, but it never became a concerted movement as it did in the United States, nor was there any South African equivalent of the AAUP. Nevertheless by mid century academic scholarship had become largely university-based, though mostly derived from British (or Scottish) traditions, while the notion of a research university was not seriously contemplated until several decades later. Likewise the expansion and democratisation of the higher education system was delayed until the closing decades of the 20th century. Although the academic profession never achieved quite the same social hegemony, and although scientific research and the university never came to matter to state and society to the same extent, they did enjoy considerably more social standing and trust during the mid-20th century than by its closing decades. Of course, due allowance for the distortions of scholarly freedom during the

apartheid era, including the uneven development of different sectors and the effects of several decades of intensified intellectual isolation from global developments, must be made. At the outset of the 21st century our local academic profession thus faces a peculiar combination of increased exposure to global trends as well as the continuing burdens of local traditions, a certain loss of former social standing but also the challenge of an incomplete process of professionalisation. If anything, these will tend to increase the ambivalences relevant to the prospects of a social compact for scholarly freedom in our own circumstances.

2.3.3. Some tentative conclusions

At this stage three tentative conclusions relevant to the issue of a possible social compact for scholarly freedom may be proposed. Firstly, the special and close conjunction of scholarly disciplines and the research community with the university as institution brought about in the 20th century is neither 'natural' nor inevitable. It is entirely conceivable that the development of professional scholarly research could have been based at specialised research institutions, whether in the private or public sector, distinct from traditional colleges and universities with a basic teaching mission. Indeed, some differentiation may currently be gathering strength (and may also serve to relieve some of the contradictory demands and pressures on modern universities). Secondly, the development of a university-based academic profession which achieved a certain social hegemony and wider respect for scholarly autonomy by the mid-20th century profoundly affects the configuration of academic freedom concerns in the changed circumstances which currently prevail. That position of hegemony was not the product of any deliberate social compact; rather, it came about through a variety of different historical circumstances, social developments, political forces and economic conditions. And now that the former position of hegemony no longer prevails, at least not to the same extent, it is far from clear how, or even if, it could be restored by any particular deliberate strategy or policy. However, and thirdly, one element that contributed significantly to that position of hegemony enjoyed by the university and the practice of scholarly freedom during the mid-20th century is amenable to deliberate efforts and concerted action, especially in the South African context, and that is the further professionalisation of the scholarly enterprise and the institutional culture of university-based academics. By itself a process of professionalising scholarship and academic work cannot ensure that a social compact for scholarly freedom can come about, or will be maintained. But without this vital internal component, it is difficult to see how there could be any serious prospects for an external social compact. On this count we thus need to consider the internal context of governance within the university, i.e. the structures of academic rule designed to enable and protect the practice of scholarly freedom. That is the topic of the next section.

2.4. Academic rule as an internal compact in university governance

Of itself, the practice of scholarly freedom does not necessarily raise major issues of governance. Even if the establishment of learned societies and disciplinary associations, or the management of scholarly journals, involve some measure of administration and oversight, more often than

not this is done on a part-time and even honorary basis and does not provide the workplace or professional livelihood for all but a very few of those involved. This is different in the case of dedicated and specialised research institutions. However, as we observed in subsection 2.3, it is a significant feature of developments during the 20th century that scholarly researchers became predominantly university-based, even if by no means all universities are research universities. In consequence, the issue of academic rule has become closely interwoven with the internal governance structures of universities. This has implications both ways: On the one hand, we need to remember that *scholarly freedom* is not the same as *academic freedom*, but only one dimension or component of the latter, along with *academic rule*. In Moodie's words: "Logically speaking, scholarly freedom neither depends upon nor necessarily requires academic freedom in the sense of self-government or rule by academics" (Moodie 1996: 143).

On the other hand, the particular structures and procedures of academic rule are not solely concerned with the requirements of scholarly freedom, but may have as much and more to do with the institutional imperatives of the university. Even research universities are not exclusively research institutions; they also have a teaching mission along with a variety of other functions. It is in the institutional context of the university and its internal governance structures that academic rule has developed as a vital component of academic freedom.

This is not a matter of analytical distinctions only but also of particular historical processes and institutional developments. Haskell describes the emergence in the American context of an explicit movement in defence of academic freedom by the beginning of the 20th century as

"a process of institutional development that proceeded in two overlapping phases, each vital to the success of the other. The first created communities of competent inquirers, the second used them to establish authority in specialized domains of knowledge."
(Haskell 1996: 45)

While the first of these interrelated phases, that of the establishment of "communities of the competent", was basically concerned with issues of scholarly *membership* and disciplinary *identity*, through such processes as the formation of a range of disciplinary associations, the second of these interrelated phases was basically concerned with matters of *governance*, more specifically with how to accommodate professionalised academics within the changing institutional culture of the modern university. At this point, the process of professionalising academics intersected with the institutional development of modern universities. We have already cited Mosher: "A basic drive of every profession, established or emergent, is *self-government* in deciding policies, criteria, and standards for employment and advancement" (Mosher 1968, cited by Epstein 1974: 128).

The 'new' academic profession, like the other liberal professions, aspired to professional autonomy and self-regulation (Moodie 1996: 144). What this meant, was that "it was imperative that the most important positions of authority over academic matters should be occupied by people of high academic authority" (Moodie 1986: 44). The crucial point, though, is that since 20th century academics had become predominantly university-based, the quest for professional self-government by academics meant that they had to develop forms of academic rule within

the institutional context of the university. It would be a mistake to take this as merely a form of democratic self-government within the university community; instead it was specifically based on the elitist grounds of specialised professional competence: “[The professoriate’s] claims to power flow from professional and academic credentials and not from a general theory of worker control” (Epstein 1974: 116). In the institutional context of the university, *academic rule* thus meant that its internal governance structures would be so arranged that academics would, in the first instance, themselves be fully in charge of the academic core business of the university while, secondly, and in order to ensure this, they also have a key part in the general overall management of the institution as a whole.

To what extent does *academic rule* within the university involve an internal compact of some kind? From the above it should be clear that this question actually has two aspects: the first aspect concerns the governance structures involved in the core academic enterprise itself, and the extent to which these take the form of some kind of compact, or not, amongst academics; the second concerns the relation between academics and other sectors of the university community – whether students, administrative staff, executive management, or the board of trustees, etc. – and the extent to which academic rule involves or requires a wider intra-university compact. We deal with each aspect of the question in turn.

2.4.1. Collegialism and the structures of academic governance

Paradoxically forms of academic governance characteristically involve both strong hierarchical dimensions as well as distinctive types of egalitarian co-ordination. On the one hand, the academic world is necessarily marked by a series of hierarchies: relations between (undergraduate and postgraduate) students and their teachers or thesis supervisors, of non-tenured, tenure-track and tenured academic staff, of the different ranks of junior and senior lecturers, assistant/associate or full professors, between department or faculty members and heads of department or deans/provosts/vice-chancellors/presidents, etc. Significantly, this is not merely a bureaucratic hierarchy; rather it involves knowledge-based structures of authority and specialised professional competence. The professor’s special authority in relation to beginning students, doctoral candidates serving their apprenticeship, junior staff in tenure-track positions, or even senior staff in non-professorial positions is, or should be, based on claims to superior academic expertise and competence. On the other hand, there is an important sense in which core academic activities and relations typically take the form of egalitarian interactions amongst peers and colleagues in which even those in positions of authority are only acting as the first amongst equals.

“Higher education organizations combine the legal-rational, position-based authority of bureaucracy with the expert knowledge-based authority of the profession. They are marked to varying degrees by the formal hierarchy of bureaucracies (vertical chain of command) and the informal, flat forms of professional organization (horizontally differentiated units linked in loose confederations).” (Rhoades 1991: 1377)

Particular structures of academic governance, such as departments, faculties or Senates, etc., exemplify or combine these vertical and horizontal dimensions in different ways. As noted

previously, Burton Clark distinguishes between different forms of discipline-based authority as versions of general professional authority, such as the personal rulership of the professorial chair, the collegial practices typical of academic departments and faculties, and guild authority as a blend of these two (Rhoades 1990: 1378). Our concern is with the extent to which these various structures of academic governance as forms of academic rule may involve elements of compact, or not.

i) The legacy and myth of collegialism

Collegial forms of academic rule have been at the heart of the university as an ancient historical institution. Epstein refers to “the old tradition of corporate collegiality associated with the great medieval universities” (Epstein 1974: 141). Altbach also stresses the medieval origins of the professoriate as a core element of academic rule within universities:

“The professor-dominated Paris model became most influential ... The faculty should determine the curriculum, the process of admitting students, the requirements for degrees and the appropriate standards for awarding those degrees, and the internal governance of the institution ... This concept of professorial control has remained a keystone of academic dogma ever since.” (Altbach 1991: 29).

Crucial to such “organizational collegiality” (Epstein 1974: 102) is its determinedly anti-hierarchical nature: colleagues interact and co-operate with each other and share in joint decision making and collective projects very much as peers and equals. It would be contrary to the basic spirit of collegial practice if any professor would presume to command or direct his colleagues by fiat; where there is an organisational need for someone to act as chairperson or co-ordinator, this can only be as a ‘first among equals’. Collegial practice as an element of internal university governance thus represents a basic alternative for, and obstacle to, any form of hierarchical authority. In modern times this has been conjoined with the quest of professions for self-governance, so that the modern version of professional collegialism represents a blend of modern and pre-modern structures of authority:

“The professionals themselves insist on making the policies relating to their work. Thus, they bring to an organization a basic principle that is incompatible with government from the top down and with decision-making by a single head. Faculty members prefer something closer to Weber’s description of a pre-modern structure of authority in which groups of people ‘are unwilling to allow any individual to hold authority over them’ (1947, p.413).” (Epstein 1974: 140)

Since some degree of hierarchical organisation and authoritative co-ordination must be indispensable for any complex institution, collegial practices of this kind have seldom, if ever, been the predominant governance structure of the university as a whole. The closest approximation to the collegial model of the university has probably been represented by the traditional ‘Cambridge Colleges’, where Fellows collegially exercise self-rule in each college and these collectively constitute the university. But even where this no longer holds of the overall governance structures of modern universities, significant elements of collegialism may persist *within* such governance structures as that of the department, the faculty board or the academic Senate. To the extent that departments adopt collegial practices all members, even if of different

academic ranks, participate in collective decision making as peers. And in the traditional academic Senate professors join their colleagues from widely different disciplines and departments as peers involved in common academic governance.

For our purposes, the significance of collegialism as a form or element of academic rule within the university is that it evidently represents a governance structure essentially based on an internal compact amongst academic themselves: “As befits a large elite group, professors conduct discussions and make their collegial decisions by majority vote or by consensual agreement” (Epstein 1974: 117). Collegial compacts work in two opposing ways: they serve to empower those included, but they can also serve to establish relations of authority and power over those excluded. Collegial compacts cannot be enforced by higher or external authorities; in that sense, like all compacts, they depend on voluntary agreements. But not everyone is free to join the collegial compact; in order to become a colleague it is necessary to meet rigorous and specialised standards and to be chosen for co-optation by the insider grouping already in place. At this point, there is a similar logic to that of membership of a scholarly or disciplinary community. Indeed, the academic department may ‘logically’ be linked to a particular scholarly discipline in that the specialised knowledge and expertise required for appointment in the department are that of a particular scholarly discipline, e.g. philosophy or physics. Even so, the ‘scholarly’ sense in which historians relate to their disciplinary colleagues wherever they might be based is distinct from the sense in which they relate to immediate ‘colleagues’ in the same department. Nor do all members of the department qualify as colleagues – e.g. administrative staff – while the sense in which students and professors are members of the university community is not a collegial one. From this, it should be clear that ‘collegialism’, though internally ‘democratic’ in the egalitarian relations which obtain between colleagues as peers, does not imply any democratic association with non-peers. Demands for democratisation of the department, or indeed of the university, by extending equal rights of participation to students, administrative staff, etc., challenge the foundations of collegialism as much as those of any authoritarian hierarchy.

Perhaps due to the ways in which collegial compacts among academic peers are linked to core elements of the scholarly enterprise itself, the notion of ‘collegialism’ has maintained a disproportionate hold in academics’ thinking and debates about internal structures of governance in the university. Thus Rhoades notes that

“some academics refer to a ‘collegial model’ of academic governance that emphasizes non-hierarchical, cooperative decision making and the significance of faculty self-governance.” (Rhoades 1991:1377)

But in contemporary university governance this tends to be more of a myth than a reality. Rhoades asserts that, “in the post-1960s era one would be hard pressed to find evidence in the literature of a collegial model of governance in operation” (Rhoades, 1990: 1379). However, he also concedes that the legacy of collegialism may still play a significant part in certain kinds of institutions:

“Despite the charge that the collegial model is more a normative aspiration than a descriptive reality, it may be that in those parts of higher education systems populated

by small teaching-oriented institutions, a sense of community and a concern for cooperative decision making are a significant part of the authority environment.” (Rhoades 1990: 1379)

Indeed, it is arguable that the legacy of collegialism is by no means restricted to small American liberal arts colleges only; in more general ways it continues to be relevant in current conditions. Especially when faced with the alien demands increasingly imposed as a consequence of the ‘managerial revolution’ in higher education the myth and ideology of collegialism can be a significant reactionary force nonetheless. Already in the early 1970s Epstein observed that, “as a non-collegial authority becomes more overt in academic matters, faculty members will almost certainly seek new means to resist managerialism” (Epstein 1974: 104). During the intervening decades this has only become a more potent tension.

ii) The professorial chair as a structure of academic governance

The professorial chair was an especially crucial governance structure in the making of the modern research university. It should perhaps be stressed that what is at stake here is not just the position of the professor as the most senior rank in the academic hierarchy, or as the familiar head of the academic department still prevalent in many current universities. Rather, the professorial chair functioned as a distinct and independent governance structure which could be linked to an academic department but could also operate as an alternative organisational principle in its own right. In its pure form, the chair invested the person of the established professor not only with the highest academic authority in a designated and specialised academic field, but entitled him to research funding as well as dedicated academic support staff personally beholden to him. In this sense the professorial chair was a key feature in the institutional development of British universities as well:

“Outside the ancient English universities of Oxford and Cambridge, the academic building-block in British universities has long been the Chair, occupied by the single professor of the subject or the discipline ... During the first half of the twentieth century ... the title of professor signified the holder of a chair in a particular subject whose superior rank was accompanied by superior status, pay, authority, power and responsibility within his (usually) university as well as in the department of which he was the head and uniquely qualified representative.” (Moodie 1986: 43)

But it was especially with the ascendancy of the late 19th century German research university that the “coincidence of power, authority and subject representation in the persons of the professorial [chair]” (Moodie 1986: 46) would become an even more prominent feature of internal university governance. In the Continental tradition the holders of professorial chairs were appointed by the minister as fully tenured civil servants, and were thus effectively confirmed in positions of independence beyond the purview of their local university administrations. Individually established professors were figures of extraordinary academic authority and power within the university: they were mandated to ‘profess’ their academic disciplines, i.e. not only to teach but also to have the authoritative say on academic issues pertaining to their discipline; they supervised and certified doctoral students and research assistants who served lengthy periods of academic apprenticeship under their tutelage; they

dispensed over substantial amounts of academic patronage and research funding. Collectively, as in the academic Senate of the university, the body of established professors were in a strategic position to stake their claims to academic rule within the university against all other sectors, whether students, non-professorial staff or the administration.

From this, it should be clear that as a governance structure the professorial chair was an essentially hierarchical mode of authority, but that as such it could also be linked into core features of the scholarly enterprise. Provided that the qualifications for appointment to a professorial chair be rigorously enforced to ensure that only those with the very highest specialised academic expertise be considered – not just a PhD but a second more advanced doctoral degree, the *Habilitation* in Germany and *Agrégation* in France – the established professor could justifiably and confidently claim to represent the interests of the scholarly discipline itself and to be entitled to a position of academic rule. (Of course, if these qualifications were not strictly enforced and those without the highest scholarly credentials were appointed to tenured positions of such academic authority then the professorial chair was a recipe for disaster and likely to spawn petty tyrants and empty facades of various descriptions). More seriously, vesting the power of appointment to professorial chairs in a combination of official and professorial authorities effectively conferred on them the capacity to veto who would teach and thus what could be taught. In Germany, this notoriously resulted in the effective exclusion of Jews and Social Democrats from proceeding via the *Habilitation* beyond the status of *Privatdozent*. As noted by an expert referee of this report, this resulted in the exclusion of such famous sociologists as Georg Simmel and Robert Michels while accounting for the ways in which Marxist (and Jewish) intellectuals, such as Kautsky, Bernstein and Luxembourg, had to pursue careers and debates in the Social-Democrat press. Max Weber trenchantly commented on this blemish of the august façade of the German professoriate in a text published as “The Power of the State and the Academic Calling in Imperial Germany” (1917). It should also be clear that as a governance structure the professorial chair does not require, or allow for, any kind of internal academic compact. The relations of the established professor to his students and the various ranks of academic and administrative staff are basically those of hierarchical authority and/or patronage and not of a compact between academic peers. In this sense the professorial chair represents the opposite mode of academic governance to that of the collegial compact (except in the sense that established professors may relate as colleagues to other established professors within or without the university).

iii) The academic department as a structure of university governance

Analytically, the academic department may be represented as a mixed structure of governance, combining elements of collegialism and the professorial chair in varying degrees, while also functioning as an administrative convenience. At the one end a department with a single established professor as permanent head may approximate the position of the professorial chair, except that the department controls other posts, which are not formally linked to that of the chair (though in practice the professor as permanent HOD may effectively have these in his sway). At the other end, the department may be marked by strong internal collegial practices,

with a rotating headship not necessarily filled by one of the professors who merely have the most senior rank among equals. Weak departments may also be lacking in both a professorial head with independent powers and any definite internal collegial practices and merely function as an administrative unit.

Over time one variant of departmental governance may evolve into another. Thus in South African universities, which never really knew the fully-fledged professorial chair on the German model, academic departments were, to begin with, typically established with permanent professorial heads but by the closing decades of the 20th century rotating headships had become a familiar feature, while academic departments no longer disposed over a fixed complement of established posts even where they had not been emasculated in more radical ways. In the British case Moodie describes a definite structural change in departmental governance, which he labels that of “the disintegrating chair” (Moodie 1986), from the ‘ideal type’ of the single chair department which predominated during the early 20th century to the multi-chair departments with rotating headships, that might even be taken by non-professorial staff, which spread from the 1950s on. While the overall numbers of professors significantly increased along with the general expansion of higher education from the 1960s, they decreased as a proportion of academic staff and lost many of their former prerogatives and powers. Moodie cites as an example the innovation of ‘personal’ chairs, as distinct from ‘established’ chairs, which (like life peerages) expire when the incumbents vacate them, making the position of a professor closer to that of a senior staff ranking only (Moodie 1986: 44-45). More generally he refers to the “gradual evolution of non-professorial staff (NPS) rights” and “the NPS challenge to professorial supremacy” (Moodie, 1986: 45). In the context of the 1960s this was partly due to the general movement for democratising the university, but within the department it also represented a greater stress on collegial practices:

“But most important ... has been the growth of consultation and collective decision-making at the fundamental level of subject and department ... The direction of movement is clear – and that is to a situation in which departmental heads must consult, in which groups of academics of all ranks must expect to share the decisions about staff work-loads, student admissions, courses, curricula, and assessment (if not so commonly about money and personnel) ... There is no doubt that the whole atmosphere has changed in the university world, even in those institutions in which the remaining prerogatives of professors are most firmly entrenched.” (Moodie 1986: 46-47)

Moodie implies that these developments – as a result of which “the label ‘professor’ no longer has a clear significance” and “the professorial package is coming apart” (Moodie 1986: 49, 53) – amounted to a diminution of academic rule more generally. But while it is certainly true that they represented a breakdown of the governance structure of the professorial chair, in so far as this had persisted within the academic department, it does not follow that the consolidation of collegial practices detracts from academic rule at this level, as may appear from consideration of the different American pattern.

In the American context the growth and expansion during the post-World War II period brought about a different configuration in which the department actually emerged as perhaps the most

significant structure of academic rule. According to Epstein the substantial increase in the number of tenured full professors, both overall but also within particular departments, had the dual effects of consolidating professorial power at departmental level and of giving it a less personal and more collegial character:

“Just as the growth in numbers of professors within a department makes it a peer group rather than a hierarchy, so the growth of a university tends to focus professorial power in the department.” (Epstein.1974: 129)

Indeed, for Epstein the collegial department is at the core of academic rule in American universities:

“[The department] is the level where professors are effectively organised to exercise collective power ... Just as the individual professor has established his power to decide what he ought to teach or study, on the grounds of his professional competence, so the department asserts the similar power for its professors to make collegial decisions within an academic field ... Departmental collegiality is the university’s leading example of the more general effort of highly professional groups to manage their own affairs.” (Epstein 1974: 126, 128)

No doubt there are other contextual factors which contribute to the comparatively greater importance of the academic department in American universities. Thus, to the extent that faculty boards and university-wide academic Senates tend to have lesser roles and/or individual departments have devolved budgetary responsibilities, the academic department must accrue more effective independent powers. Even, and perhaps especially, in the changing context of the ‘managerial revolution’ the significance of the department as an effective structure of governance within the university should not be underestimated. Rhoades concludes that, “those scholars who have explored the effects of changing governance arrangements have emphasized the resilience of department-based academic authority” (Rhoades 1990: 1381).

From the perspective of scholarly freedom effective collegial governance at departmental level may actually better accord with the peer character of disciplinary self-government. Vesting academic authority and power in the sole person appointed to the professorial chair inevitably risks abuses of power, but may also serve to stultify the open intellectual contestation needed for scholarly advance. This is brought out well by Louis Menand:

“Giving departments and disciplines the freedom to determine their own course of action means giving professors the freedom to interfere with one another’s professional designs ... the essentially contestatory nature of life within a discipline. ... Academic freedom, as it is now structured, depends crucially on the autonomy and integrity of the disciplines. For it is the departments, and the disciplines to which they belong, that constitute the spaces in which rival scholarly and pedagogical positions are negotiated.” (Menand 1996: 10, 17)

However, collegial governance at departmental level can only be in accord with scholarly freedom if the qualifications for peer membership are set and maintained at appropriately rigorous and professional levels. If the non-professorial members of the department are to participate as collegial peers in disciplinary self-governance then it will be imperative that their academic tenure satisfies professional requirements otherwise the very practice of scholarly freedom will itself inevitably be ‘dumbed down’.

The linkage between the department as a structure of university governance and specialised scholarly disciplines is clearest in the case of single-discipline departments, which has also historically been the predominant pattern. This is not a necessary connection. As organisational structures, academic departments may well accommodate multiple disciplines or take interdisciplinary forms. However, this involves definite trade-offs. To the extent that the department involves multiple disciplines or interdisciplinary studies the specialised collegial peer group will not be able to function as legitimately and coherently in collective decision-making as in the case of a single shared discipline. Conversely, the tradition of single-discipline departments can, intentionally or not, effectively block the development of innovative interdisciplinary research and teaching. Indeed, from the perspective of interdisciplinary studies the existence of a strong array of single-discipline departments may be among the most serious constraints on scholarly freedom.

From the above, it should also be clear that the academic department is not necessarily a matter or product of internal compact. This depends on the extent to which collegial practices prevail within the department. Departments structured around established professors as permanent heads with extensive powers and prerogatives and run on authoritarian lines can hardly be considered to involve an internal compact of any kind. As against this, departments with shared practices of collegial decision-making and well-developed internal peer-group procedures are prime examples of internal compacts in practice. Nor is this only an intra-departmental matter. Within a centralised and top-down university administration, where all decisions of substance on appointments, budgets, curricula, etc., are taken at higher levels than that of the department, there would be little scope for any internal compact of consequence. In such cases departments are reduced to administrative conveniences and merely social interpersonal arrangements. But this may also be taken as an accurate indication of the lack of academic freedom in the internal governance structures of the university.

iv) Intermediate structures of internal university governance

Next to academic departments, a great variety of organisational forms, such as subject-groups, centres, working or teaching committees, and the like, exist; while above them, there can be all sorts of intermediate structures such as schools, sub-faculties, faculties and inter-faculties, consortiums and the like, apart from the academic Senate as the university-wide supreme body of academic governance. We do not need to consider the various alternatives to the academic department in any particular detail unless these raise basically different issues of internal governance. Thus, it may well be the case that 'schools' are more suited to interdisciplinary programmes of research and teaching than single-discipline departments, and there may be pragmatic reasons why 'area studies' require a complex organisational co-ordination of different disciplinary perspectives for which the standard departmental structure is not well equipped. But within these variant organisational structures we are likely to find a similar spectrum ranging from the professorial chair and permanent head to more conspicuous collegial practices.

Intermediate structures do raise some distinctive issues of academic governance. In this regard

two more general considerations may suffice for present purposes. First, even if some form of 'hierarchy' is suggested by the different levels of intermediate structures, from that of academic departments through schools and faculties to the academic Senate, then this does not necessarily correspond to increasing levels of superordinate academic power. Depending on the substantive powers vested in professorial chairs and/or academic departments, higher-level bodies like faculty boards or the academic Senate may have different representative and co-ordinating functions but not always specific superordinate powers. A main reason why individual academics often take little interest in general faculty or Senate matters, compared to their active involvement at departmental level, is that the former may be of less consequence to them: "faculty senates exercise in practice a more limited authority than professors are able to exert in their departments" (Epstein 1974: 139). Of course, the converse may also be true, more especially in the case of highly centralised top-down university administrations. In such circumstances professorial representation at the highest level, e.g. in the university-wide academic Senate, would become correspondingly that much more important. From an academic freedom perspective, an institution of this kind, but with a strong academic Senate, perhaps constituted mainly by established professors who are also permanent heads of their departments, poses some intriguing paradoxes. On the one hand, this would probably constitute a particularly strong form of academic rule within the university; on the other hand, it could raise serious concerns regarding the implications for the scholarly freedom of non-professorial academics, not least at departmental level. At some South African universities, for example, all senior academic appointments are effectively vested in a single Senate appointments committee and departments may have little more than a consultative role. This may be contrasted to the American practice, where departments have primary responsibility for initiating appointment processes, if not the final say, or to the basic collegial practice where the current fellows decide on co-optation to the college. The crucial consideration, from a scholarly freedom perspective, is that even if the central Senate structures consist of academics only, they will not in many, or even most, cases have the relevant specialist scholarly expertise as required by the principle that judgements on scholarly matters be made by qualified insiders only.

Secondly, the position of intermediary structures like schools or faculties within the complex institutional architecture of the university tends to raise basic questions regarding their representative and/or administrative functions. Thus, if deans head up faculties they can either basically function to represent the interests and needs of a particular set of academic departments to the central university administration and executive management, or they can instead be expected to function as 'line-managers', conveying and implementing centrally decided policies to the departments for which they are responsible. In practice the position of dean may well involve both kinds of functions, but the balance may depend on the kind of governance structure adopted. Traditionally faculties have often preferred to have non-executive deans, elected from one of their own number and for a fixed period. This serves to stress the representative function of the dean and to ensure commitment to the academic interests of the faculty as defined at that level. As against this, the recent 'managerial revolution' has been associated with the introduction of executive deans, not necessarily with professorial status, preferably with relevant managerial expertise, but without an academic post as fall-back

position. As Epstein explains, this lack of independent academic tenure actually serves to ensure that the appointed executive dean will act as an instrument of executive management compared to the elected dean who retains an academic base in the faculty:

“Collegial practices impose a special qualification on the effectiveness of hierarchical authority in a university. Dismissal of faculty-level administrators does not have the same consequence as the management dismissals in other enterprises. For example, a president can dismiss a dean as a dean; but ordinarily the dean, as an old faculty member himself, holds a professorship entitling him to tenure in that capacity ... Although this situation need not deter dismissal of an administrator, it deprives the superior officer of some usual managerial advantages implicit in the possibility of dismissal.” (Epstein 1974: 103)

Similarly it is a crucial matter whether the elected dean is accountable to the faculty board and acts on their behalf, or whether the appointed executive dean is accountable to senior management and need only consult at faculty level. From a scholarly freedom perspective the direction in which the dean faces, bottom-up towards the executive management, or top-down towards departments in the faculty, can make all the difference.

2.4.2. Academic rule as an internal compact within the wider university community

Academic rule is not confined only to the governance structures of the academic sector of the university and does not involve compacts amongst academics only. Even if the former was the case, so that we were only concerned with the governance arrangements among academics themselves internal to departments, faculties, etc., and not with those involving the wider university community including students, administrative staff, executive management or council, then the issue of autonomous self-governance of academics would still require an implicit or explicit compact on the part of the other sectors of the university community. In practice, though, academic rule involves more than the internal governance structure of the academic sector of the university which cannot be strictly separated from the larger institution. In the preceding section we saw how the functioning of intermediate structures of governance, such as that of the role of deans as executive or non-executive heads of faculties, implicitly involves their relation both to academic departments and to the executive management and central administration. Conversely, academics have a major stake in the character of senior management and the overall leadership of the university. As we saw in Part 1, the notion of ‘academic rule’ refers, above all, to the strong tradition that these positions be in the hands of (former) academics rather than professional managers, amounting to a deliberate preference for managerial “amateurism” in the interests of safeguarding the academic core business of the university (subsection 1.2). Academic rule in this broader sense raises fundamental issues regarding the ‘constitution’ of the wider university community of which academics are just one part.

The practice of academic rule within the wider university community is neither ‘natural’ nor democratic. Epstein rightly poses the problematic status of what he terms “the conception of professorial governing power”, i.e. “the claims of professors to make university policy in

whatever spheres they believe are rightfully theirs". He points out that

"professors are no more than a substantial minority of the staff of any large university ... The still largely professorial faculty is far short of representing the whole of the university's staff. Rather, it is an elite segment, although a large one, within that staff." (Epstein 1974: 115)

But if academic rule amounts to an effective form of elitism then, at least in the modern world and contemporary democratic context, the question must arise why other sectors of the university community would be prepared to go along with it. Epstein writes that "professorialism ... is an elitism ... that rests on modern as well as ancient credentials" (Epstein 1974: 117). Its ancient credentials presumably refer to the legacy of academic collegialism still informing our notion of the university; the modern credentials involve the principles of professional self-governance applied to the vital role of the academic profession in the modern research university. But in both cases these credentials will be persuasive primarily to academics themselves. The fact remains: other sectors of the university community, in particular senior management, central administration or Council, also need to agree to academic rule on these grounds. Of course, academic rule does not have to take the radical form of control by academics of all aspects of university affairs; it is consistent with leaving the details of bureaucratic administration or the budgetary process to others. Moodie points out that academic rule is a self-limiting notion in that the arguments for academic rule apply only to strictly academic matters and not to wider decisions about higher education or other matters, while not "every issue that directly affects [academics] is a proper sphere for academic rule" (Moodie 1996: 145). Epstein also stresses the limited application of academic rule within the university: "the faculty cannot and does not assume responsibility for governing the university as a whole" (Epstein 1974: 139). De George refers to the dual authority structure which characterises the university as an institution comprising:

"the epistemic authority of the faculty based on its knowledge, and the operative or executive authority ... The university is properly autonomous in the areas in which knowledge is appropriate and decisive. But in the functioning of the plant and the operation of the institution, knowledge is typically not decisive, and the university is not autonomous ... A university is properly collegially run in determining academic matters, there are non-academic areas in which the faculty appropriately can claim no expertise and so appropriately may have no voice, and there are areas in which both kinds of authority are pertinent." (de George 1997: 59-60)

But this depiction of a pre-determined harmony in the dual authority structure of the university actually masks the realities and the contested status of academic rule within the wider university community. One part of that academic rule has traditionally been that academics do not confine themselves to the academic sector only or leave the overall management and leadership of the university to professional managers and administrators, but see to it that (former) academics take up these positions of leadership. And even if academic rule is properly seen as limited to ensuring that scholarly freedom be sustained and protected in research and teaching as the core business of the university, then the other non-academic sectors of the wider university community would still implicitly or explicitly have to agree to this. In that sense academic rule implies and requires an implicit or explicit compact within the wider university community.

In most cases it would prove difficult, if not impossible, to find evidence of particular historical processes or agreements involved in establishing the structures of academic rule which obtained in a range of modern universities during the 20th century. In a sense the most telling evidence for the prevalence of implicit compacts within the wider university communities underpinning the practice of academic rule has come when these consensual arrangements began to be challenged in various ways, or were in danger of breaking down. Thus the protests and outrage at the changes wrought by the 'managerial revolution' in the internal governance structures of the university, and especially at the ways in which it challenged the practices of academic rule that had been in place (e.g. by marginalising Senate or downgrading departments), provides retrospective evidence for the existence of an implicit compact that may not have been consciously noted while it still prevailed. (It would be especially significant to investigate to what extent this outrage is shared by the non-academic sectors of the university community). For these reasons the notable example of a major case where such a compact came about through an actual historic process of publicly negotiated compromise has particular relevance. For our purposes the process leading to the 1940 AAUP/AAC *Statement of Principles on Academic Freedom and Tenure* is of special significance, not only for its general importance in the history of academic freedom in the American higher education system, but as an instance of an explicit and deliberate compact between key parties involved in internal university governance. In his authoritative study of the significance of the 1940 AAUP/AAC Statement, Metzger has argued that it is best understood as the product of a *historic pact* (Metzger 1990: 12). This pact came about through a decades-long and seriously contested process of negotiation between two representative bodies, the AAUP as the premier association representing the academic profession and in particular the professoriate, and the AAC as one of the main organisations representing university management and administration, in particular the presidents of a range of undergraduate colleges and universities. But if this was the particular historical origin of the pact embedded in the 1940 Statement, even more notable has been its durability and increasingly wider acceptance across the university sector:

“During the first two decades of its existence, it secured the endorsement of no more than a handful of learned societies and academic administrative associations. During the 1960s it gained the backing of as many as sixty-five such legitimizing bodies; during the 1970s, when stock-taking on academic freedom and, especially, academic tenure came into vogue, it suffered but one organizational defection and picked up thirty-five new subscribers; during the 1980s and early 1990s ... it added thirty-four new endorsers to the list. Moreover, as time wore on, more and more colleges and universities ... saw fit to incorporate bits and pieces of it into their regulations, or by reference or quotation embrace the whole.” (Metzger 1990: 4)

Metzger comments on the remarkable way in which this pact has come to be accepted across so many internal divisions within the university sector:

“What is surprising is that support for the 1940 Statement cuts across so many internal divisions. These include divisions between administrators and professors, first and foremost; divisions between public and private, church-connected and independent, teaching-oriented and research-oriented institutions; and finally, divisions between the specialist profession of the 'disciplines' and the ecumenical profession of the 'faculty'.” (Metzger 1990: 5)

Over the decades the 1940 Statement acquired an “aura of sacrosanctness” within the AAUP itself, but even more significant is the evidence of bipartisan support for these principles of academic freedom and tenure reform. It was the explicit and continuing support of the university presidents, and not just of the academic professoriate, which consolidated the pact:

“By every indication the presidents regarded tenure as beneficial and the arguments in favor of it as beyond debate ... It is safe to say that tenure would never have taken root in this country if the presidents had not been able to see the good of it, and that it would be moribund today ... if they did not have strong self-interested and disinterested reasons for keeping it alive.” (Metzger 1990: 74)

In an important sense, thus, the AAUP/AAC pact represents an example of an internal pact within the university community in which other key parties, in particular the representatives of university management, agreed to the principles of academic rule as an appropriate structure of internal governance.

Considered as an example of such an internal compact for academic rule within the university community, the AAUP/AAC pact had a number of distinctive features. Firstly, it was not a pact within a particular university community but between representatives of key sectors across the university system. Metzger notes that the AAUP and the AAC actually related to different sets of institutions: the professors belonging to the AAUP were in fact mostly based at the elite research universities and graduate schools whose presidents belonged to the distinct Association of American Universities (AAU) and not to the AAC. When the leaders of the AAUP negotiated the 1940 Statement with the university presidents represented by the AAC it was not with their *own* presidents (Metzger 1990: 20ff.). Secondly, not all sectors of the university community were involved or represented in the process of negotiation that issued in the 1940 Statement. Significantly, neither students nor the boards of trustees were directly involved. While the founding history of the AAUP, in its quest to secure the academic freedom of the professoriate, had involved a series of conflicts with the lay trustees who exercised oversight over universities, it was not with the representatives of these bodies but with those of the university presidents and senior administrators with which they entered into negotiation. There still are conspicuous absentees who did not at the time or subsequently endorse the basic agreement:

“A roll call of its endorsers would disclose the conspicuous absence of the American Council on Education, the Association of American Universities, and several other prominent members of the academic establishment” (Metzger, 1990: 4)

For all its historical significance, the AAUP/AAC pact is not a comprehensive compact including all major sectors of the university community either at the level of local universities or system-wide. Thirdly, if the AAUP/AAC negotiations resulted in a historic pact with substantive implications for the internal structures of university governance, effectively establishing and consolidating the foundations for academic rule within the wider university community, that was not their avowed objective at the time. Rather, the focus of these negotiations was narrowly on the basic principles of academic freedom and the professionalisation of tenure. In this sense the AAUP/AAC pact may be considered as a *principled pact*, though one that subsequently proved to be of immense *strategic* significance. Arguably, if the leaders of the AAUP had approached the negotiations as a consciously strategic exercise, then they would probably not have been as

successful in getting the university presidents to agree to the principles of academic freedom and the need for securing the autonomy of the academic profession. From a comparative perspective, the absence, in the South African context, of anything like the equivalent of this historic pact between the representatives of the organised academic professoriate, on the one hand, and the representatives of university executives and management, on the other hand, must be considered a major desideratum for the prospects of protecting academic freedom in the longer term. Not only has there not been any such historic pact, but the key elements of a possible pact are missing due to the incomplete professionalisation of academics in South Africa: there is no effective national organisation of academic staff and the organised representation of South African university leaders, formerly based in bodies, such as the South African Universities Vice-Chancellors Association (SAUVCA), has fallen into abeyance. In short, it is difficult to see the makings of anything like a South African version of the historic internal pact between academics and university management which issued in the public recognition of the principles of academic freedom and tenure in the American case.

2.4.3. Some tentative conclusions

At this stage the following tentative conclusions regarding the notion of academic rule as an internal compact in university governance and within the university community may be ventured. Firstly, there is a basic sense in which an internal compact binding academics into a joint enterprise of peers is fundamental to academic life, but there is an equally basic sense in which being entitled to exercise the highest academic authority in scholarly matters cannot just be a matter of voluntary agreement but must rest on demonstrated scholarly credentials. The former sense is reflected in the ways in which *collegialism*, even if it is no longer feasible as an independently viable form of academic governance, remains a vital and valued aspect of academic life in various key contexts. The latter sense explains why the *professorial chair*, despite its inherently authoritarian character, can be compatible with academic freedom and historically functioned as a mainstay of academic rule. These two senses correspond to the two dimensions of academic governance, that of hierarchical authority and that of egalitarian co-ordination, distinguished earlier (subsection 2.4.1). It follows that it would be ill conceived to construe academic governance entirely on consensual lines, or to regard the presence of an internal compact as a sufficient condition for academic rule. Conversely, though, the possibility of relevant forms of collegialism may be considered a necessary condition for legitimate academic governance. An internal governance structure that systematically works against a collegial culture can hardly be considered a form of academic rule. (The incumbents of professorial chairs could, after all, still have collegial relations with other professorial peers). Secondly, the *academic department* must be considered as a crucial building block for academic rule as a dimension of academic freedom within the university. Not only does it provide perhaps the most effective forum for the exercise of 'collegialism', but the organisational principle of single-discipline departments also serves as a significant link with the scholarly disciplines in ways which align scholarly freedom with academic rule. Whoever seeks to end or undermine traditional forms of academic rule within the university could hardly do better than to dismantle the effective powers and functions of academic departments. At the same time, a rigid structure of single-discipline departments may put serious obstacles in the way of *interdisciplinary research*

and teaching, and so inhibit scholarly freedom. Conversely, it is possible to devise appropriate governance structures for interdisciplinary programmes of research and teaching that would not undermine or threaten scholarly freedom and academic rule. In the final analysis, it is not so much the particular organisational form of the department that matters for scholarly freedom and academic rule, as whether the system of academic tenure is based on, and allows for, the independent exercise of professional scholarship. In the third place, then, we must conclude that a strong and professionalised system of *academic tenure* is a necessary condition for protecting scholarly freedom and ensuring academic rule within the university. Assured independent tenure is the *sine qua non* of ‘collegialism’; control over a set of established academic positions provides the backbone of departmental independence without which it could relapse into a mere administrative convenience; the independently tenured dean can represent the faculty to central administration compared to the appointed fixed-term dean as functionary of executive management. At the same time, it will be vital that the academic tenure system requires and promotes strong scholarly qualifications at different levels and stages of an academic career. Confirming the permanent appointments of academic mediocrities, or of those who have yet to demonstrate that they are capable of the highest levels of scholarly excellence, may provide job security to the individuals concerned, but will not be conducive to the longer-term development of research and teaching, nor of scholarly freedom itself. Finally, and in the fourth place, we may conclude that traditional structures of academic rule may, or may not, have been based on some form of implicit or explicit compact within the wider university community. This depends on varying local academic cultures and historical patterns of development. The evidence of those cases where a pact of some kind was indeed put in place, as with the origins of the American academic freedom and tenure system based on the 1940 AAUP/AAC agreement, suggests that this is best pursued not within local university communities but on a system-wide level while the key protagonists are likely to be strong academic staff associations, on the one hand, and representatives of university administration and executive management, on the other hand. An internal pact for academic rule as an objective in its own right is unlikely, but this could result if the professoriate and university management can agree to the principles of academic freedom and a professionalised tenure system as in their respective best interests.

2.5. Institutional autonomy as a social compact

On the face of it, the issue of a possible social compact for the institutional autonomy of the university in the external context of its relations to state, economy and society might appear a relatively straightforward matter. While there will always be a measure of dependence and interdependence of the state and society, these may still agree to confer a substantial amount of autonomy on the university to manage its own internal affairs as an institution without significant external interference. We first posed the possibility of a social pact for autonomy in Part 1 of this report along these lines (subsection 1.3.4). Indeed, the institutional autonomy of the modern university in consequence of an underlying social compact has often been described in just these general terms:

“A society that supports a college or university does so with the expectation that it will receive something in return. It grants these institutions autonomy only if it believes that

it can achieve more of what it desires by so doing than it can otherwise. If this were not the case then it is not clear why any society should support these institutions or grant them autonomy ... Society grants the institutions a good deal of autonomy in deciding what should be taught and researched and how ... Nonetheless, society grants to the college or university only a limited amount of autonomy ... The autonomy of the university consists in its having the right to determine ... issues that are based on knowledge.” (de George 1997: 56-57)

As far as this goes, the question of a social pact for institutional autonomy would thus appear to depend, firstly, on whether the university does in practice have an effective measure of self-governance with regard to its internal affairs without external interference and, secondly, on whether this has come about with the implicit or explicit support and agreement of the state and society.

However, from an academic freedom perspective, matters are more complicated. In light of the foregoing discussion it should be clear that, for a number of different reasons, the significance for academic freedom of a social compact for institutional autonomy is by no means a straightforward issue. There are at least four sets of complicating considerations to take into account. Firstly, the institutional autonomy of universities is a notable feature of academic culture specifically in the Anglo-Saxon world, so much so that it even tends to be conflated with academic freedom itself, but not in the continental-European tradition where academic freedom does not depend on the institutional autonomy of universities (subsection 1.2; subsection 1.3.4; subsection 2.2.1). This inevitably raises some basic questions regarding the relation between institutional autonomy and academic freedom in these comparative cultures. On the one hand, the striking contrast in the prevalence of institutional autonomy in the two different traditions must raise doubts regarding the Anglo-Saxon assumption that institutional autonomy is a necessary condition for academic freedom; on the other hand, the question must arise as to the different bases of academic freedom in the continental-European tradition if it cannot rely on institutional autonomy. Neave’s notion of a “Roman” mode of incorporating the universities as opposed to the “Saxon” mode might be taken as suggesting such an alternative basis to that of a social compact for academic freedom (subsection 2.2.1). Secondly, in some cases where the social compact for the institutional autonomy of the universities had at one stage been securely in place for a considerable period of time, as in the British tradition, this underlying and implicit agreement was subsequently challenged during the Thatcher administration, and may be in danger of breaking down irrevocably (subsection 1.2). This must raise questions about the significance of social compacts for institutional autonomy in historical and political circumstances conducive to such arrangements as against conditions where such arrangements may be counter-intuitive but perhaps most needed (subsection 1.4). It may also raise questions, as Pritchard has argued, about the relative significance of implicit and informal social compacts compared to explicit and even constitutionally entrenched pacts for institutional autonomy. Thirdly, we need to distinguish between those cases where universities managed to maintain institutional autonomy, but did so, in part, because there was no particular reason for state and society to become more closely involved, from those cases where universities are recognised to be key resources for social and political development so that high stakes would be involved in

social pacts for institutional autonomy (subsection 1.4); likewise we need to distinguish between social pacts for *substantive* institutional autonomy of the university (where this involves internal scholarly freedom and academic rule) and social pacts for *functional* institutional autonomy only (where this does not require internal scholarly freedom and academic rule) (subsection 1.3.4). On both counts, this raises basic questions regarding the actual significance of the institutional autonomy at stake in a social compact for autonomy. Finally, we need to consider the significance of the fact that the institutional autonomy of the university is valued for contrasting reasons in terms of Olsen's constitutive and market visions of the university (although not in terms of his instrumental and political visions of the university) (subsection 1.3.4). This raises fundamental questions as to whether a particular compact for institutional autonomy will function as a protection of scholarly freedom and academic rule within the university, or (on the contrary) whether it will function as a threat to academic freedom (subsection 1.2; subsection 1.3.4).

It follows that what is needed in this section is not just an enumeration of the extent and limits of the university's institutional autonomy together with a consideration of the evidence for an implicit or explicit social compact in support of that. Rather, we first need to interrogate the significance of a social pact for institutional autonomy from an academic freedom perspective with reference to these four sets of complicating considerations.

2.5.1. Interrogating a social pact for institutional autonomy from an academic freedom perspective

In the Anglo-Saxon world, the institutional autonomy of universities tends to be regarded as vital for the protection of academic freedom. In so far as universities in the Anglo-Saxon tradition have indeed been characterised by a notable measure of freedom from interference by state and society in their internal affairs, indicating some kind of underlying social compact for academic freedom, this has been taken as support for their institutional autonomy. From this perspective the lack of, or attacks on, the universities' institutional autonomy tends to be equated with the lack of, or attacks on, academic freedom itself. On the one hand, this means that accounts of the position in other academic cultures where the institutional autonomy of universities is not respected in the same way, or does not play a similarly prominent role, can hardly be reconciled with the practice of academic freedom in those cultures. Consider the following account of the position in some major European countries:

“[On the Continent] in terms of administrative control, the ties between Nation and university took a very specific form of a descending hierarchy from Ministry to university in the person of a permanent civil servant delegated to exercise an auditing function within the individual establishment. His formal responsibilities were – and in many cases still are today – to act in the government's name, to verify expenditure and to ensure that both procedures and structure within the university were in keeping with the conditions set out in current legislation. The German *Kanzler*, the French *Secrétaire Général*, the University Director in Scandinavian lands, or the *Regeringscommisaris* in Belgium incarnated the direct presence of central administration within the individual university,

the very personification of public accountability.” (Neave 2001: 29)

From an Anglo-Saxon perspective it is almost impossible to see how such a direct presence of state functionaries within the university can be anything but interference with its internal affairs and institutional autonomy, or how this could be compatible with academic freedom in any serious sense. The fact that these European universities nevertheless are marked by longstanding practices of scholarly freedom and even academic rule (for example in the notable form of the German and French professorial chair system) thus must appear inexplicable.

On the other hand, the fact that in the Anglo-Saxon tradition itself the historic social compact underpinning the relationship among universities, state and society has in recent decades been challenged, and that in important respects the former trust and consensus has broken down, must appear as nothing less than a crisis for academic freedom itself. Consider the following account of developments in Britain during the closing decades of the 20th century:

“[The] former relationship of trust between the universities and the government has now ended ... It would be no exaggeration to say that an outright hostility existed between British universities and the government, especially under the Conservatives. Older concepts of institutional autonomy have become subordinate to arguments about accountability and the right of the government to determine policy when substantial government expenditure is involved.” (Pritchard 1998: 103)

To the extent that the university’s institutional autonomy in its external relations has traditionally been regarded as the most important protection of academic freedom within the university itself, these developments tend to be taken as spelling doom for academic rule and scholarly freedom. And indeed the Thatcher administration made determined attempts to ‘abolish’ the basis of academic tenure, though it is not clear just how much difference that has made to the actual practice of academic tenure, or more generally to scholarly freedom and academic rule, in these universities.

It is at this point that a comparison with the different academic cultures in European universities becomes relevant: if scholarly freedom and academic rule could develop and be sustained within European universities which lacked the degree of institutional autonomy traditionally accorded to British universities, why could that not also be possible in the latter case as well? What the comparison with the different European academic culture shows, at the very least, is that institutional autonomy in the university’s external relations is not a necessary condition for scholarly freedom and academic rule within the university. This point may be more of analytical interest than of practical interest since the alternative Anglo-Saxon and European traditions should probably be considered as holistic ‘package deals’ whose constituent elements cannot be freely interchanged. In other words, it could be the case that precisely because institutional autonomy had traditionally been closely tied to internal academic rule and scholarly freedom in British universities, in ways which were not the case in the European tradition, that a challenge to their institutional freedom would therefore also be of much greater consequence for the internal practices of academic freedom in these universities. (Presumably European universities had to develop alternate mechanisms and procedures to safeguard their internal academic freedom which British universities, given their institutional autonomy, did not need, leaving the

latter more vulnerable and exposed when their institutional autonomy came under threat).

However, a closer look at just how the institutional autonomy of the British universities had been affected in relation to their internal practices of academic freedom indicates a still more complex position. Thus, it is not so much the case that recent developments meant that British universities lost institutional autonomy in their external relations to state and society while they might have salvaged some degree of internal scholarly freedom and academic rule. Instead, Tapper and Salter summarise the developments the other way round:

“[In recent decades] the link between the autonomy of the universities as institutions and the ability of the dons to control their working conditions has been broken. As institutions universities are more autonomous, while their academic members are increasingly less able to direct their working lives ... The most important area in which universities have greater freedom for manoeuvre is in the employment of their staff. In the past, the autonomy of the institution and of the faculty was perceived as a symbiotic relationship. Now, one could argue that universities are autonomous of their staff. The most symbolic manifestation of this crucial change is the rapid erosion of academic tenure ... Thus university autonomy has been reconstituted while donnish domination has declined.” (Tapper & Salter 1995: 60, 70)

From this point of view, the institutional autonomy of the university has both external dimensions, in relation to state and society, and internal dimensions in terms of the relations between executive management and the academic staff. Externally, the institutional autonomy of British universities was affected in the sense that they no longer received state funding in the form of block grants which they had discretion to deploy according to their own priorities but more targeted funding in terms of preset parameters. Internally, the institutional autonomy of executive management actually increased, and did so at the expense of academic rule and scholarly freedom. But in that case, further questions arise, especially regarding the nature and object of the social compact which had formerly existed and had now broken down (or been reconstituted in a different way). Was the former social compact actually supportive of the university's institutional autonomy in particular, or rather of the full 'package deal' including internal academic rule and scholarly freedom? In different terms, this might be put as the question as to whether these social compacts concerned the university's *substantive* autonomy (including internal scholarly freedom and academic rule) or *functional* autonomy only.

Arguably, then, one analysis of recent developments in the British context could be that the former social compact for the university's substantive institutional autonomy has broken down and been replaced by a newly reconstituted but different social compact now supportive of the university's functional autonomy and potentially aimed at the dismantling of its internal academic rule and scholarly freedom. In that case it would not be the institutional autonomy of the university in its external relations which is at risk but the internal dimensions of academic freedom, i.e. scholarly freedom and academic rule. The point is that the content of the social compact has changed from support of substantive autonomy (including internal scholarly freedom and academic rule) to support for the university's functional autonomy potentially set against the internal dimensions of academic freedom. Moreover, the university's institutional

autonomy, so far from serving to protect internal academic freedom, in the process emerged as potentially a major threat to academic rule and scholarly freedom within the university.

2.5.2. Implicit or explicit social compacts for institutional autonomy

In Part 1 it was suggested that in considering possible compacts for autonomy we need to focus, *inter alia*, on the specific *sense* in which some sort of social compact might be involved

as an *explicit and formal pact* entered into by particular parties;

as an *informal agreement* or *underlying social compact* governing the interaction of relevant parties or institutional sectors; and/or

as explicitly *articulated 'theories'* of the nature of the university and academic freedom subscribed to by state actors as well as the professoriate.

It was also suggested that with regard to possible social compacts for autonomy, whether explicit or informal, their *terms*, *scope* and *objectives* need to be indicated, i.e.

who the relevant parties to the social compact are and *how* they arrived at it;

what the agreed autonomy involves, within which limits or subject to what conditions; and

for what *general purpose* the autonomy compact is supposed to function (subsection 1.4).

At this stage we may consider the changing role and significance of social compacts for institutional autonomy in the British case, as contrasted with developments in the European academic culture, in these terms.

As we have seen (subsection 2.2.1), the “Saxon” mode of incorporating the universities into the public realm and the nation-state, in which British academic culture was embedded, both enabled and required a significant role for relevant social compacts between universities, state and society. In comparison the “Roman” mode of incorporating universities as part of the national state apparatus in the public sector, which characterised the European tradition, neither required nor allowed a similar role for particular social compacts between universities, state and society. With the universities as part of the state apparatus, and more specifically with, on the one hand, the direct presence of state functionaries within the university as the personification of public accountability and, on the other, with the independent academic tenure of professors guaranteed by their status as civil servants appointed by the minister, the practice of academic freedom did not have to rely on any social compact but was a matter of constitutional principle. It was the general ethos of the rational-administrative nation-state and its legal-bureaucratic order which, on the one hand, limited the role of state functionaries within the universities to that of ensuring public accountability without any directive or executive involvement and, on the other hand, guaranteed the academic freedom of professors in their established chairs. Moreover, these legal and constitutional arrangements were explicitly framed in a clearly articulated conceptualisation of the nature and purpose of the university in terms of the Humboldtian vision of the modern research university and its principles of ‘the three unities’ – i.e. the unity of knowledge, the unity of research and teaching and the unity of teachers and learners (Pritchard 1998: 105). In a sense, it was precisely a measure of the strength of this explicit and formalised arrangement that it did not need any further social compacts between

universities, state and society to ensure the practice of academic freedom. By comparison, not only the corporate independence of universities in the British tradition, but “the absence of a written Constitution and the lack of a clearly-formulated British conceptual model of higher education” (Pritchard 1998: 121) made the role of underlying and informal social compacts for autonomy that much more important. In Britain, as Neave points out, since public administration and the universities were kept in separate spheres the character of their interaction was different: “the British university fed the upper ranks of public service but was not part of it” (Neave 2001: 28). Under these circumstances the necessary social compact took the form of an underlying and informal elite consensus among university leaders and key state officials:

“The idea of the university is much less strongly defined in the United Kingdom than in continental Europe ... Freedom has long been internalised in the personal value systems and professional socialisation of British dons, and institutionalised in collegial structures of shared power. It was implicit rather than explicit. Because it was believed that individual freedom could be taken for granted, it was not guaranteed by legislation. Academe’s sense of security was so deep-rooted that, until recently, there was little effort to articulate what is meant by academic freedom or indeed what the essential mission of the university is.” (Pritchard 1998: 102)

This elite consensus was sustained in the changed conditions of an expanding higher education sector during the decades following the Second World War, feeding into the sense that it amounted to a stable order:

“The relations which bound the state, the UGC and the universities continued to be based upon a considerable body of mutual trust ... there remained a large residue of elite consensus as to both the nature of a university education and its benefits. Trust enabled the system to function relatively harmoniously.” (Tapper & Salter 1995: 63)

What was not realised at the time was the extent to which this elite consensus was dependent on the favourable conditions of an expanding higher education sector and confined to a strategic but relatively small ruling elite: “The sense of security derived in part from the homogeneous socio-political culture which existed among the ruling elite” (Pritchard 1998: 102). This elite consensus was comfortable with “a university system that was elitist ... high in cost, and lacking in diversity” (Tapper & Salter 1995: 70). It was the major economic crisis of the mid-1970s which brought matters to a head. In short order it became clear that the universities would no longer be able to count on the high levels of state funding on which the expanding higher education sector had come to depend while the Thatcher administration no longer shared the assumptions of the prevailing elite consensus on the purposes of the university:

“If the concept of university autonomy was integral to the traditional idea of the university, a powerful counter-ideology has developed in which a university education is perceived as an economic resource ... The current relations between the state and the universities can best be described as an attempt on the part of the Government to create a managed market: financed mainly by public money, the universities retain control of their own affairs while operating within centrally defined and regulated parameters that are managed by the funding agencies.” (Tapper & Salter 1995: 65).

By comparison, in Germany, where the internal academic freedom of the universities depended less on a particular elite consensus and more on recognition of basic constitutional principles,

the impact of similar economic developments and ideological changes was less intrusive and disruptive:

“The ideology of market forces and competition has by no means by-passed Germany. The facts of massification and of vocationalism pose an obvious threat to Humboldtian values and ideals, but so far the sharpness of ‘the market’ has been mitigated in Germany ... the fact that academic freedom is guaranteed by the Basic Law is likely to deter government from excessively brutal financial cuts.” (Pritchard 1998: 108).

We have already cited (subsection 2.2.1) Pritchard’s conclusion that “the fact that academic freedoms are implicit rather than explicit in the United Kingdom has now become a weakness rather than a strength” (Pritchard 1998: 123). This can now be seen as a more general comment on the role of the social compact for autonomy in the British context of a “Saxon” incorporation of the universities into the public sphere.

More specifically we may consider the evolution of the University Grants Committee (UGC) in the British context as the functional mechanism of that underlying social compact for institutional autonomy. The UGC was set up in 1919 as an intermediate and independent board to administer state funding to the universities at a time when this comprised roughly one-third of their income. Significantly state funding was allocated in the form of block grants on a five-yearly cycle, allowing universities substantial discretion to determine their own budgetary priorities and to engage in long-term planning. This arrangement expressed “a tacit bargain between the state and the universities, that in return for the Exchequer’s recurrent grant the universities would evolve in a manner that fulfilled national needs ... The UGC was to guide the universities along this path” (Tapper & Salter 1995: 61-62). Moodie describes the functioning of the university grants system during its ‘golden age’ from 1919 to 1963 as a “relatively straightforward, even gentlemanly process” (Moodie 1986: 49). Significantly, the government-appointed UGC consisted of working academics, not government officials, though they shared common social and educational backgrounds with their counterparts in the Treasury. In practice that contributed greatly to the elite consensus underlying the relatively informal process that evolved:

“[The UGC] negotiated with the Treasury the total sum required ... This total was then distributed among the universities by the UGC on the basis of their individual needs (defined in consultation between them and the UGC) in the form, for all but a tiny fraction of the total, of a single or ‘block’ grant to each institution.” (Moodie 1986: 50)

In principle, the UGC, as the link between the universities and the state, could have functioned either as a policy implementation instrument of the state, or as a buffer and broker negotiating their interactions at some distance. At the outset the government’s intentions may have been the former rather than the latter, while the universities had to be convinced that the UGC would not represent the government’s interests rather than their own. In practice the UGC, in line with the “Saxon” mode of bottom-up incorporation rather than a centralised top-down administration, soon developed into an intermediate co-ordinating agency basically committed to the universities’ interests in their dealings with the government: “[the UGC’s] purpose was not so much to strike an honest bargain, but rather one that would benefit the universities to the maximum feasible extent” (Tapper & Salter 1995: 60). The willingness of the state at the time to

go along with this was a definite indication of that compact for institutional autonomy even if the levels of state funding still remained at proportionately low levels. The test for this operative compact first came in the decades immediately following the Second World War when the massive expansion of the higher education system brought about a substantial increase in both overall and proportional state funding. Inevitably the much greater dependence of the universities on state funding would greatly increase their vulnerability to possible cuts or more direct forms of control. Significantly, though, as already noted above, the relations of trust binding the state and the universities through the 'gentlemanly' arrangements administered by the UGC continued unchallenged during this period with the principles of the block grant and the five-yearly cycle of planning remaining in place (Tapper & Salter 1995: 62-63). This was perhaps the clearest indication of a 'high stakes' compact continuing to function despite more adverse conditions. Moreover, historical evidence indicates that to some extent this was a deliberate choice made with awareness of the possible alternatives:

"Interestingly, the established perception that an over-dependence upon the Exchequer posed a threat to autonomy was challenged. Thus a 1944 UGC memorandum claimed that 'the acceptance of Exchequer money through the UGC tends to be less injurious to academic independence than reliance on municipal contributions and private benefactions'." (Tapper & Salter 1995: 62).

The universities, through the UGC, thus recognised that dependence on state funding at national level could pose a lesser threat to academic freedom than a similar dependence on funding by the local state or private benefactors; the state, for its part, was prepared to trust the universities to set their own priorities in utilising these block grants.

However, this mutual trust did not survive the economic crises of the 1970s and the ideological onslaught of the Thatcher administration. The UGC successively had to make changes in its mode of operation, first dispensing with the five-yearly planning cycle, then introducing more targeted and conditional grants within government-determined limits:

"In a comparatively short space of time the idea that the UGC made representations to government on behalf of the universities was supplanted by the introduction of government imposed cash limits within which university development had to be constrained. Moreover, the UGC was to all intents and purposes forced to adopt a formula funding model as it sought to distribute declining real resources." (Tapper & Salter 1995: 63)

It was not long before the UGC itself was replaced by funding councils functioning to implement state policies, as the former tacit compact broke down completely:

"The University Grants Committee, praised by Robbins, was supposed to be a buffer between government and universities, but has now been replaced by funding councils which take direct advice from the secretary of state and link the funding to policy objectives like student expansion or contraction ... state pressure is exerted much more heavily on universities than was formerly the case." (Pritchard 1998: 109)

In place of the former elite consensus administered by the UGC came a comprehensive drive for greater accountability of the universities for performance of specified services funded by the state. The universities have resisted the notion that they are formally tied into a contractual

relationship with the state to render specific services as opposed to grants for functions they may determine themselves, but in practice that has effectively come about: “In effect the universities receive income from the funding councils for the performance of particular services, with the level of performance affecting the size of the income” (Tapper & Salter 1995: 67). Tapper and Salter conclude that within the context of the British tradition “there has been an evident shift in the power relationship: increasingly the state imposes its parameters upon the universities and is less willing to tolerate the conventions that were created by the universities” (Tapper & Salter 1995: 69). However, this loss in the traditional institutional autonomy of the universities in their external relations to the state has a complicated relation to the questions of institutional autonomy in the internal contexts of academic freedom as evinced by the concurrent impact of the ‘managerial revolution’.

2.5.3. ‘High stakes’ compacts for functional institutional autonomy and the managerial revolution in the university

Recent developments in higher education systems, across different academic cultures, are characterised by some notable trends relevant to institutional autonomy and academic freedom. These include a strengthening of the hierarchical elements in university governance, a turn from traditional patterns of academic rule to a more market-oriented approach to executive management, and an increasing insistence that universities should be more ‘accountable’ both in terms of ‘quality assurance’ of their core functions of research and teaching and in their external relations to state and society. More often than not, alarm at the implications of this ‘managerial revolution’ is conflated with a supposed loss of the university’s institutional autonomy. However, while there are definitely serious threats to scholarly freedom and academic rule, this is a misconception in so far as the university’s institutional autonomy has, in some important senses – i.e. that of *functional* rather than *substantive* autonomy – actually been strengthened by some of these trends. Moreover, all these developments, including that of the ‘managerial revolution’, need to be viewed in relation to the greatly increased stakes for state and society in universities given the high levels of funding required and their strategic significance for the new ‘knowledge economy’.

Comparative surveys of contemporary higher education stress the growing trend, at least since the 1970s, to harness university research to the perceived needs of society and at the expense of university autonomy:

“From one country to the next, the 1970s and 1980s have seen external as well as internal challenges to the structure and function of academic institutions ... Major reform legislation has been introduced in virtually every European country in this period ... In the areas of graduate education and research, governments have also become quite directive ... the trend has been for government to attempt more explicitly to harness university research to address the pressing and practical needs of society.” (Rhoades 1990: 1380)

In part this is a consequence of the very success of university-based science and research and a growing recognition of the strategic significance of universities for state and society. It should also be noted that the state’s increasing concern with the universities did not necessarily assume

the form of direct interference or take-overs; on the contrary, it tended rather to be concerned with strengthening the hierarchical and bureaucratic elements of academic authority in universities, often at the expense of collegial practices and academic rule:

“The literature indicates a marked trend towards the increased exercise of political and bureaucratic forms of authority at both campus and system levels. At the same time, there appears to be a marked decrease in the efficacy of professional authority, evident in the challenges to the academy.” (Rhoades 1990: 1379)

In France reforms of the university system gave increased importance to academic chief executives on campus even if the authority of the massive national administrative bureaucracy in education persists; in Germany, too, reforms sought to increase the power of university chief executives (Rhoades 1990: 1379-1380). In the Netherlands, the radical reforms of the new 1997 legislation mandated new rules of institutional governance and management “doing away with the internal distinction between academic and administrative affairs in favour of an integrated management approach except at departmental level” (de Boer 2006: 8). These reforms are evidently inspired by external perceptions, on the part of state and society, that traditional forms of university governance will not be able to meet the challenges posed by current economic and political developments. Olsen comments that “the suspicion that the University is unable to manage its own affairs in a coordinated and unitary way is not new”, but has acquired increased urgency given the higher stakes currently involved:

“The current enthusiasm for strengthening academic and administrative leadership and introducing more hierarchical elements as a condition for institutional autonomy is also based on a perceived threat to the coherence of the university.” (Olsen 2005a: 32)

While intended to strengthen the university’s institutional autonomy, rather than to weaken this, these developments did amount to challenges to the internal structures of academic rule and scholarly freedom. In Europe, concludes Gary Rhoades,

“several of the reform efforts ... constituted a direct challenge to the personal rulership and guild authority of chairs and faculties ... All systems consist of a mix of academic, political and bureaucratic types of authority. The literature suggests that the balance among them has shifted significantly, with various forms of professional authority on the decline, and different forms of political and managerial/bureaucratic authority at different levels of higher education on the rise.” (Rhoades 1990: 1379)

Olsen, too, concludes that the bolstering of the hierarchical elements of academic authority structures in the university, even if this increases its institutional autonomy in the external context of economy and society, poses threats to scholarly freedom and academic rule: “Strengthening internal University leadership and external representation and weakening collegial and discipline-oriented organization, is likely to impact individual freedom and creativity” (Olsen 2005a: 33).

It is in this context that the much-contested tendency towards more business-style executive management in the universities, the so-called ‘managerial revolution’, over the past few decades should be understood. There can be no doubt that this constitutes a momentous development in university governance. It has been some considerable time coming. Already in the early 1970s Epstein observed of American universities that managerial and business principles were

increasingly impinging on the academic realm and that non-collegial authority was becoming more overt in academic matters (Epstein 1974: 105). In the previous section we followed Tapper and Salter's account of how the former elite consensus in Britain represented by the intermediary role of the UGC gave way to an alternative model for the relationship between the state and universities in which university education was conceived as an economic resource while the state aimed to create a managed market (Tapper & Salter 1995: 66ff.). Similar trends have occurred worldwide; South Africa is no exception. From the perspective of scholarly freedom and academic rule these are highly alarming developments to which we will return below. Still, in relation to institutional autonomy at least two major qualifications need to be made.

Firstly, the 'managerial revolution' was not forced upon the universities by external parties. In many ways it constitutes a major break with traditional practices of university governance, this was not imposed on unwilling universities by state directives or through externally based take-overs. Instead, the main thrust of the 'managerial revolution', in its various forms and guises, has emerged from within the universities themselves and represents their institutional response to perceived changes in, and challenges of, the external economic and social context in which contemporary universities find themselves. By and large this has been the response of the top leadership and executive management of the universities, and it has pitted them against the academic faculty, effectively inverting the tradition that (former) academics should take up the key leadership positions to ensure the interests of academic rule within the university. Still, however this may be regarded by the academic faculty, it remains the case that the executive management is a key sector of the university community and sets out to act for and on behalf of the university. As such the 'managerial revolution' can hardly be considered a breach of the university's institutional autonomy, at least in the sense of *functional* autonomy.

Secondly, as we have just seen, many of the initiatives associated with the 'managerial revolution' were actually designed to strengthen the university's functional institutional autonomy. These trends are succinctly and perceptively summarised by Olsen in his account of the 'enterprise vision' of the university, a passage already cited in subsection 1.3.4, but worth quoting again and at greater length:

"Market competition requires rapid adaptation to changing opportunities and constraints which again requires strong, unitary and professional internal leadership with a responsibility for the University as a whole. The University has more freedom from the state and political authorities. Government involvement is at arm's length and there is regulation and incentives rather than government dictates. Simultaneously, the University is more dependent on 'stakeholders', donors, buyers, competitors and society at large and university leaders are market entrepreneurs ... Collegial, disciplinary and democratic organization and individual autonomy are viewed as hindrances to timely decisions and good performance, to be replaced by strong management and inter-disciplinary organization." (Olsen 2005a: 12-13).

If such stronger executive management and professional leadership comes at considerable cost to the traditional practices of academic rule and scholarly freedom in the internal governance structures of the university, that is a matter of *substantive* institutional autonomy. At the risk of

conceptual paradox it might be said that it is the uses of the university's own institutional autonomy in one sense (that of *functional* autonomy as wielded by a strong market-oriented executive management) which has come to pose a serious threat to its institutional autonomy in another sense (that of *substantive* autonomy including academic rule and scholarly freedom). But that is just another way of saying that the threats to academic freedom have become as much internal as external to the university community.

It is worth considering to what extent the re-alignments in relationships between different sectors and parties associated with the 'managerial revolution', both within as well as outside of the university community, amounts to a new or differently reconstituted social compact for precisely such *functional* institutional autonomy. Within the university community the 'managerial revolution' has opened up major lines of fissure and conflict, and served to undermine long-standing internal compacts to protect *substantive* institutional autonomy, more especially those between the academic faculty and the executive management. But in its external relations the new more market-oriented university leadership has been able to count on implicit and explicit support from the business community, both as donors and as members of the University Councils or Boards of Trustees, and from the state, especially in cases where governments are committed to 'neo-liberal' economic and social policies. Within this perspective, there need not be any inherent conflict between, on the one hand, the state's imperative to set definite parameters for university funding, and even to tie these to more directed priority areas in terms of national policy needs; and, on the other hand, the university leaderships' concern to maintain maximum *functional* institutional autonomy. As long as the state's involvement took the form of system-wide "steering" or "supervision" of higher education policy developments, as opposed to more direct forms of hierarchical "control" or "interference" (Muller, Maassen & Cloete 2004: 12), ample room remained for the exercise of the university's functional institutional autonomy. Indeed, negotiating the specifics of broadly targeted funding within the parameters set by the state could become the arena where the terms of this new compact is consolidated. A telling example of what may be involved is provided by Tapper and Salter's account of the new dispensation for university funding in Britain following the change and breakdown in the traditional function of the UGC from the 1970s:

"Central to the established idea of the university was the contention that there was a symbiotic relationship between research and teaching. A university was an institution that pursued both functions, and dons were persons who both taught and researched. ... the UGC [now] challenged this idea. The assumption that all dons both taught and researched was jettisoned, and the universities were to receive separate and identifiable amounts of funding for research and teaching." (Tapper & Salter 1995: 64)

For a university still strongly committed to the traditional ideal of the unity of research and teaching, a funding policy of this kind would no doubt raise fundamental objections; but to a market-oriented university executive leadership basically concerned to maintain its *functional* institutional autonomy this need not be true. In this context one can see the makings of new alliances in which a market-oriented executive leadership of the university, backed by a Council or Board of Trustees with strong representation from the business community, and in broad consensus with the "steering" objectives and approach of state planners, will be ranged against that part of the academic faculty within the university still committed to *substantive* views of

institutional autonomy including scholarly freedom and academic rule. This may also be the context in which to understand the notable new tendency in European universities, traditionally part of the public sector and state apparatus, to introduce lay Councils and Boards drawn from civil society, an arrangement previously regarded as peculiar to Anglo-Saxon universities. Along with allowing a greater degree of institutional autonomy from state direction and strengthening the hierarchical authority of university executives within the university, this may represent attempts to put together the elements of a new social compact in support of functional autonomy. The question is what the bearing of this new social compact will be on the traditional practices of academic rule and scholarly freedom which still survive in the internal academic governance structures of the university.

2.5.4. The institutional autonomy of universities in the South African context

If we now consider the issue of the institutional autonomy of South African universities within this comparative perspective, then certain familiar features appear in a different light while other usually ignored aspects acquire more significance. Broadly speaking, of course, the South African university system derived from the Anglo-Saxon tradition rather than the continental-European or American academic cultures. The institutional structure, especially of the older South African universities, broadly follows the British model, in some cases more specifically the Scottish version, with similar functions for the Vice-Chancellor, academic Senate and University Council, faculty boards and academic departments. South African universities never knew the full German institution of the professorial chair, except in the attenuated guise of permanent professorial heads of departments, nor did they develop a strong and professionalised system of academic tenure on the American model. Some of the institutional divergences and peculiarities of South African academic culture can be directly attributed to the heritage of the racially divided higher education system which developed under apartheid. Thus in the older white universities (now known as 'historically advantaged institutions', or HAIs) we find traditions of collegialism and academic rule:

“The HAIs followed a collegial model in which university professors were key decision makers. Although over the last three decades there had been growing bureaucratisation in these universities, the power of the professor remained more or less intact.” (Webster & Mosoetsa 2002: 67)

As against this the apartheid universities originally designed to serve the various 'Bantustans' and ethnic groups (now known as 'historically disadvantaged institutions', or HDIs) are burdened by the legacy of a distinctive bureaucratic academic culture: “The HDIs, on the other hand, were creatures of apartheid and were tightly controlled by apartheid managers. Academics on these campuses did not exercise the same degree of power as those in the HAIs” (Webster & Mosoetsa 2002: 67).

Another consequence of apartheid (and to some extent of the academic boycott as part of world-wide anti-apartheid protests) was the intellectual isolation in which it cast South African higher education generally so that, *inter alia*, “the shift towards academic managerialism [began] in South Africa a decade later than the developed world” (Webster & Mosoetsa 2002: 67). By the

1990s, though, the ‘managerial revolution’ was under way within South African universities as well, albeit much more marked in some instances than others, along with the internal transformation of the function and significance of institutional autonomy itself. In the African context this was paralleled by the impact of the new and radically different version of ‘developmentalism’ applied to education in general, and African universities in particular, by the World Bank and the International Monetary Fund (IMF) as part of the structural adjustment programmes they imposed. On the one hand, this opened the way to much needed alternative financial resources for African universities increasingly faced with crises of survival. On the other hand, the conditionalities on which such external funding was premised spelled disastrous consequences of both privatisation and commercialisation for key African universities (Mamdani 2006: 7ff.; Oloka-Onyango 1994). We cannot pursue these developments in the present context but need to consider, if only in outline, some key features of the changing relation between South African universities and the state both before and after the democratic watershed of 1994.

2.5.4.1. The South African state and university autonomy prior to 1994

From a comparative perspective, then, the distinctive features of the relations between the universities, state and society can be attributed only in part to the apartheid era and its consequences. These need to be located in relation to longer term patterns and underlying structures going back to the colonial era. Thus if the South African higher education system broadly derives from the Anglo-Saxon tradition, then it is not quite the case that our universities have been incorporated into the public sector in line with the “Saxon” as opposed to the “Roman” mode. It takes an experienced observer of the British academic culture like Graeme Moodie to note that from the outset there were significant differences in South African institutional arrangements from the British model:

“All the South African universities are statutory creations, their constitutions consisting not of royal charters but of Acts of the South African Parliament which do not confer the wide implied powers that accompany general corporate status, but only those powers explicitly conferred ... Universities were legally required to submit annual budgets to government for approval ... Members of academic staff could appeal against dismissal to the minister. And universities [were] legally obliged to seek state approval before establishing new courses, departments, or faculties. There is thus a long tradition of legislative intervention and of legal dependence upon the state.” (Moodie 1994: 2)

And if all these historical features of South African universities aligned them with the state in ways not fundamentally unlike that of the “Roman” mode of incorporating continental European universities as part of the state apparatus, then this would be even more true of the apartheid universities founded from the 1960s. Given all this, the strong concern of especially the liberal universities in South Africa with regard to their institutional autonomy, as if they shared the same context of state-university relations as those in the British tradition, appears somewhat anomalous. After all, constitutionally they did not have the same status as independently chartered corporations nor were they rooted in local communities in the “Saxon” mode of their British counterparts. Nevertheless, as Moodie notes, the response of the liberal universities to the apartheid state and the Separate Universities Bill in 1957 was focused on a defence of their

vaunted institutional autonomy to such an extent that the very definition of academic freedom in the TB Davie formulation equated it to institutional autonomy:

“The open universities’ initial opposition to the government was as restricted in its scope ... Their public statements focused, indeed, almost entirely on the threats to ‘academic freedom’ (by which they meant university *autonomy*) posed by the new legislation ... The universities as corporate bodies for long confined their direct opposition to government to those occasions when their own autonomy, or the personal freedom of their members, were under direct threat.” (Moodie 1994: 9-10)

In important respects, then, the liberal defence of the university’s institutional autonomy against the (apartheid) state implied an ideological misrepresentation of the basic state of affairs. This becomes clear if we raise the question of the nature of, and the parties to, a possible underlying compact for institutional autonomy in the South African case. In the British case, as we saw in the previous section, the state played a vital part in the elite consensus which long enabled the universities to maintain their institutional autonomy even in a context of increasing dependency on state funding – but that implicit compact then came apart once the state lost its trust in the universities, with drastic consequences for the nature and terms of state funding. Correspondingly one might expect that in the South African case, where universities did not have the same constitutional or effective independence, the state’s involvement in any underlying compact would be even more decisive. In particular, one would expect that any vital conflict between the state and the universities would have even more drastic consequences in terms of basic funding arrangements. In actual fact the historical pattern of South African state-university relations turns out to have been surprisingly different. For one thing, as Moodie points out, the conflict between the liberal or ‘open universities’ and the apartheid state did not translate into significant changes in their funding by the state; these universities continued to be financed largely from public funds and according to the same formulas which applied to the universities generally (Moodie 1994: 25).

From the point of view of the South African state, its relations to the universities were historically characterised by a remarkable degree of respect for their *de facto* autonomy. Even if constitutionally the universities did not qualify for institutional autonomy, the state tended to deal with them as if they did. Moodie observes that

“state involvement was informed and guided, however, by what seems to have been a genuine, if qualified, respect both for higher education and for university autonomy. ... This forbearance showed itself in the way in which the state funded higher education and in the recurrent anxiety to make decisions only after consultation and on the basis of expert (and interested) advice.” (Moodie 1994: 2-3)

Thus state subsidies from 1922 took the form of block grants while the Adamson committee in 1933 proposed the consolidation of a stable and predictable system of formula-based funding. The new funding formula introduced by the Holloway Commission in 1951 continued the practice of block grants leaving considerable discretion for the universities, while the 1955 *Universities Act* gave statutory recognition to the Committee of University Principals (CUP) and established the University Advisory Committee (UAC) loosely modelled on the British UGC (Moodie 1994: 3-5). In effect this approximated the British pattern of state-university relations

during the halcyon era of respect for university autonomy to an extent that belied the basic legal and practical dependence of South African universities on the state. Arguably the South African state fostered an elite consensus allowing a measure of institutional autonomy to (white) universities disproportionate to their constitutional position or social clout. This does not detract from the serious violations of academic freedom during the apartheid era, including the banning, detention and exile of leading academics involved in political opposition as well as censorship, prosecution of student leaders and security police incursions on campus. But, in Moodie's judgement, "to focus only upon the public disputes between the State and universities is ... significantly to falsify the relationship which, in many respects, was as close to cooperation as to confrontation" (1994: 24). As far as higher education and the universities were concerned, the apartheid state's record actually was more ambivalent than is usually recognised, and included a certain recognition of academic freedom and respect for the university's institutional autonomy:

"The Nationalists were very careful to maintain what they saw as the rule of law – narrow and formalistic as their conception of it was ... Within the universities ... a degree of academic freedom survived the pressures brought to bear upon it, but not without losses both to individuals and, in consequence, their institutions ... To a significant extent ... 'the private life' of the white universities (the activities pursued in their classrooms, laboratories and libraries) was not directly affected by state intervention, whether through legislation or the security forces." (Moodie 1994: 14, 23)

More importantly, as far as the basic involvement of the state in the higher education sector is concerned, there was a significant expansion in the number and size of universities after 1959 based on public funding. In its own way South Africa thus shared in the post-Second World War expansion of higher education taking place elsewhere in Europe and America during this period. Notably this included the beginnings of more substantial access of black students to higher education, even if that was tailored to the distorted ends of apartheid ideology. The apartheid state went to great lengths to ensure that universities should be structured on racially exclusive and discriminatory lines, yet to a significant degree it was also prepared to recognise them as universities. Moodie notes that while the 1974 report of the Van Wyk de Vries Commission insisted that universities are subordinate to the (apartheid) law of the land and could not be allowed to function as "sanctuaries" from apartheid, it paradoxically also paid its respects to the principle of academic freedom: "Even so, some notion of academic freedom or autonomy is implicit in the whole report and seems honestly to be sustained" (Moodie 1994: 18). At least as far as its approach to the public funding of universities was concerned, the South African state also continued to put this basic respect for the institutional autonomy of the universities into practice. Moodie notes that the SAPSE formula for state funding introduced in 1985 was both sophisticated and flexible, with both the data and the calculations matters of public knowledge so that universities knew what their 'entitlements' were. Even more important the state subsidies, though reduced, continued to be paid in the form of block grants, allowing universities some measure of discretion in determining their own spending priorities. Compared to the position of British universities by that time, Moodie concludes that, "when it comes to the spending of government money South African universities are much freer than British ones" (1994: 26).

Taken together, then, the historical legacy of the institutional relations between the universities and the state in South Africa is decidedly ambivalent. On the one hand the grounds for the university's claim to institutional autonomy are less secure than appears from the conventional rhetoric of the liberal universities; on the other hand, the state has in practice been more respectful of the universities' autonomy, especially in terms of the basic funding arrangements, than has commonly been recognised in South African debates. To what extent does this represent some kind of underlying compact for institutional autonomy of the universities in the South African context? And if so, how has that compact been affected by the restructuring of higher education in the post-1994 new democratic South Africa?

2.5.4.2. University autonomy in the context of the post-1994 democratic restructuring of South African higher education

South Africa's negotiated transition to democracy in 1994 brought manifest changes to its system of higher education though on closer analysis these often proved to have ambivalent and unintended, not to say unexpected and even counter-intuitive, consequences. While desegregation of the historically white universities had already been initiated before 1994, the new Constitution required basic structural change with all institutions of higher education included in a single national system explicitly based on the principles of equity and democratic transformation. The direct consequence of this unprecedented student mobility, coupled with the introduction of a national student bursary scheme, was a massive increase in black student enrolments, amounting to nothing less than a 'revolution' of the general student profile, with the proportion of black students in the universities increasing from 32 per cent in 1990 to 60 per cent by 2000 (Cooper & Subotzky 2001; Bunting, 2002b; Cloete 2002b: 415). Yet in institutional terms, this primarily benefited not the historically black universities but their historically white counterparts as black students 'voted with their feet' to move away from the institutions to which they had previously been restricted by law. In institutional terms, too, the inclusion of the universities associated with the former homelands into a unified national higher education system meant that from 1995 they were brought on to the general SAPSE funding formula and so exposed to the quasi-market principles on which this funding formula operated. As a consequence the level of state funding for these universities, which actually harboured raised expectations of benefiting from substantial 'redress' funding under the new democratic dispensation (which proved to be not forthcoming either), declined in both absolute and relative terms (Bunting 2002a: 137). By the end of the first decade of democratic restructuring in higher education analysts found that the pattern of actual institutional development and performance showed some paradoxical and counter-intuitive features. Thus, "viewed from a statistical and funding perspective, it would appear that the new South Africa benefited not the black institutions, but the historically [white] Afrikaans-medium institutions." Indeed, for historically black universities the new South Africa proved a disaster (Cloete 2002b: 423). More generally, despite the commitment to equity as a basic principle of higher education restructuring, the actual trend proved otherwise. Thus Bunting finds that by 2001 the higher education system had actually become "more differentiated and more unequal" than in 1994 (Bunting 2002b: 179) while Cloete concludes that,

“in summary, the equity objective in the post-1994 period was not met. Instead changes resulted in a more elite public higher education system: while the student population became dramatically more black, this was against an overall decrease in participation rates.” (Cloete 2002b: 422)

What this indicates, for our purposes, is that the state of university autonomy in the new democratic South Africa, like much else pertaining to higher education, cannot just be read off from the relevant constitutional principles, legislative enactments or official policy statements. No doubt it is significant that academic freedom has been explicitly recognised as a right in the 1996 Constitution, but in the absence of pertinent judgements by the Constitutional Court it remains unclear how, or even whether, this would be interpreted to apply to the institutional autonomy of universities. Likewise the broader implications of the 1997 *Higher Education Act* for university autonomy were ambivalent, to say the least. Bringing all higher education institutions within the scope of the same statutory regulation served as a double-edged sword: for the historically white universities it meant that they were deprived of any special measures of independence previously enshrined in their respective University Acts, while for the historically black universities the reverse applied. As the CHE’s report on the first decade of democracy in South African higher education noted, these institutions had enjoyed little or no institutional autonomy prior to 1994:

“The six universities in the ‘bantustans’ and self-governing territories were specifically designed as extensions of these bureaucracies, with tight controls over the appointment of teaching staff and similar attempts to control the curriculum. Their budgets were line-item extensions of administration budgets, and an integral part of the civil service.” (CHE 2004: 174)

Henceforth, though, they would share similar legal status with the mainstream universities as self-governing entities with their own Councils and legal personalities. (The *Higher Education Act* also encompassed the technikons in its purview of higher education institutions, thereby implicitly eroding the universities’ pretensions to a special independent status in similar ways to that in which British polytechnics were assimilated to university status – by 2005 the technikons had explicitly been accorded university status). At another level, of particular significance to the practice of institutional autonomy, the proportionate levels of state funding declined notably compared to historical patterns: while state funding as a component of overall income of universities had been as much as 80 per cent and more in the 1960s and 1970s this has currently decreased to less than 60 per cent in most cases, and, in some instances, to less than 40 per cent. This has been achieved by means of significantly increased student fees as well as contract research, returns on investment and other forms of ‘third-stream funding’. According to Cloete, “South African higher education institutions had by the end of the 1990s diversified their income to an extent not achieved in many developed countries” (2002a: 103). However, contrary to possible expectations this did not result in any lessening of the pressures on the universities to be publicly accountable; instead, the pressures for their public accountability have markedly increased on all sides, not least that of the state. In short, the fortunes of institutional autonomy in the context of the new democratic South Africa are elusive and cannot readily be pinned down under one aspect only. We need to pay close attention not only to official policy

statements in this regard but as much and more to the underlying political dynamics of the restructuring process still under way, and to the effective parts played in this by higher education institutions as well as by the state and other stakeholders. Our concern is the extent to which a possible new social compact for autonomy can be identified, or not, in the ways in which this restructuring process is being played out. For this purpose, some of the unintended consequences may be as significant as the official policy objectives themselves.

The restructuring of higher education in the new democratic South Africa proceeded through a number of distinct phases:

“The post-1994 period can be summarised as having started with a huge participatory policy effort within a context of optimism for both the expansion of the system and redress for past inequities. This was followed by an ‘implementation vacuum’ in relation to the new policies, a shift after 1997 to efficiency, and finally a reassessment of priorities and a more interventionist approach by government in 2001.” (Cloete 2002a: 105)

The initial post-1994 phase, represented by the work and report of the National Commission on Higher Education (NCHE) during 1995-96, was marked by widespread consultation within a broadly supportive higher education community. It effectively operated at the level of symbolic policy with the prime intention of declaring a break with the past and signalling a new direction (Cloete & Maassen 2002: 449). The NCHE articulated three main “pillars” for the transformation of higher education: 1) increased participation and massification of higher education; 2) greater responsiveness; and 3) increased co-operation and partnerships, or ‘co-operative governance’ (CHE 2004: 25). The NCHE’s central proposal, that the massification of South African higher education should provide the vehicle for equitable transformation, amounted to an optimistic declaration of intent rather than a realistic policy objective:

“In 1996, the presumed expansion of enrolments – coupled with a policy focus on redress funding, targeted capacity building and infrastructure provision – permitted a view that all existing institutions could be made viable and equal partners in the national higher education system.” (Hall *et al.* 2004: 30)

The NCHE’s proposals were received with general acclaim but its central massification proposal was not accepted by the Minister (Cloete 2002a: 98). Instead, the 1997 *White Paper*, while accepting the three NCHE “pillars”, argued for “a planned expansion of higher education” (CHE 2004: 26). Still, this initial phase, marked as it was by the pre-eminent transformation objectives of equity and redress, was also a notably participatory and co-operative exercise:

“From the appointment of the NCHE up to the approval of the *White Paper*, South Africa exemplified one of the most participatory and transparent higher education policy processes anywhere in the world.” (Cloete 2002b: 424)

The 1997 *White Paper* and the consequent *Higher Education Act* signalled a distinct change of approach on the part of the Department of Education (DoE) as it prepared to move on to the implementation process. The *White Paper* envisaged a more prominent role for the Ministry and the Higher Education Branch of the DoE, which had been established in 1995. Indeed, the *White Paper* was silent on the role of institutions or other market factors as mechanisms for transformation of higher education but instead relied on the state as primary motor of change

(Cloete 2002b: 424). Accordingly, this second phase has been characterised in terms of a shift from a model of state ‘supervision’ or of state ‘steering’ of the higher education sector, premised on high levels of participation and consultation, to one of increasing state ‘interference’ and more direct forms of intervention. As such this shift in official policy objectives has occasioned considerable concern amongst analysts and commentators who viewed this as a potential serious threat to institutional autonomy (CHE 2006: 13; cf. CHE 2004: 36ff.; Hall *et al.* 2004: 16ff.; Cloete 2002b: 424ff.). Of equal significance, though, is that if the stated intention was to expedite the implementation of official policy objectives, then this is not quite what followed. Introduction of the new funding formula to replace the SAPSE formula inherited from the apartheid era was repeatedly postponed, the envisaged ‘redress’ measures aimed at the historically black universities did not materialise, while other policy instruments needed for effective implementation were also still lacking. Having arrogated to itself the role of primary change agent the DoE during the following years instead presided over what the 2001 *National Plan for Higher Education* (NPHE) retrospectively characterised as an “implementation vacuum” (CHE 2004: 26).

This does not mean that there were no significant developments in the higher education sector during these years. On the contrary, a number of notable changes in the fortunes of the different institutional sectors took place in short order, with especially the formerly white Afrikaans universities moving quickly to expand their enrolments and to consolidate their financial position while the historically black universities experienced serious crises of survival (Cloete & Maassen 2002: 467ff.; Cloete 2002b: 417-423). According to the CHE’s history of South African higher education during the first decade of democracy

“some higher education institutions (HEIs) seized market opportunities: historically advantaged institutions (HAIs) undertook a range of entrepreneurial initiatives to position themselves advantageously ... while enrolments at most historically black universities (HBUs) declined sharply ... several of these institutions faced serious threats to their sustainability, further aggravated by governance crises ... The net result of unplanned change was a set of HEIs whose differentiation, while overtly linked to developments in the market, was also linked to differences engendered by apartheid.” (CHE 2004: 27)

From the official policy perspective such developments were “unintended and unanticipated consequences, which, if left unchecked, threatened the development of a single, national, coordinated, but diverse higher education system” (NPHE 2001, cited in CHE 2004: 26). From an institutional perspective, though, this was arguably testimony to the continuing, or indeed growing, vitality of institutional autonomy, be it of one sector of higher education at the expense of others. Cloete and Maassen conclude that

“South African higher education did experience a number of major changes after 1994. However, our assessment is that most of these were bottom-up changes, initiated by institutions ‘reading off’ policy and global developments instead of being the direct result of deliberate, top-down government policies. ... In general the ability and willingness for self-regulation amongst South African higher education institutions was stronger than was initially expected. It was the institutions, more than the central government, that shaped the new institutional landscape that materialised in the post-1994 period.” (2002: 471, 478)

From this point of view, effective institutional autonomy, be it of some universities more than others, was a significant factor in the actual restructuring on the ground of higher education in the new democratic South Africa.

For its part the DoE, headed by a new and more energetic Minister, Prof. Kader Asmal, came to opposite conclusions. The “unintended and unanticipated consequences” occasioned by the institutional initiatives in some sectors of the higher education system were identified as the problem to which the state would have to provide the answer by more firmly taking charge of the restructuring process. To begin with this took the form of another round of consultations, though of a more directive and less inclusive nature than the NCHE had been (Cloete 2002b: 424-425). The newly established CHE appointed a Task Team which produced a report in 2000 commonly known as the ‘size and shape’ report. In general the Task Team assumed that “a far more interventionist attitude by the Ministry is needed because institutional voluntarism has failed to achieve transformation ... To the CHE task team, reconfiguration has become an exercise where system-level concerns must override certain institutional sensitivities” (Hall et al. 2004: 34, 36). The main recommendations of the report were for a differentiated higher education system based on different institutional mandates and types. More specifically the CHE report proposed a differentiation between different types of higher education institutions, i.e. “bedrock institutions” largely limited to undergraduate teaching and effectively amounting to community colleges, and two types of universities with respectively more selective and more comprehensive research focuses (CHE 2002: 43). Implicitly these proposals, more especially those for scaled-down “bedrock institutions”, addressed the crisis of survival in which the historically black universities had come to find themselves. Politically, though, such proposals were highly contentious, and were vigorously resisted, not just by the representatives of these institutions who insisted on full university status, but also by key ANC leaders and others who had been educated at Fort Hare and other historically black universities. The political nature of this response is well brought out in the following account:

“The [CHE] proposal to entrench diversity in institutional mandates and the implications of doing so – essentially distinguishing most of the historically white universities as some type of ivy league, while the historically disadvantaged and rural universities (the ‘face-bricks’) would be relegated to undergraduate teaching – caused havoc in the system. To some the CHE Report was tantamount to an assault on black higher education in South Africa.” (Hall et al 2004: 37)

Not surprisingly, these aspects of the CHE ‘size and shape’ report were rejected by the Ministry which instead seized on a different and less prominent recommendation of the report, that of engaging in restructuring through a process of institutional mergers. This official response was set out in the 2001 NPHE which was presented at a public meeting where “it was made clear that it was not a document open to negotiation” (Cloete 2002b: 416). The Ministry also rejected the CHE report’s advice for a consultative approach to the proposed mergers:

“Unlike the CHE who had advised on an elaborate process of consultation and iterative planning, the National Plan insisted on leadership from the centre ... in giving effect to the National Plan, the ministry emerged as the main driver of restructuring in both its definitions, as mergers and as rationalisation of academic programmes.” (Hall et al. 2004: 50)

The tenor of the CHE report itself had already indicated a general shift to a top-down interventionist approach of implementing official policy objectives: Cloete notes that in the CHE report “for the first time in a post-1994 South African national policy document effectiveness and efficiency were listed before equity” (2002a: 103). Amendments to the *Higher Education Act* in 1999 and 2000 gave additional powers to the Minister “to determine the scope and range of public and private institutions and to appoint an administrator to manage institutions with serious financial problems and ministerial approvals” (Cloete 2002b: 425). In various ways, thus, it became clear that with the announcement of the institutional merger process the period of unprecedented consultation and co-operative governance between the state and universities in the 1994-1999 period had come to an end and had given way to a much more directive and interventionist approach by the state (Cloete 2002b: 426).

It is less clear what this change in the nature and direction of official policy signified in relation to the general issue of institutional autonomy. Evidently, a process of mandated institutional mergers must involve both wholesale and more specific violations of the affected institutions’ institutional autonomy. The Ministry appointed a National Working Group (NWG) which engaged in a rather hurried process of consultation, widely regarded as too narrowly focused on the proposed mergers, and also otherwise inadequate (CHE 2004: 43). The NWG report, proposing an overall reduction through institutional mergers from 36 higher education institutions to 21, was taken to Cabinet in May 2002. In its own response, “the Ministry endorsed the NWG’s approach and method, rejecting those concerns and criticisms mentioned. It accepted all the NWG’s recommendations with four exceptions” (CHE 2004: 44). To begin with, the implementation of the institutional mergers was met by fierce resistance from some universities. Thus in one case “the exercise of restructuring was launched with a fiery exchange of directives and legal challenges between the Minister and UNISA” (Hall *et al.* 2004: 67) while other universities also threatened to take the Minister to court. However, these confrontations subsided and the process of institutional mergers proceeded with little further public contestation.

Did this mean that the universities had acquiesced in the state’s assault on their institutional autonomy through the process of mandated institutional mergers? At least on the surface this was indeed the case. But this begs the question that, on that level, *any* restructuring of the higher education system, except that which is undertaken by institutions themselves on a purely voluntary basis, must involve some violation of institutional autonomy. If it is accepted that some kind of restructuring of the South African higher education system was indeed needed, then the relevant question must be how the option of mandated institutional mergers compared to alternative proposals as far as respecting the principle of institutional autonomy was concerned. The main alternative under discussion at the time was the CHE Report’s ‘size and shape’ proposal for a differentiated three-tier system of higher education institutions. Much could be said about the academic merits and/or political difficulties of this proposal, but on reflection it must be clear that implementing it would also have involved substantial violations of institutional autonomy, be it through a different process from that of the mandated institutional mergers. The CHE itself describes the distinction between the two options involved as that of “*differentiation through distinct institutional types*” as opposed to “*differentiation through*

mission and programme mix” (CHE 2004: 27), but this obfuscates the implications for institutional autonomy by posing these policy alternatives as if it was possible to start with a clean slate. In the circumstances at the time the underlying question was how the state should, and could, respond to the historically black universities’ crises of survival. Accepting the CHE report’s proposal that these historically black institutions were not viable as fully fledged universities but should be scaled down to “bedrock institutions”, or community colleges largely limited to undergraduate teaching, would effectively have amounted to a judgement that they could not meet the conditions for proper institutional autonomy. It was this implication that was fiercely resisted by the representatives of the historically black institutions, their social constituencies and political allies, thus asserting their aspirations for these institutions to gain full institutional autonomy. As it happened, the option proposed by the CHE report was rejected by the state, though it is not clear whether that was due to a lack of the necessary political will or because the state shared the critics’ views. Either way, in a roundabout sense, this provided testimony to the strength of the aspiration for higher education institutions to have institutional autonomy as universities, rather than a dismissal of the very idea of institutional autonomy in favour of centralised system-wide restructuring.

Meanwhile, with regard to the route actually taken, that of mandated institutional mergers, the question remains just what this says about the effective institutional autonomy of universities in the new democratic South Africa. This may be considered in relation to the roles, respectively, of the state and of the universities concerned. As far as the state is concerned, it must be said that, contrary to the often-repeated warnings about the increasingly interventionist approach of the state to the restructuring of higher education, opting for the alternative of institutional mergers actually indicates a relatively self-limiting strategy. To the extent that the DoE had arrogated to itself the role of being the main driver of restructuring higher education, delegating responsibility for institutional mergers to the level of the universities themselves might even be considered as a form of buck-passing. Rather than having to confront particular institutions head-on, as would have been required had the alternative of *“differentiation through distinct institutional types”* been chosen, with the prospect of having to persuade or force some historically black universities to become “bedrock institutions”, the DoE could limit itself to overseeing the merger process while leaving the messy details to other agencies on the ground. Conversely, from the perspective of the institutions concerned, having been mandated to engage in institutional mergers, with all the burdens and constraints which this must in practice entail, the fact remains that responsibility for merging also brings with it a level of agency that could be consistent with effectively achieving institutional autonomy. This may account for the way in which the affected institutions, despite their initial protestations, have by and large in practice gone along with the process of institutional mergers despite the emergence of various unforeseen complexities and tensions between the DoE Merger Unit and individual institutions alongside accusations of ‘micro-management’ (CHE 2006: 17). On both counts the dynamics of the mandated institutional mergers do not so much reflect the demise of the universities’ institutional autonomy at the behest of an increasingly interventionist state, but a much more complicated interactive process in which institutional autonomy, as ideology but also in practice, remains a significant factor.

2.5.4.3. Co-operative governance and the (un)making of a compact for autonomy

From the above account, it should be clear that the different phases of the post-1994 restructuring of South African higher education institutions were marked by notable shifts both in the general levels of support from within the higher education community, on the one hand, as well as in the nature of the approach taken by the state, on the other hand. Thus the 1995/96 proposals of the NCHE were “received with general acclaim” (Cloete 2002a: 98) and the intentions outlined in the 1997 *White Paper* framework “had broad support within the higher education community” (Cloete 2002: 456). However, the 2000 CHE ‘size and shape’ proposals were opposed not only by university principals but also by the government (Cloete 2002a: 103) and while the 2001 *National Plan* was generally well-received, it also raised serious concerns amongst analysts and within the higher education sector, not least with regard to the proposed process of institutional mergers (Hall *et al.* 2004: 29). As already noted, the launching of the mandated institutional mergers was accompanied by “a fiery exchange of directives and legal challenges” between the Minister and some of the affected institutions (Hall *et al.* 2004: 67). In Cloete’s overall assessment it had become apparent by 2001 that “at the national level, serious strains were manifesting themselves in the open, co-operative relationships that had characterised the 1994-1999 period” (Cloete 2002b: 426).

For its part the approach taken by the state changed over time in directly opposite ways. To begin with, in the immediate post-1994 phase it had been characterised by a pronounced shift from a ‘state control’ model to a ‘state supervision’ model “because of a belief that higher education would perform better with the state in a supervisory rather than controlling role ... participation was to be driven by stakeholder participation under the auspices of a supervising state” (CHE 2004: 175; cf. Hall *et al.* 2004: 16). However, even by the time of the 1997 *White Paper* “the implementation process was increasingly perceived to be one that required more direct government steering with the corollary of less consultation” (Cloete 2002b: 424); by 2001 with the publication of the NPHE the trend was definitely in the opposite direction: “the National Plan appeared to some to be a sign of intensified state steering of the system” (CHE 2004: 29). And with the launching of the process of mandated institutional merging from 2002 the state explicitly took on the task of directing the restructuring of higher education institutions, given the failures of market forces and institutional voluntarism to break with the apartheid legacy:

“Mergers and incorporations have been prescribed by the state as part of an explicit agenda of transformation, equity and efficiency in the sector ... [T]he South African state has taken the route of mandatory restructuring in the face of failure by HEIs to explore such solutions voluntarily.” (CHE 2004: 54)

Cloete and Maassen likewise conclude that with the mandated institutional mergers the DoE had reverted from a ‘state steering’ model to a ‘state control’ approach: “In South Africa ... the institutional merger processes are prescribed and not voluntary, a change in approach to governance that can be described as a shift from co-operative governance to coerced co-operation” (2002: 484).

In some ways this is, of course, by no means an uncommon pattern. Many examples could be

given of innovatory policy frameworks launched by new administrations in a deliberately consultative mode, and with broad support from a range of stakeholders, but which then, before long, encountered various implementation problems as difficult trade-offs had to be made, leading to decreasing support and criticism from various quarters – with the administration itself in consequence opting for a more directive and even coercive approach. As far as this goes institutional restructuring simply amounted to “the well-known tendency of governments to resort to top-down intervention when frustrated with the slow pace of change” (Cloete 2002b: 429). However, for our purposes, it is of considerable relevance that the restructuring of higher education in the new democratic South Africa had not been conceived in this way as just another national policy initiative of the new government to be implemented by its administrative apparatus and with the support of stakeholders. Instead it had explicitly been launched within a constitutionally-based framework of ‘co-operative governance’ which was hailed as providing a participatory democratic alternative to more customary modes of national policy making and implementation. The 1996 Constitution declared that, “all organs of state (whether these be government departments, or any institution exercising a public power or performing a public function) must cooperate with each other in mutual trust and good faith” (CHE 2004: 176). Rather than state departments serving as sovereign powers to whose centralised policy and administration other institutions are to be subordinated, the 1997 *White Paper* accordingly proposed “a system of cooperative governance [which] would see the state playing a steering and coordinating role, while autonomous HEIs retained authority over their resources but acquired obligations to be accountable for their use” (CHE 2004: 26). The notion of co-operative governance thus allowed room for the institutional autonomy of universities as independent institutions within a higher education system overseen by the DoE. This assumed that where different interests and objectives existed between the state and independent higher education institutions these would be negotiated in a co-operative manner and not be unilaterally or coercively resolved by state intervention (Hall *et al.* 2004: 51; cf. Cloete 2002b: 428). In Cloete’s summary account, co-operative governance thus seeks “to mediate the apparent opposition between state intervention and institutional autonomy. The directive role of the state is reconceived as a steering and coordinating role. Institutional autonomy is to be exercised within the limits of accountability” (Cloete 2002a: 91).

If that is what the framework of “*co-operative governance*” promised, then evidently the shifts and changes in the process of restructuring higher education in the decade following 1994 represented a breakdown of co-operative governance. This much is acknowledged by official accounts and independent assessments alike. Thus, the CHE in its account of the first decade of democracy in South African higher education concludes that,

“as cooperative governance was implemented, it became evident that agreement in principle between actors did not always translate into unity in practice. At system level the state, through the National Plan in 2001, gave a strong signal that in its view voluntary initiative on the part of institutions to transform had been insufficient, had yielded little, and that the period of consultation with respect to institutional restructuring was over. This prompted it to adopt a stronger version of state steering than the cooperative governance model had premised.” (2004: 177)

With specific reference to the process of institutional mergers Hall and his fellow researchers provide a similar analysis and assessment:

“while co-operative governance is the explicit policy framework for higher education, and its underpinning values remain valid for the promotion of good governance, the implicit reality is that state steering of higher education has intensified to a significant degree. Accordingly the state is increasingly setting procedural conditions upon the substantive autonomy of institutions, rather than relying on their voluntary co-operation in pursuit of national policy goals ... The fact that restructuring is proceeding on the basis of mandatory mergers is key evidence of the actuality of a higher education system which is essentially not co-operative in its governance at present.” (Hall *et al.* 2004: 67)

This breakdown of the framework of co-operative governance in the restructuring of higher education institutions has commonly been interpreted as primarily a matter of *policy failure* on the part of the state. Accordingly analysts have pointed to a number of defects and inadequacies in the ways in which the official policy approach had been articulated and developed. Thus they have pointed out that, even as the principle of co-operative governance was being proposed as providing the general framework, the 1997 *White Paper* effectively assumed that the DoE would be the main implementation agency while remaining “silent on the role of institutions and the market as drivers of change” (Cloete 2002a: 105; Cloete 2002b: 424). Conversely, while it was a distinctive feature of the co-operative governance framework that it allowed higher education institutions to have some space for independent agency, state policy makers evidently wholly underestimated the impact which that could have: “in South Africa the roles of the higher education institutions were underestimated, if not ignored, in the policy formulation phase” (Cloete & Maassen 2002: 474). Some of the consequent problems with the “unplanned outcomes and unintended consequences” which supposedly came about in the context of the “implementation vacuum” can be attributed to this policy “oversight” (Cloete & Maassen 2002: 478). Pertinent as such criticisms are, there is a certain paradoxical quality in considering ‘co-operative governance’ in policy terms. As Cloete also observed, “the model of co-operative governance ... assumes a certain ‘dialogical’ notion of change, [while] the assumption in the policy documents [is] quite uni-directional: from centre to periphery, or from top to bottom” (Cloete 2002a: 92).

Indeed, if the notion of ‘co-operative governance’ were to be taken seriously it would point not so much to some sophisticated *policy* approach, for which the state should take primary responsibility, but rather to an *interactive* process involving a range of independent institutions, agencies and stakeholders, of which the state would be only a first among equals, in a ‘dialogical’ approach to concerted change. *On this view, ‘co-operative governance’ may best be interpreted in terms of a possible social compact for autonomous involvement in transformation. The introduction and breakdown of the framework of ‘co-operative governance’ during the first decade of democratic restructuring of higher education in South Africa after 1994 may then be considered in terms of the making – and unmaking – of a compact for accountable institutional autonomy.* We will briefly consider some relevant aspects which made that compact possible as well as some factors which contributed to its demise.

The unprecedented participatory and transparent character of the initial post-1994 phase of higher education restructuring, the broad support for a break with the apartheid legacy and the general acclaim with which these largely symbolic aims and objectives were welcomed at that stage, did not yet represent any definite social compact within the higher education sector. What it did indicate was quite positive and conducive conditions in which such a new compact might come about. In this regard the open and broadly consultative approach taken by the new democratic government certainly made a seminal contribution. Had the new government and its administrative apparatus for higher education come with a well-defined policy for the restructuring of higher education institutions which it then proceeded to implement in a unilateral and top-down fashion then the eventual outcomes might have been a radical new institutional order breaking decisively with the legacy of the apartheid past, or it might have led to an ongoing confrontation with, and/or stand-off between the state and the historically privileged higher education institutions – but it could hardly have resulted in anything like a new *compact*. Why did the state opt for the framework of ‘co-operative governance’ instead? In the general political context of the time, this was no doubt part and parcel of South Africa’s negotiated democratic transition and of the ANC-led Government of National Unity’s overall policy of reconciliation in line with the values and principles of the new rights-based democratic Constitution. But the shift from an approach seeking ‘state control’ to one limited to ‘state supervision’ or ‘steering’ was also in line with international trends to the restructuring of higher education in a globalising and increasingly market-driven environment. As Hall and his fellow researchers explain:

“A fundamental shift has occurred from a ‘state control’ model, to a ‘state supervision’ model, strongly influenced by notions of the marketisation and commodification of higher education. Concerns over funding constraints, widened access, accountability, quality and management efficiency, have led governments to adopt quasi-market approaches in higher education resource allocation. They have sought to align accountability and control by delegating to the institutional level increased authority over inputs and resource use, while increasing institutional accountability for outputs and performance (thus creating what is in effect an artificial higher education market).” (2004: 16)

While the two different rationales – that for national reconciliation in the aftermath of apartheid, and that for political liberalisation allowing more scope for market forces and institutional or stakeholder initiatives – broadly coincided in the notion of ‘co-operative governance’ this did not mean that all parties also shared the new democratic government’s understanding of the process and its objectives. Indeed, it soon enough transpired that the institutional initiatives and market forces allowed by the general framework of ‘co-operative governance’ in practice resulted in unforeseen developments out of kilter with declared national goals:

“The pattern of development after 1994 makes it clear that change is not exclusively driven by the state and national policy. It has in the recent past also been propelled from within the higher education sector (as HEIs and stakeholders acted in line with sectional interests and varying interpretations of policy) and by economy and society (as market forces and shifting social demand for higher education came to bear) ... Accordingly, the course of policy implementation may quite easily – and to a greater or lesser extent, run

counter to planned intentions.” (CHE 2004: 36)

Confronted with these ‘unanticipated outcomes’ and ‘unintended consequences’ the state effectively lost faith in the approach of ‘co-operative governance’ and reverted to more directive interventions and controls, especially in terms of the process of mandated institutional mergers from 2002. This *dirigiste* turn is well captured by Hall and his team:

“ ... the South African restructuring of higher education is unique to the extent that it is driven by a political agenda of transformation, redress and equity which explicitly seeks to break the apartheid mould of higher education. In effect, restructuring is occurring through an exertion of political will that the state has seen to be lacking in the institutions themselves. Thus restructuring decisions have emerged during a period of demonstrable intensification of state steering in higher education and mark a specific moment in the evolution of state-sector relationships in higher education in South Africa.” (2004: 28)

What this exertion of political will did, however, was to undercut the earlier framework of ‘co-operative governance’ and, with that, the prospects for a bi- or multi-lateral compact for accountable autonomy.

For their part the various higher education institutions were affected by, and responded to, the ‘co-operative governance’ framework for institutional restructuring in very different ways with little or no indication of the making of a new compact. In so far as ‘co-operative governance’, while it lasted, allowed space for the assertion of institutional autonomy, both in relation to the national agenda of political transformation as well as in relation to market forces, institutions in different sectors of the higher education community responded with notably different strategies. We now briefly consider the main forms which these took, and their implications for a possible new compact.

Firstly, the historically white Afrikaans-medium universities tended to perceive the national agenda of transformation and redress as a potential threat to their institutional survival, but one which energised them to embrace entrepreneurial strategies for exploiting available market opportunities to expand their product range:

“They set about enhancing their resource base through a variety of enterprising strategies which were remarkably successful in increasing their student numbers, enlarging their product range, securing research and consultancy money, and introducing strict cost-cutting measures.” (Cloete & Maassen 2002: 467)

Significantly, this involved the adoption of explicitly ‘managerialist’ approaches bent on reconfiguring the university “to become more competitive and market oriented through the vigorous adaptation of corporate management principles and techniques to the higher education setting” (Kulati & Moja 2002: 245). In this regard Kulati and Moja distinguish between “strategic or soft managerialism” and “unwavering entrepreneurialism or hard managerialism”. The former applies “management techniques in order to run their institutions more efficiently and effectively, [but] still sees higher education institutions as distinct from businesses, governed by their own norms and traditions”, while in terms of the latter “the higher education institution is seen as being a business, as opposed to being run like a business” (Kulati & Moja 2002: 247-248). Bunting characterised this strategy as opportunistic and enterprising, a combination of

“window-of-opportunity” and “increase-the-product-range” strategies (Bunting 2002b: 175). In relation to a possible new compact these strategies amounted to an implicit and/or indirect resistance to the national agenda of political transformation through a commitment to a more managerial market-oriented approach in positioning the university within the wider economy and society.

Secondly, the historically black universities did not only respond positively to the national agenda of political transformation, but effectively relied on its promise of institutional redress to resolve the legacies of discrimination and exclusion. Unlike the Afrikaans-medium universities these institutions were thus not as energised to engage in new entrepreneurial strategies; conversely they tended to rely on the state in anticipation of redress in support of their weak institutional bases. “Symbolic government policy generated unrealistic expectations about redress and at the same time, unexpectedly, these institutions faced intensified market competition for students” (Cloete & Maasen 2002: 469). When the expected redress funding was not forthcoming, and these universities with their weak institutional bases were instead exposed to the pressures of a more competitive academic market place, the effect proved a further spiral of institutional decline, if not literal crises of survival:

“In three HEIs (the universities of Fort Hare, the North and Transkei) governance had collapsed altogether, prompting the Minister to request a report in each case by an independent assessor, and followed by the appointment of an administrator to fulfil the governance functions of disbanded councils.” (CHE 2004: 178)

Bunting characterised this as a (disastrous) “wait-for-redress” strategy (Bunting 2002b: 175). Kulati and Moja describe it as an ineffective version of crisis leadership:

“The leadership approach at these institutions was characterised by crisis management and decision-avoidance; the lack of institutional cohesion made it difficult for leaders to steer, let alone drive, change ... The institutions in crisis were characterised by a very weak ineffective, second-tier management layer, and there was also a lack of trust between the key stakeholder groups and institutional management ... [as well as] confusion on the responsibility and scope of governance structures.” (2002: 251)

In relation to a possible new compact this strategy proved very much ambivalent: on the one hand it basically relied on the national agenda of political transformation, but on the other hand this served to expose the actual lack of effective institutional autonomy on the part of the historically black universities especially in the new quasi-market conditions of higher education.

Thirdly, the historically white English-medium universities adopted what Bunting characterised as an “internal-consolidation-first” strategy (Bunting 2002b: 175). These universities, according to Cloete and Maassen,

“consolidated rather than expanded their traditional domain ... while making some compromises with regard to new government policy, such as deracialising the student body and the management profile, these institutions to a large extent continued doing what they had done previously.” (2002: 468)

However, this did not so much amount to a conservative strategy as to what Kulati and Moja term “reformed collegialism”, a version of their category of “transformative leadership”.

According to them the approach of “reformed collegialism”

“starts from the premise that at the centre of the transformation project of the institution lies the intellectual agenda of higher education, which is non-negotiable. Thus part of the transformation agenda is to reclaim and reassert the centrality of the intellectual traditions of higher education institutions.” (2002: 243)

We can readily recognise this approach as consistent with the defence of academic rule in the internal governance structures of the university. That is not the case with the approach which Kulati and Moja distinguish as that of “transformative managerialism” concerned to strengthen the university executive by expanding the top leadership group including executive deans in order to drive transformation more effectively from the centre. Such “transformative managerialism” can be harnessed both to democratising and to market-oriented objectives:

“In some cases the challenge for the transformative ‘managerialists’ is to transform the culture of the institution from an authoritarian to a more democratic one. In others it is to manage academics more efficiently, in line with policy principles or market pressures.” (2002: 244)

In relation to a possible compact this strategy is also very much ambivalent depending on which version of it predominates. The ‘collegialist’ defence of academic rule and concern with consolidating the traditionally core academic business of the university may well come into conflict with a national agenda of political transformation. The approach of ‘transformative managerialism’, though, can effectively lend itself either to a national agenda of transformation or to an entrepreneurial response to market opportunities. Taken together this varied range of institutional responses and approaches reveals significant fault lines bearing on the framework of ‘co-operative governance’ which may help to explain both why a new compact for accountable autonomy did not come about and what new alliances may be possible. We will briefly consider the main fault lines at stake.

The first fault line concerns the exercise of institutional autonomy itself, and in two opposite ways. On the one hand, some of the historically advantaged institutions utilised the opportunity not only to further consolidate and strengthen their institutional bases but also to do so in ways that were ‘out of kilter’ with the national agenda of political transformation. On the other hand some of the historically disadvantaged institutions were disastrously affected by their exposure to the new academic market place without the state stepping in to help them out under the rubric of ‘redress’, thus effectively demonstrating their institutional incapacity. This fault line thus runs between different sectors of the higher education community in their respective relations to the state. For its part the state, in defining its approach to the general issue of institutional autonomy, finds itself confronted with the contradictory problem of some strong institutions exercising their capacities for autonomous action only too well but for officially unintended purposes, while other weak institutions have to be salvaged from the consequences of their own incapacity and lack of effective autonomy. (It remains to be seen to what extent the process of mandated institutional mergers will, or will not, be able to resolve this dilemma).

The second fault line concerns the restructuring of higher education institutions through liberalising reforms and the creation of academic quasi-market conditions perceived by some as

a threat to the traditional core business of the university and to academic rule, but enthusiastically seized on by others in developing a more market-oriented and entrepreneurial approach. This fault line does not so much run between the higher education institutions and the state but rather between the 'collegialists' and the '(soft or hard) managerialists' within the higher education community itself, and even within the internal governance structures of particular universities with executive management pitted against academic faculty. In principle it is possible to see the outlines of possible new alliances on this front. Thus, it is not inconceivable that 'transformative managerialists', especially those of the 'hard and unwavering entrepreneurial' variety, may come to an accommodation with key aspects of the state's national agenda of transformation, while 'soft' and 'strategic managerialists' may find common cause with the 'collegialists' concerned to defend academic rule or teaching and research as the core business of the university. The former alliance would amount to an 'external compact' between executive management and the state while the latter alliance would require an 'internal compact' between management and academic faculty within particular universities.

The third fault line concerns the state's national agenda of political transformation, redress and equity aimed at overcoming the legacies of apartheid. This has proved a not altogether clear and sometimes shifting fault line, especially with regard to what the objectives of redress and equity might entail in practice. Those historically disadvantaged higher education institutions which banked their future prospects on high expectations in this regard were sadly disappointed and had to pay a high price for that, while some historically advantaged institutions who perceived this as a threat and who opportunistically developed evasive and pre-emptive strategies came out of that institutionally strengthened, at least in the short term. It is at this point that the state's change of approach from 'co-operative governance' to the more directive process of mandated institutional mergers changed the rules of the game, with what longer-term consequences it remains to be seen. In official discourse this shift is described in terms of the distinction between nationally defined 'fitness *of* purpose' and institutionally conceived 'fitness *for* purpose':

"Through mandatory restructuring, the state is recasting institutions in terms of a transformed 'fitness *of* purpose' – institutional fitness in terms of national policy goals, priorities and targets. Once institutions have grasped this challenge by formulating visions and missions for merged entities that align them with transformation goals, it is then their task to achieve 'fitness *for* purpose' – i.e. conditions that will allow them to implement these visions and missions." (CHE 2004: 54)

If taken seriously this cryptic, not to say obscure, formulation could spell the end of substantive institutional autonomy. It implies that there is no room for independent formulation of their institutional missions by universities themselves – it is for the state to formulate the role of universities in relation to national policy goals, priorities and targets ('fitness *of* purpose') while universities can only articulate their strategies for effectively implementing their pre-determined national goals and priorities ('fitness *for* purpose'). Of course, if the nationally determined policy goals and priorities of universities would include the core academic objectives of research and teaching, in the sense of scholarly freedom and academic rule, then there would be no need for conflict or confrontation with the state. But to the extent that this is not the case, the fault lines would once again run between the 'collegialists' and 'strategic managerialists' within the

university community, on the one hand, and the 'transformative' and 'hard managerialists', on the other. The potential alliances on this count could be broadly similar to the possible 'external compact' between executive management and the state, as distinct from a possible 'internal compact' between management and academic faculty, which we anticipated with regard to the previous fault line of approaches to the new quasi-market conditions of higher education, though in this case for different sets of reasons. In this regard it is of considerable importance to note the implications of a possible 'external compact' of this kind *without* an associated 'internal compact' in that it would amount to the conditions for *functional* institutional autonomy in terms of the distinction discussed in subsection 2.5.3. Only if such an 'external compact' be conjoined with an 'internal compact' ensuring protection of scholarly freedom and academic rule could this amount to the conditions for *substantive* institutional autonomy.

It is sometimes suggested that the more directive and interventionist role of the state, as exemplified above all by the process of mandated institutional mergers, should be conceived as a transitional phase and that, once the merged institutions are in place, it may be possible to return to the framework of 'co-operative governance' and the model of 'state steering' as opposed to 'state control' (CHE 2004: 180; Hall *et al.* 2004: 28). The preceding analysis suggests otherwise: it should be noted that the main fault lines which derailed the original putative consensus around the framework of 'co-operative governance' will by and large still be in place (with the possible exception of the problem of 'failed' universities lacking the capacity for effective institutional autonomy) once the merging process will have run its course. Similarly the potential new alliances which might result in possible 'external' and 'internal compacts' of the kind just suggested cut across the landscape of merged and unmerged institutions alike. So it is not to be expected that the merging process will of itself make the prospects for a new compact for accountable autonomy any more feasible (except in so far as it might have helped to resolve the problem of 'failed' universities, thereby removing that particular rationale for directive state intervention). What might be more to the point would be to consider some of the more systemic structural aspects of the process through which the original consensus around 'co-operative governance' within the higher education community unravelled when this came under pressure. It is at this level that a vital 'missing link' in the making and unmaking of a new compact for accountable autonomy may be identified.

One of the most striking features of this particular history is not only the divergent approaches developed by different sets of higher education institutions, but the absence of any effective intermediary forum or structure where more concerted strategies could be developed or even debated. Prior to 1994, under the apartheid dispensation, the CUP and the Advisory Council for Universities and Technikons (AUT) had a significant function in providing intermediary fora where key issues could be debated on a sector-wide basis, even if neither had anything like the powers of the British UGC. After 1994 the CUP, and its successor SAUVCA, do not appear to have played any particular role in articulating a clear and coherent position on behalf of the university community in relation to the state, or even to provide an effective internal forum to debate the tensions between the historically advantaged and disadvantaged universities. In 1997 the AUT was abolished and "until the formation of HESA in 2004, the sector was effectively

without an organisation representative of all institutions” (CHE 2006: 10-11). The NCHE report in 1996 proposed two intermediary bodies, a higher education council with allocatory as well as policy and advisory functions, and a higher education forum for sector-wide debate, consensus-building and lobbying (Cloete, 2002b: 424). The Minister instead opted for the CHE (established in 1998), but without any policy-making functions or funding role. The proposal for a sector-wide higher education forum fell away. The effect was to leave the DoE as “virtually the sole implementation agency” (Cloete 2002b: 424), with no formal forum in the space between the state and individual institutions. In the retrospective assessment of the CHE itself this may have had quite a lot to do with the unravelling of the ‘co-operative governance’ consensus:

“To this day there is no body that would unite the various institutional perspectives and those of specific stakeholders ... In short, the new governance arrangement for the sector enacted in the Higher Education Act failed to provide an outline of the role of individual institutions in the flow of co-operative decision-making for the sector as a whole. The absence of a strong statutory body representing the institutional interests in the governance of higher education at the system level may be responsible for some of the shortcomings of self-regulation.” (CHE 2006: 11)

In short, the ‘missing link’ in the holistic interactive process of ‘co-operative governance’ may be just that sector-wide higher education forum proposed by the NCHE report in 1996 but then rejected by the Ministry in its *dirigisme* to ensure more efficient policy implementation.

It should be clear that the creation of such an intermediary body as a sector-wide forum cannot by itself ensure the revival of ‘co-operative governance’ or function as a substitute of a possible compact for accountable autonomy. But it may serve to facilitate the making of such a compact by providing a forum for interaction between representatives of individual institutions on common concerns as well as the development of coherent sector-wide strategies in relation to the DoE. The absence of such an intermediary forum has been identified as a major weakness of the original framework of ‘co-operative governance’:

“Cooperative governance assumed that change would be the result of a participatory, negotiated process amongst all constituencies, and that ultimately complementary interests would overcome competing interests. However, the policy remained conspicuously silent about who would initiate, direct and manage change.” (Cloete 2002b: 428)

In the event the DoE stepped in to fill this vacuum, thereby scuppering not only the official framework of ‘co-operative governance’ but also undermining the prospects of a new compact for substantive institutional autonomy. One step towards creating the conditions in which a new compact for accountable autonomy may become feasible would be to set up appropriate sector-wide intermediary fora along the lines originally proposed in the NCHE report.

2.6. Autonomy, academic freedom and accountability

This report has consistently been concerned with the tensions and conflicts between accountability, on the one hand, and autonomy and academic freedom, on the other. In current debates, the growing demands for greater ‘accountability’ by universities are often seen as constituting a threat to academic freedom in terms of traditional notions of their autonomy.

However, these discussions tend to assume over-simplified and unanalysed notions of academic freedom while taking inadequate account of relevant developments affecting the nature and functions of contemporary universities. Accordingly, we have attempted a closer analysis of the complex concept of academic freedom in different relevant contexts as well as a selective survey of comparative academic cultures in relation to developments in South African higher education. In concluding Part 2 of the report, we will briefly consider to what extent our analysis of the different senses and contexts of academic freedom, as well as possible conclusions from our comparative and contextual understanding of contemporary academic culture, might assist in clarifying and/or resolving the perceived conflicts between accountability and autonomy or academic freedom. More specifically, we will consider the relevance of the notion of a new 'social compact', in particular the notion of a compact for accountable autonomy, for our understanding of academic freedom in the context of higher education in a post-apartheid democratic South Africa as much as a globalising higher education market place.

To begin with we need to consider the relevant senses of the notion of accountability and their relation to autonomy. We will then relate these to the different senses and contexts of academic freedom, i.e. that of scholarly freedom in the context of the scholarly disciplines, that of academic rule in the internal context of university governance, and that of institutional autonomy in the external context of the university's relation to state and society. Next we will consider what the implications of a possible social compact for autonomy might be for each of these. And finally we will bring this to bear on the current state of 'co-operative governance' in the transformation of higher education institutions in the new democratic South Africa.

2.6.1. Different senses of accountability in relation to autonomy

The distinctive and relevant senses of accountability need to be carefully distinguished from related concepts like 'responsibility', 'answerability', 'liability', etc. Significantly, accountability is a relational concept: one is accountable to someone or something and for something or other subject to possible sanctions. Thus a private tutor is accountable to her employer for the education of the children entrusted to her care subject to possible dismissal. In this relational quality 'accountability' differs from 'responsibility' which is not necessarily relational or subject to possible sanctions. Thus an individual is (causally and morally) responsible for his or her own actions but not necessarily in relation to anyone else. (Robinson Crusoe alone on his island would still be a responsible agent, but it is not clear to whom or what he could be 'accountable') (Mulgan 1993, 2003; Oshana 2001). There is a sense in which someone can be '*held* responsible' for something or for some action – this implies more than simply *being* responsible for his or her own actions in also being answerable for them to some source of authority subject to possible sanctions. In this usage 'responsibility' comes closest to 'accountability'.

The various different senses of 'accountability' may be distinguished in terms of the different bodies or institutions to which you are accountable, the different things or actions for which you

may be accountable, and the different kinds of sanctions to which you may be subject. In the Judaic/Christian tradition from which modern notions of accountability were derived, personal and religious accountability for one's life and conduct was ultimately to God, whether in terms of the covenant binding the Chosen People or of the universal Last Judgement. This notion of some basic eschatological accountability to God prevailed for many centuries and profoundly informed subsequent secular conceptions of individual and criminal accountability under the rule of law (Ratner & Abrams 2001). In modern contexts, more specialised notions of accountability were developed in at least three different kinds of contexts, i.e. those of bureaucracy and management, those of democratic politics, and those of capitalist enterprise and the market. First, in the context of public bureaucracies as much as that of corporate administrations the logic of functional and hierarchical accountability was established. This is the classic domain of Weberian administrative rationality in which competencies and duties with respect to particular domains are structured in a vertical chain and whereby each official is answerable to the next level of superior rational-legal authority. As a system of administrative rule this functions as a means for rulers to assert authority by delegating tasks with defined mandates and policy objectives, verifying the performance of those tasks, maintaining the responsiveness of administrative agents, assessing blame and sorting out responsibility among many agents and functionaries (Romzek and Dubnick 1998: 6). As a practice of management this has been developed and operationalised as a functional sequence of 'line-management' in which agents with delegated authority and explicit job descriptions are accountable upwards for their performance ultimately to executive management.

Secondly, in the context of democratic politics distinctive notions of political and public accountability have been established. This relates to the principle of democratic representation in terms of which governments and political representatives are accountable to their constituencies for carrying out the mandates and policies on which they had been elected. The classic dilemma of democratic accountability, as Burke already noted in the 18th century, relates to the dual meanings of 'representation' as either binding an agent to determinate mandates or empowering that agent with discretionary powers to act on behalf of his principals. According to Hanna Pitkin's seminal analysis of this dual meaning of 'representation', public representatives may thus be held accountable both with regard to the sense in which they act "instead of" as well as "to the benefit of" the people (1967: 155-156). In the former sense the specific terms of particular electoral mandates are crucial in determining the accountability of political representatives; in the latter sense it is the nature and scope of the public good which requires appropriate forms of public accountability. Thus the politician elected to serve as parliamentary representative for a particular constituency on a certain policy platform is accountable to that electorate on an ongoing basis and ultimately in the next election, but if this does not apply to the directors of public institutions in the same way then that does not mean that they are not accountable for their stewardship in terms of the public good.

Thirdly, in the context of capitalist enterprise and the market, well-defined procedures for financial accounting, as well as more general notions of fiduciary accountability, have become

common practice. This relates to the sound management of financial expenditures in terms of the budgetary appropriations of both private and public funds subject to possible criminal sanctions. In the case of private enterprise, employees and managers are financially accountable to their directors or principals who may have fiduciary accountability to shareholders or investors. In the public sector, principles of financial accountability apply in the same way but, as with fiduciary accountability, this is due to relevant stakeholders and ultimately to the public at large.

These different notions of accountability – functional and hierarchical, political and public, and financial and fiduciary – are not exhaustive. They may be supplemented by further distinct notions of accountability developed in other areas and contexts. Of particular significance for our purposes is the notion of collegial accountability characterising the practice of research and science. It would be a category mistake to apply the logic of bureaucratic organisation or managerial practice in terms of functional and hierarchical accountability to the ‘republic of science’. Similarly, scholarly research does not have a representative function and so cannot be made subject to notions of political or democratic accountability. And likewise financial accounting is extrinsic to, and inadequate for, assessing the core activities of research and scholarship. This does not mean that the ‘republic of science’ has not developed its own strict and distinctive forms of accountability in terms of the scholarly disciplines, peer review, etc. Indeed the professional legitimacy of scholarly research and science depends on the rigorous observance of the principles of collegial accountability. It also does not mean that in practice the worlds of scholarship and research do not intersect and overlap with those of institutional bureaucracy, democratic politics or private enterprise and public funding. To the extent that this happens, these other notions of accountability will also become relevant to aspects of research and science. Thus we have seen that it is a prominent feature of 20th century developments that scientific research and scholarship became largely university-based and so embedded in particular institutional structures. In so far as scholars and scientists are not just independent professionals but employees of the university, they are no longer accountable only to their collegial peers and issues of administrative hierarchy and managerial accountability must arise. Similarly the rise of ‘big science’ requiring substantial funding from public and/or private sources must mean that sound procedures for financial accounting must apply. The different notions of accountability can and should be complementary where scholarship and research overlap or interact with administrative management, democratic politics and financial practice. What is problematic is when the notion of accountability appropriate to one sphere or sector subsumes that of another as with the increasing hegemony of financial accounting in contemporary ‘audit cultures’ associated with the managerial revolution in the academic world as well (Shore & Wright 1999).

Conversely, we need to clarify the basis on which ‘autonomy’ may be compatible with any or all of the different senses of accountability just outlined. It is a mistake to assume that demands for administrative, public or financial accountability must, in principle, be inconsistent with the recognition of individual or institutional autonomy. Apart from the fact that in social, economic and political practice ‘autonomy’ can never be absolute but will always be limited and conditional in various ways (except for the solitary Crusoe on his desert island), there are also

familiar and legitimate ways in which ‘autonomy’ may be squared with different kinds of ‘accountability’. One of these is the principle of consent: autonomous individuals can voluntarily enter into contractual agreements or employment conditions involving specified forms of accountability, and autonomous institutions can choose to form partnerships or to accept funding subject to specified conditions of accountability. In neither case would such accountability be in conflict with autonomy; on the contrary, in these cases accountability presupposes autonomy. (If the contractual arrangement had been forced, or if the funding could not be refused, then this would reflect on the grounds for accountability.) Another relevant principle is that of the distinction between private and public goods where the latter implies particular forms of accountability from autonomous individuals and institutions as well. Thus while the traditional gentleman scholar who has the resources to pursue his idiosyncratic interests may not be accountable for this to others, it would be a different matter should he make some major scientific discovery capable of saving large numbers of lives or substantially improving their lives. Even apart from questions of intellectual property rights, access to and disposal of public goods must require some form of accountability from autonomous individuals and institutions as well.

It remains to be seen how these different senses of accountability can be related to the specific concerns of autonomy involved in the different contexts of academic freedom. We also need to consider what difference a (new) social compact for autonomy might make in this regard. These are the topics of the following two sections.

2.6.2. Accountability and the different senses and contexts of academic freedom

Our analysis of the complex concept of academic freedom has developed Moodie’s analytical framework in distinguishing between scholarly freedom (in the context of the scholarly disciplines), academic rule (in the internal context of governance within the university) and institutional autonomy (in the wider context of state and society). We argued that though these different senses of academic freedom are mutually supportive and ideally go together they are also distinct and may under certain circumstances come into conflict with each other (subsections 1.2; 1.3). In the present context, that of the relation of accountability to academic freedom, the question is what kinds of accountability would be appropriate, and to whom, with regard to scholarly freedom, academic rule and institutional autonomy respectively? More specifically we need to consider the implications of the relevant sense of accountability:

- i) with reference to scholarly freedom in the general context of scholarly disciplines;
- ii) with reference to academic rule in the internal context of university governance;
and
- iii) with reference to institutional autonomy in the external context of the university’s relations to the state, economy and society.

i) Scholarly freedom and collegial accountability: Collegial accountability is at the heart of the notion of scholarly freedom. As we saw in subsection 1.3.2, scholarly freedom, as distinct from general freedom of speech, involves the practice of a particular form of intellectual discipline in which the views, arguments and findings of individual scholars need to be subjected to the

judgement of an in-group of qualified scholarly peers: scholars are and must be accountable to their colleagues in terms of the consensually agreed criteria of scholarship and science. The collectively autonomous nature of scholarly freedom in which only the in-group of scholarly peers can take responsibility for the quality of its exercise is thus the counterpart of individual scholarly accountability to the scholarly community. In subsection 1.3.1, scholarly disciplines were characterised, following Haskell, as self-defining “communities of the competent” ruling out all extraneous sources of epistemic authority. This means that other senses of accountability – whether that of bureaucratic and hierarchical accountability, or that of political and public accountability, or that of financial and fiduciary accountability – are incompatible with the constitutive practice of scholarly freedom. Making scholars and scientific researchers accountable to the judgement of administrative superiors, public representatives or funders on the scholarly qualities of their work would amount to basic violations of scholarly freedom. (This does not mean that in other contexts scholars and scientific researchers may not be administratively accountable as employees of an institution like the university, politically accountable as citizens of a democratic society, or financially accountable as recipients of research funding.)

The internal practices of collegial accountability within the scholarly community need to be located in a wider social and political context. Within that wider social and political context the restrictive claims and exclusionary function of scholarly freedom in the context of the scholarly disciplines are not self-justifying. In that broader social perspective we argued (subsection 1.3.1; subsection 2.1) that the question must arise:

Why should the lay public agree to their exclusion from and by the “communities of the competent”?

Likewise, in a broader political perspective the question must be:

Why should or could a democratic society and state agree to such autonomous in-group empowerment of the scholarly community?

Whether or not these questions can be answered in principle and in general, they may be the subject of an implicit or explicit social compact for autonomy in which the broader society and state do in fact recognise the legitimacy of the autonomous realm of scholarly freedom. In subsections 2.2. and 2.3, we saw that just such an implicit social compact for autonomy did in fact prevail during much of the 20th century during the period of the rise and hegemony of the academic profession, but that this implicit social pact for autonomy began to come apart in more recent decades. The growing demands for greater ‘accountability’ are symptomatic of this breakdown of the implicit social pact in so far as these indicate that the internal forms and procedures of collegial accountability within the scholarly community are no longer accepted as sufficient evidence of ‘quality assurance’ from an external perspective. Absent a new social compact for autonomy such demands must constitute a direct threat to scholarly freedom itself. To the extent that these external demands for more ‘accountability’ amount to the imposition of other kinds of accountability – whether those of administrative/hierarchical accountability, or those of political/democratic accountability, or those of financial/fiduciary accountability – to replace that of collegial accountability within the practice of research and scholarship this would amount to so many basic threats to scholarly freedom.

ii) *Academic rule and accountability*: While collegial traditions have long been central to university life, collegialism is no longer feasible as an independently viable form of academic governance in the modern university. Likewise, while professionalisation has been a major force in academic culture from the end of the 19th century, academics are typically not independent professionals but appointed as employees of the university. In subsection 1.3.3, we considered academic rule as referring to the range of internal governance structures designed to ensure that scholarly freedom in teaching and research will effectively prevail within the university and be recognised as its core business. As a structure of governance academic rule involves the dual dimensions of hierarchical authority as well as that of egalitarian co-ordination, and accordingly it requires both administrative/hierarchical accountability as well as collegial accountability. These combine in different ways in the key structures of academic rule such as the professorial chair, the academic department and Senate, elected deans, etc. Thus the professorial chair is characterised by an inherently authoritarian structure with little or no collegial accountability except to academic peers at the professorial level, while requiring strict hierarchical accountability from academic subordinates. In comparison the academic department may not only provide an effective forum for the exercise of collegialism, but as such it depends on the effective practice of collegial accountability. (If the two structures are combined in an academic department with a permanent professorial head this also requires a combination of collegial and hierarchical accountability.) Within the university at large academic rule has typically been ensured by the key governance roles of the academic Senate and elected deans. To the extent that these are seen as representative functions, they imply notions of internal democratic accountability: elected deans represent their faculties in relation to the university administration and the executive, and they are accountable to these faculties, while the academic Senate represents and is accountable to the academic sector of the university community. (The academic Senate may also view itself not so much as representative but as constituting the professorial core of the university in which case the issue of democratic accountability does not arise.) Traditionally, academic rule has also been consolidated by the practice of recruiting university leadership and executive management from the ranks of (former) academics. We have considered the implications of this “collegial thrust toward amateurism” in university management in subsections 1.3.4 and 2.4.2. Here we should note that implicitly it also assumes some measure of democratic accountability of the university leadership and executive management to their core internal academic constituency.

From the perspective of the wider university community, of which the academic faculty constitutes only one sector, and from the perspective of the university leadership and executive management, academic rule is not necessarily obvious or self-justifying. Historically the university leadership has often conceived itself as accountable to Council or to a Board of Trustees, as representatives of the wider society and state, rather than to the academic faculty. Similarly the executive management of the university may give primacy to the requirements of financial accounting in running an efficient organisation and may consider its fiduciary accountability in broader economic and social terms which do not primarily involve the academic faculty. From this perspective the internal governance structures of academic rule, and academic freedom itself, may appear as obstructions in the way of more efficient management

of the institution. Recognition of teaching and research as the core business of the institution, and even more recognition that these involve not only the principle of scholarly freedom but also the internal governance structures of academic rule, requires something like an internal pact for autonomy within the broad university community. The classical example of such an internal pact is that between the AAUP and the AAC which resulted in the 1940 Statement establishing the foundations for the system of academic tenure and the practice of academic freedom in American universities. The current threat to academic rule by the 'managerial revolution' in South African universities as well raises the question for the prospects of a new internal pact for autonomy between academic faculty and university management.

iii) *Institutional autonomy and accountability*: Especially within the Anglo-Saxon tradition the institutional autonomy of the university within the external contexts of state and society has often been conflated with academic freedom itself. Indeed, in conditions where academic rule is well established in the internal governance structures of universities and where there is an underlying social compact for autonomy in the broader society, the institutional autonomy of universities can function as an effective capstone guaranteeing academic freedom. But, as we have seen in subsections 1.3.4 and 2.5, the institutional autonomy of universities is not necessarily a feature of academic culture, such as that of continental Europe, while the underlying social compact for autonomy, so long a central feature of British academic culture as one example, may actually break down. In circumstances where the university leadership and executive management are not centrally committed to the protection of academic rule and scholarly freedom within the university, the significance of institutional autonomy for academic freedom appears quite differently. In this regard we distinguished in subsection 1.3.4 between merely functional and more substantive conceptions of the university's institutional autonomy. On a substantive conception of institutional autonomy, academic freedom, in the senses of scholarly freedom and academic rule, is viewed as an intrinsic feature of institutional autonomy itself. On the functional conception of institutional autonomy, though, what matters is only whether the university, taken as an institutional whole, is able to function independently without undue interference by external parties or forces even if it is internally dismantling academic rule and restricting scholarly freedom in various ways. These different senses of institutional autonomy are associated with different notions of accountability. On the substantive conception of institutional autonomy, accountability is primarily defined inwards with regard to the protection of scholarly freedom and academic rule. It is less obvious to whom the university leadership and executive management are considered accountable in terms of the functional conception of institutional autonomy. Apart from general financial accountancy they may, in the first instance, be accountable to the university Council or Board of Trustees as a stand-in for their basic fiduciary accountability. But that fiduciary accountability is actually quite vague and open-ended. If business or corporate interests are strongly represented on the Council or Board of Trustees, then the actual content of the fiduciary accountability could be informed by notions of making the university a more efficient enterprise in market-oriented terms. The overseeing body could also be constituted more on stakeholder principles, representing various constituencies in civil society and the local community, but in that case, more political and democratic notions of accountability would come into play along with a more instrumental view

of the university on which institutional autonomy is subordinate to developmental or political purposes (see Olsen's model of the different visions of university organisation, subsection 1.3.4). The market vision of the university is consistent with a positive valuation of functional institutional autonomy as required for efficiency and enterprise but effectively reduces accountability to financial accountancy and 'quality assurance'. In this vision, fiduciary accountability has little or no effective content: the corporate leadership of the enterprise university (including both executive management and the business-oriented members of Council) are no longer conceived as accountable to the academic faculty or even to the broader university community, but they also do not have the equivalent of shareholders to satisfy. The insistent demands for increased 'accountability' associated with the market-oriented approach thus amount to a severely reductionist conception of accountability, primarily in terms of financial accounting and 'quality assurance', allowing executive management freedom to exploit the functional institutional autonomy of the university without being accountable to any clearly defined internal or external constituency.

2.6.3. A (new) social compact for accountable autonomy?

A central argument of this report has been that university autonomy and academic freedom are better conceived in terms of some underlying or explicit social compact than as matters of principle. At the outset we cited some incisive statements of the general notion of autonomy as a social compact. Thus we referred to Olsen's statement that

"In democracies the confidence of citizens and elected representatives is in the last instance decisive for how far institutional autonomy will reach and what will be an institution's legitimate role in the social order ... One way to generate support for the University is to convince the public that a well-functioning democracy requires a (partly) autonomous university." (Olsen 2005: 36, 37, cited in subsection 1.1)

Likewise we referred to Menand's formulation of a basic social compact for autonomy:

"Universities have, essentially, a compact with the rest of society on this matter, society agrees that research which doesn't have to answer to some standard of political correctness, economic utility, or religious orthodoxy is a desirable good, and agrees to allow professors to decide among themselves the work it is important for them to undertake." (Menand, 1996: 8, cited in subsection 2.1)

These statements are highly generalised and need to be specified more closely. Accordingly, we proposed the following as an analytical framework in developing such a social compact approach:

"With regard to possible social compacts for autonomy, whether explicit or informal, their terms, scope and objectives need to be indicated, i.e.

who the relevant parties to the social compact are and how they arrived at it;
 what the agreed autonomy involves, within which limits or subject to what conditions; and
 for what general purpose the autonomy compact is supposed to function."
 (subsection 1.4)

Even so, the notion of a social compact for autonomy remains paradoxical. It does not allow a

priori proof or in principle justification but comes about at the level of actual social practice. As such this must pose the basic question (first introduced in subsection 1.1, and then recapitulated in subsection 2.1):

Under what conditions would state and society be prepared to subscribe to a compact allowing a basic and significant measure of autonomy to universities in academic affairs?

It is a matter of historical record that, as discussed in subsections 2.2 and 2.3, the rise of the modern research university from the late 19th century and for much of the 20th century was associated with an effective social compact for autonomy of just this kind. In subsection 2.1, we argued that this involved a double shift: an institutional shift from elitist teaching colleges to the emergence of the modern research university and a conceptual shift from a constitutive conception of scholarly freedom. Actually, these developments increased the stakes of a social compact for autonomy. The massification of higher education meant that modern universities were no longer 'elitist' preserves and became dependent on substantial amounts of direct and indirect public funding, while the contribution of the research university was identified as a vital component of economic growth and technological development for the emergent 'knowledge society'. Accordingly we argued in subsection 1.4 that "it would be surprising, and require some special explanation, if state and society continued to allow universities the same autonomy in these circumstances. However, in broad terms this is indeed what happened with the rise of the modern research university from the late 19th century to the mid-20th century: the university developed into a vital institution for modern industry, state and society but somehow also managed to carve out and preserve a substantial degree of autonomy in the name of academic freedom" (subsection 1.4). It was this counter-intuitive development which most strongly suggested the presence of an underlying social compact. In this perspective the late 20th century demands by various forces in state and society for universities to become more accountable thus appear both as "the price of success" (Shils 1975: 117ff.) for the modern university, but more significantly as the breakdown of that underlying social compact for autonomy.

At various points, this breakdown of the underlying social compact for autonomy was characterised in terms of a collapse of society and state's 'trust' in the universities. Thus at the beginning of subsection 1.1, the problem of a social compact for autonomy was introduced in the following terms:

"On all sides, in other parts of the world but increasingly also in South Africa, there are calls that universities and academics must be more accountable, resulting in the introduction of various mechanisms and procedures for 'quality assurance', etc. Leaving aside the specifics of these measures, they indicate that universities are no longer trusted to benefit state and society if basically left to their own devices." (subsection 1.1)

Similarly, the Thatcherite interventions in British higher education during the 1980s, which challenged the traditional institutional autonomy of the universities, were described in subsection 2.1 as follows:

"Observers ascribed the unprecedented extent of government interventions in higher education, amounting to an outright hostility to universities, along with the introduction of market-oriented reforms and ever-increasing demands for quality-assurance and

accountability, to an underlying “withdrawal of trust” (Trow, 2005: 8). The previous social compact for autonomy was coming apart.” (subsection 2.1)

It may be helpful to consider the significance of these references to a breakdown of ‘trust’, and the implications for the prospects of a possible new social compact for autonomy. One possible implication of the references to ‘trust’ may be to stress the informal and implicit nature of the underlying social compact for autonomy. This would certainly be apposite of the British case, and it is part of Pritchard’s argument that the informal and implicit nature of the elite consensus which so long underpinned the workings of the UGC must account for what eventually proved the vulnerability of institutional autonomy as a core pillar of academic freedom. Moreover, while such informal and implicit social compacts may be effective while they last, they are also especially difficult to reconstruct once they have broken down: how would one go about re-assembling the various elements going into an informal and implicit social compact or elite consensus? A second possible implication of the references to ‘trust’ in this context may be to take these as indicative of more traditional social relations lacking in procedural provisions for accountability. In this view, the counter-intuitive ‘high stakes’ social compact for autonomy of universities during much of the 20th century (subsection 2.5.3) may be regarded as resulting from a kind of ‘delayed’ adjustment: during a transitional period the universities continued to trade on their inherited status as inconsequential ‘ivory towers’ and were not properly held accountable for the substantial public funding they now required or for their key social and developmental roles in the new ‘knowledge society’. It follows that the withdrawal of ‘trust’ was in fact overdue, and that any quest for restoring that relationship of trust would be inappropriate. Instead, any new social compact should not be based on ‘trust’ but should be a social compact for accountable autonomy. Moreover, that new social compact should be appropriately specified in terms of the specific senses of accountability relevant to the different senses and contexts of academic freedom just discussed (subsection 2.6.2).

With this in mind we may in conclusion briefly consider the prospects of a new social compact for autonomy in relation to the different senses and contexts of academic freedom. This can be done by revisiting some of our tentative conclusions to earlier sections of Part 2 of this report.

i) *The prospects of a new social compact for scholarly freedom:* In subsection 2.3.3, we tentatively concluded that the notable position of social hegemony of scientific research, and the wider respect for scholarly autonomy, which prevailed by the mid-20th century, was not the product of any deliberate social compact; rather, it came about through a variety of different historical circumstances, social developments, political forces and economic conditions. As such, that particular configuration of historical circumstances and socio-economic factors or political forces can hardly be replicated. To that extent, the former social hegemony of scholarly autonomy may well be a lost cause. However, one key element that did contribute significantly to the position of hegemony once enjoyed by the university and the practice of scholarly freedom is amenable to deliberate efforts and concerted action, especially in the South African context, and that is the professionalisation of the scholarly enterprise and of the institutional culture of university-based academics (subsections 2.3.2 and 2.3.3). In the present context, we may add that a core component of the process of professionalisation consists precisely in a systematic strengthening

and consolidation of the procedures for internal accountability within a professional community as a precondition for more effective claims to professional autonomy. (It should be stressed that this is not the same as externally-oriented ‘quality assurance’; indeed it is in principle an alternative to that.) It is only on the basis of well defined, explicit and effective procedures for internal accountability that the academic profession, too, may have any prospects to having its claims for professional autonomy recognised in a new social compact. Even so, it will not be sufficient to develop forms of internal accountability which are satisfactory to academic professionals themselves alone: without external recognition of the legitimacy of such professional accountability there would still not be any social pact for autonomy. What is required is a new social pact for the (internally) accountable autonomy of scholarly freedom which also has external legitimacy in the wider society and state. The key to that may be through a deliberate and systematic project of professionalising scholarly research at our universities. To repeat our earlier conclusion: “By itself a process of professionalising scholarship and academic work cannot ensure that a social compact for scholarly freedom can come about, or will be maintained. But without this vital internal component, it is difficult to see how there could be any serious prospects for an external social compact” (subsection 2.3.3).

ii) *The prospects of a new social compact for academic rule:* In subsection 2.4.3, we tentatively concluded that academic rule, as the internal governance structure of the university designed to protect scholarly freedom of teaching and research, represents an internal compact between the academic faculty and the university leadership or executive management. As such, the internal compact of academic rule is testimony to the ways in which collegial accountability remains a vital and valued aspect of academic life in the modern university even if collegialism is no longer feasible as an independently viable form of academic governance. The various internal governance structures, such as that of the professorial chair, academic departments and the academic Senate, function both to enable and protect scholarly freedom of teaching and research as well as to ensure that these remain the core business of the university as institution. More generally, we concluded that

“a strong and professionalized system of academic tenure is a necessary condition for protecting scholarly freedom and ensuring academic rule within the university. Assured independent tenure is the *sine qua non* of collegialism; control over a set of established academic positions provides the backbone of departmental independence without which it could relapse into a mere administrative convenience; the independently tenured dean can represent the faculty to central administration compared to the appointed fixed-term dean as functionary of executive management.” (subsection 2.4.3)

At the same time it is vital that a strong academic tenure system does not primarily function as a means to employment security but rather as an incentive for professionalisation by requiring and promoting strong scholarly qualifications – as determined through internal peer review – at different levels and stages of an academic career. Even so, it is bound to put various kinds of constraints on the ability of the executive management to deploy and exploit institutional resources. Accordingly university leadership and executive management need to be persuaded that it is in their longer-term institutional interests to accept the limitations and constraints which academic rule and a strong tenure system impose on executive efficiency. The origins of the

American academic freedom and tenure system may be traced to the internal pact of the 1940 AAUP/AAC agreement, in which the key protagonists were a strong and representative academic staff association, on the one hand, and representatives of university administration and executive management, on the other. The force of this internal pact very much depended on the ways in which the different parties were accountable to their respective constituencies and also found that they could agree on the principles of academic freedom and the collegial accountability embodied in a professionalised tenure system as in their respective best interests. In the current South African context the prospects for a similar internal compact would depend as much on the development of a system-wide representative and accountable academic staff association as on the representatives of university leadership and executive management being prepared to commit themselves to substantive institutional autonomy.

iii) *The prospects of a new social compact for substantive institutional autonomy:* We reviewed some of the factors and developments relevant to the (un)making of a new social compact for institutional autonomy in the current South African context in the previous section (subsection 2.5.4.3). As we saw, the official notion of ‘co-operative governance’ allowed room for the institutional autonomy of universities as independent institutions within a higher education system overseen by the DoE in line with a general shift from a model of ‘state control’ to a model of ‘state supervision or steering’. However, the shifts and changes in the process of restructuring higher education in the decade following 1994 issued in an effective breakdown of co-operative governance and a reversal to a more interventionist approach on the part of the state. For our purposes we considered the introduction and breakdown of this framework of ‘co-operative governance’ during the first decade of democratic restructuring of higher education in South Africa after 1994 in terms of the making – and unmaking – of a possible compact for accountable, institutional autonomy. From this point of view the fact that the state reverted to more directive interventions and controls, especially in terms of the process of mandated institutional mergers from 2002, thus represented a breakdown in the prospects of a possible new social compact for autonomy. As for the universities, some of them utilised the opportunities available during the period of ‘co-operative governance’ and in the context of the new quasi-market conditions in higher education to consolidate their effective institutional autonomy. A range of different institutional approaches can be identified including those of ‘strategic or soft managerialism’ and ‘unwavering entrepreneurialism or hard managerialism’ as against that of ‘reformed collegialism’ or ‘transformative managerialism’. We argued that these could come together in different alliances along some of the main fault lines appearing in the higher education sector with significant implications for the kind of new social compact that might be possible:

“Taken together this varied range of institutional responses and approaches reveals significant fault lines bearing on the framework of ‘co-operative governance’ which may help to explain both why a new compact for accountable autonomy did not come about and what new alliances may be possible ... The ‘collegialist’ defence of academic rule and concern with consolidating the traditionally core academic business of the university may well come into conflict with a national agenda of political transformation. The

approach of 'transformative managerialism', though, can effectively lend itself either to a national agenda of transformation or to an entrepreneurial response to market opportunities. ... Thus it is not inconceivable that 'transformative managerialists', especially those of the 'hard and unwavering entrepreneurial' variety, may come to an accommodation with key aspects of the state's national agenda of transformation, while 'soft' and 'strategic' managerialists may find common cause with the 'collegialists' concerned to defend academic rule or teaching and research as the core business of the university. The former alliance would amount to an 'external compact' between executive management and the state while the latter alliance would require an 'internal compact' between management and academic faculty within particular universities." (subsection 2.5.4.3)

The distinction between a possible 'external' and 'internal' compact for institutional autonomy is closely related to the distinction between functional and substantive institutional autonomy. Without an associated 'internal compact' an external compact for autonomy, for example, one involving 'hard managerialists' in the university and the state, would amount to the conditions for functional institutional autonomy. Only if such an 'external compact' could be conjoined with an 'internal compact' between the academic faculty and the university leadership and executive management, ensuring protection of scholarly freedom and academic rule, would this amount to the conditions for substantive institutional autonomy. What is needed, is thus a dual compact for accountable autonomy, external as well as internal, while the necessary conditions for this would involve both a strong representative academic staff association as well as an intermediate system-wide representative forum for higher education institutions.

ENDNOTES

- 1 In response to the prospective introduction by the National Party government of legislation imposing apartheid on university admissions, the 'Open Universities' of UCT and Witwatersrand in 1957 committed themselves to a principled defence of academic freedom and institutional autonomy as adumbrated in the celebrated TB Davie formulation: "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study" (*The Open Universities in South Africa* 1957: 11-12). The formulation was first used by Dr Davie, a former Principal and Vice-Chancellor of UCT, in an address to new students in February 1953. Recent instances invoking the TB Davie formula of academic freedom include: John Higgins (2000), "Academic Freedom in the New South Africa", *Boundary* 27(2): 97-119; and Jonathan Jansen (2004), "Accounting for Autonomy", 41st TB Davie Memorial Lecture, University of Cape Town, 26 August 2004.
- 2 For an important example, see Nico Cloete and Peter Maassen (2002), "The Limits of Policy", in Nico Cloete, Richard Fehnel, Peter Maassen, Teboho Moja, Helene Perold and Trish Gibbon (eds), *Transformation in Higher Education: Global Pressure and Local Realities in South Africa*, Cape Town: Juta & Co.
- 3 Cf. William Van Alstyne: "Successful academic freedom claims did not develop naturally or easily as an incident of early 20th century first amendment doctrine. Rather, they developed largely without benefit of the first amendment, generally under private auspices and in response to the vacuum of doctrine associated with the first amendment as hard law." (1990: 93)
- 4 A fundamental tenet of the 19th century German ideal of academic freedom was that of the 'three unities', including the unity of teaching and research (along with the unity of knowledge and the unity of teachers and learners) (Pritchard 1998: 105). Effectively, this implied that *Lehrfreiheit* could not be restricted to the context of teaching only, but required freedom of research and inquiry as well. *Lehrfreiheit* may thus best be rendered as 'scholarly freedom', freedom of teaching and inquiry (Moodie 1996: 137).
- 5 Cf. also, Phillip V Tobias (1976), "The Sixth Freedom", Edgar Brookes Academic and Human Freedom Lecture, University of Natal, Pietermaritzburg 6 May 1976.

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