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## **Academic Freedom and the University: Fifty Years of Debate**

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Contemporary debates about academic freedom and institutional autonomy in South Africa's "liberal" universities began in the 1950s, stimulated by the policies and legislation for racial segregation. At the University of Cape Town (UCT), these debates were shaped by the influential T B Davie, and since 1959, UCT has offered a (usually) annual T B Davie Memorial Lecture at which the symbolic torch of academic freedom (extinguished during the apartheid years, and re-ignited after 1994) is carried in procession. But despite this ceremonial and its endurance there is not, and has not been since the mid 1980s, a university-wide consensus on the nature of academic freedom and its relationship with institutional autonomy.

There are two interrelated – but distinct – traditions of thought and practice in such considerations of academic freedom and institutional autonomy. I will call these the "classic" and the "contextual" views. Of course, making a distinction in this way is to a degree a rhetorical device: there are many commonalities, as well as other points of view that are not represented here. My over-arching point, though, is that there is no settled "institutional position" on the matter, perhaps in itself testimony to the fact that freedom of thought and expression is still alive and well.

The "classic" interpretation holds that academic freedom is the institutional form of a human right. Academic freedom and institutional autonomy are indissoluble. This interpretation was formulated by T.B.Davie and has been continued in subsequent generations. The most prominent advocate of this view today is John Higgins who, in a series of position papers, public statements and scholarly papers, has both advanced Davie's views and contributed an intellectual exegesis appropriate to the place of the university in a changed and changing world. Higgins argues that academic freedom is vested in "an autonomous community of teachers and students dedicated to the search for, or service of, truth". This tradition is based on "the constitutive interdependency of academic freedom and institutional autonomy", and the principles of academic freedom articulated by T B Davie in the 1950s: "our freedom from external interference in a) who shall teach, b) what we teach, c) how we teach, and d) whom we teach" (cited in Higgins 2000a). Seen from this perspective, there is little difference between 1959, when the T B Davie lectures were initiated, and the present day. The principle of academic freedom, assailed by the apartheid government, continues to be assailed in the post-apartheid period.

In making this argument, Higgins turns to the report of the National Commission on Higher Education (1996) and its argument for the "hegemony of government" in the cause of socioeconomic development and equity. This requires a culture of cooperation and accountability between the university and the state, and furthers the needs of neo-liberalism, in which higher education fulfils a utilitarian purpose, steered

by the requirements of the labour market. Higgins sees this approach as further consolidated in the Higher Education Act of 1997 and through other legislation, putting at risk the core concept of a university. In a second essay, Higgins situates the current situation of the South African university in the wider context of a crisis of intellectual life in the academy (Higgins 2000b).

While often misunderstood as such, this “classic” argument cannot be typecast as reactionary, and Higgins (2000b) shows how his case for academic freedom as an inalienable right is distinct from the “culture wars” in the United States, where a spurious call for freedom of speech was evoked to undermine progressive thought. Indeed, Higgins’ argument is that post-apartheid governments have failed those they represent by failing to preserve the conditions necessary for free thought and expression: “in reality there is a significant – and deeply disappointing – continuity between the restrictive definitions of academic freedom offered in both pre- and post-apartheid society. Conceptually, this impoverished definition of academic freedom is incommensurate with the task of the university in achieving a critical and participatory democracy and, in practice, it has allowed the higher-educational system to be increasingly defined around a highly restrictive neo-liberal agenda” (Higgins 2000a: 101).

The “contextual” interpretation of academic freedom is drawn from the same sources in liberal philosophy and thought, but allows that the nature of the institutions of state and university change with political circumstances. In this view, the freedoms of intellectual life are not automatically associated with the independence of the university as an institution: Academic freedom and institutional autonomy are related, but distinct concepts. This “contextual” reading is seen in the work of André du Toit. Du Toit argues that the concept of academic freedom does not have determinate meaning and is therefore evoked in differing ways from various perspectives: “what is needed, is a critical and reflective turn in which rival conceptions of academic freedom, and of the threats to it, are not simply asserted or reasserted but interrogated for their underlying assumptions, associated political agendas and possible ideological functions”. In particular, du Toit asks whether the primary issue is external – the role of the state – or internal: “the actual practices of university communities themselves and their possibly defective understanding of academic freedom”. The basis of his argument is that “in the context of an incomplete transition from older forms of collegiality and academic rule, and in the face of increasing demands for new forms of accountability, the mere re-assertion of the liberal discourse on academic freedom no longer provides a coherent or adequate assistance in getting to grips with the current challenges to academic freedom”.

Du Toit argues that the South African tradition of academic freedom that was articulated by Davie in the 1950s is a narrow version of more general liberal principles, with a contingent emphasis on institutional autonomy, stemming from the specific need to counter the controls on university life proposed by the apartheid government. Given this, continuity in the role of the state from the 1950s to the contemporary period cannot be assumed, and the issue of institutional autonomy needs to be contextualized. At the same time, the nature of university management has changed, with the result that the university – as an institution – is different now to fifty years ago: “a stress on the institutional autonomy of the university must now presumably refer not so much to the realm for decision-making by academics, but

must in the first instance apply to the practices and policies of the new class of professionalised university managers”.

Du Toit sees the “classic” formulation of academic freedom as “crucially ambiguous”, in that, in asserting institutional autonomy, “it tended to imply a denial of duties or responsibilities that extended beyond the institution's own walls”. This “negative” reading of academic freedom would prove incompatible with “a more positive and contextual notion of the university’s social responsibility”: a contradiction that was brought into sharp relief at UCT in the mid-1980s in disputes about the academic boycott of South Africa, and whether it should be supported by progressive academics and students, or opposed on the grounds that it undermined the very essence of university life.

Consequently, du Toit argues that the “classic” view is unsuited to contemporary challenges, and in particular “the increasing pressures for academic accountability, associated with the restructuring of academic curricula in terms of explicitly articulated programmatic objectives capable of ‘quality assurance’ for their educational outcomes. This bears on the vital issue of who is to decide on what may be taught as part of the curriculum”. Consequently, “the traditional liberal discourse on academic freedom can no longer suffice: it is misleading in that it directs attention to supposed external threats rather than to relevant developments closer home; it is outdated in so far as the concern with institutional autonomy does not take account of the changed circumstances brought about by the managerial revolution within the universities themselves; and it is incoherent when applied to current issues of internal accountability and academic authority within the university community” (du Toit 2000a).

By decoupling academic freedom from institutional autonomy, du Toit opens up a space for discussing the ethical issue of the appropriate balance between the right to academic freedom, and the responsibilities it carries. While the concept of ethical responsibility is inherent in the “classical” view, where the argument is that academic freedom and institutional autonomy should be inalienable to ensure the continuity of independent critical thought essential to democratic values in society at large, it is difficult to progress beyond the absolute prohibition on state involvement in the affairs of the academy. In contrast, the “contextual” view allows that the state has a legitimate interest in the internal affairs of the university, in the interests of such public goods as economic development and social justice.

Du Toit advances this argument by introducing the concept of “republican” freedom of speech. In contrast to the liberal emphasis on individual rights and the prohibition on restriction of expression, the republican philosophy carries an obligation to speak out freely in the public interest: “freedom of speech is a precondition for the good society; it is the duty of citizens or members of the community to speak their mind freely and honestly, without fear of the consequences”. This is closely associated with the idea of collegiality, in turn at the heart of the concept of university governance, and includes an obligation of active participation in the affairs of the institution. In turn again, possibilities for appropriate accountability to society are opened: “it is one of the problematic features of the liberal concept of academic freedom that demands for accountability tend to be conceived as external interferences within the autonomous domain of the university and academic activity. By contrast the

republican notion of free public speech is not anti-thetical to notions of social accountability; on the contrary it is inherent in academic freedom as a civic virtue and responsibility that it must give proper account of itself to the public at large ... academic freedom is not conceived negatively in terms of individual and institutional rights and protection against external interference (by the state, the public or even university administrators); rather it is conceived positively in terms of empowering viable intellectual discourse communities, both within the university and also able to reach out, engage with and give account of themselves to wider communities, society and the state more generally” (du Toit 2000b).

In my own work, conducted jointly with Ashley Symes (Hall and Symes 2005), I build on the contextual approach, advancing the concept of “conditional autonomy” as allowing “both for the procedural role of the state in ensuring the effective use of public money and the substantive rights of higher education institutions to academic freedom in teaching and research”. The key test is legitimacy: “before 1994, the claim to legitimacy for government policies in higher education rested on meeting the interests of the white minority. Governance arrangements directed student participation, resource allocations and research funding to this end, and defied international trends. After 1994, the legitimacy of government policies has been founded in a discourse that stresses the interests of all South Africans. Shifts in governance arrangements, that in turn frame policies for increasing equitable participation in higher education and for achieving outputs considered appropriate for a developing economy, reflect an interpretation of the appropriate relationship between the state and individual institutions.”

We note that the defining trend in university governance in South Africa, expressed through legislation and amendments to the Higher Education Act, has been increasing state control. This requires an appropriate conceptualization of the accountability of government for the use of public funds, and the autonomy appropriate to a university: “what is currently missing in the discourse of governance is a conceptual device that acknowledges the legitimate role of the state in steering the public higher education system, while also recognising the rights of individual institutions to autonomous governance over their central business of research, teaching and learning”. The concept of “conditional autonomy” is proposed to address this issue: “Conditional autonomy recognises the role of the state in steering the system and its outcomes through procedural controls, while respecting the autonomy of individual institutions in the substantive fields of their intellectual work” (Hall and Symes 2005).

We differentiate “substantive autonomy” – the authority of a university to determine its own objectives and academic programmes – from “procedural autonomy”: the right to determine how these goals will be pursued, and how effect will be given to academic programmes. This differentiation provides the means of determining the respective rights and responsibilities of universities and the state. Taken together, they constitute the appropriate conditions of autonomy.

Does this concept of conditional autonomy constitute a surrender of academic freedom? We argue that, to the contrary, accepting conditional autonomy is an effective defence of academic freedom: “conditional autonomy provides the basis for asserting the right of individual institutions to pursue research objectives on their own terms, to interpret their social responsibilities, to determine the content of the

curriculum and to teach in the manner that they think best. This is because conditional autonomy recognises that a democratic state will always have a legitimate, overarching accountability for the disbursement of public funds and for the authentication of academic qualifications. By distinguishing this framework of procedures from the substantive content of research, teaching and social responsiveness, the concept of conditional autonomy helps to define the distinction between state steering of higher education and state interference in the academic domain”.



Leaving aside these disagreement between the “classicists” and the “contextualists”, it is a matter of record that academic freedom has not been defended or advanced with the same vigour a decade into democracy as it was when the liberal university was at loggerheads with the apartheid state. In particular, the community of scholars has taken a very different approach to legislative proposals after 1994 than before democracy was won. In the apartheid state, amendments to the legislation that sought to impose increased state controls were vehemently contested in terms of the “classic” principles of academic freedom. After 1994, these “classic” principles continued to be affirmed symbolically and intellectually, through the writing of a small number of individuals. However, the 1997 Higher Education Act, and particularly its series of subsequent amendments which have considerably extended the authority of the state, and diminished the autonomy of the institution, have not been protested. There will be a range of reasons for this pre- and post-1994 contrast, and one of them must be the active participation of prominent scholars from universities in framing policies and legislation (including the Constitution) for the democratic order. Whatever one’s view of academic freedom and institutional autonomy, it must be acknowledged that the position of the university relative to the state was less complex before 1994 than after the inauguration of a democratic – and legitimate – political order.

There are, however, indications that issues around academic freedom and institutional autonomy are taking a new form, shaped by questions of institutional transformation. As with the mid 1980s, when the debate revolved around the question of the academic boycott, current discussion has been prompted by specific issues which raise, in their turn, general principles. Thus in June 2005 the University of Cape Town’s Academic Freedom Committee resolved that “unfounded charges of racism” are “a threat to the free exchange of ideas”, urging “members of the University community who are witness to ill-considered and unfounded accusations of racism to speak out promptly against such labelling”.<sup>1</sup> Subsequently, this concept of academic freedom was

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<sup>1</sup> “The Academic Freedom Committee (AFC) reports the Committee’s concern about the dampening effect that unfounded charges of racism have on campus debate about important University and social issues in which race is or is perceived to be an element. The Committee regards this as a threat to the free exchange of ideas. In order to foster an environment in which open debate can take place, the Committee urges:

- the University community not to level ill-considered and unfounded accusations of racism, particularly in response to differences of opinion;

contested from within the university: “the call by the Academic Freedom Committee to allow those accused of racism to complain appears to pre-empt attempts to establish a more effective racial harassment mechanism on campus, affording those accused of racism a space for action when those feeling aggrieved do not feel they have been provided an effective institutional space. This, of course, is deeply ironic, given that the Academic Freedom Committee’s brief is to promote dialogue and openness on campus. In light of the current debate about the nature of transformation at UCT, it would be more helpful if academic freedom was not viewed as separable from the institutional culture in which debate takes place on campus. It would have been far more helpful for the committee’s call to have urged the rapid finalization of the racial harassment policy and the establishment of credible, transparent and fair mechanisms to resolve allegations of racism (and other forms of discrimination) on campus” (London 2005).

This exchange, followed by a well-attended public debate on the issue, takes forward du Toit’s republican principle of free speech, the obligation to speak out to promote the public good, and insists that the right of academic freedom cannot be claimed without taking account of the internal circumstances of the academy – the persistence of unfair discrimination by race and gender. In other words, the concept of a “community of scholars”, standing united in the defence of truth and justice, is corrupted if the conditions of the academy do not permit equality within the community of scholars itself. In a way, this current debate completes a circle with TB Davie’s formulation of academic freedom half a century ago. Then, the university was a homogenous community (overwhelmingly white, predominantly male, English speaking, economically privileged) facing outwards to a highly unequal society in which discrimination by race was being enforced and enshrined in law. Now, the university is a diverse community (increasingly black, increasingly representative by gender, multilingual, and with students from a wide range of economic backgrounds) looking inwards at the challenges of achieving and maintaining social justice within itself. In this context, the issue of whether academic freedom is an absolute right or a conditional privilege remains unresolved.

In essence, this juxtaposition of the claim to academic freedom with the continuation of discrimination within the university is a requirement that rights are linked to responsibilities. This has been captured in Njabulo Ndebele’s framing of the challenge ahead for the University of Cape Town: “The guiding approach to transformation is that it should be a total institutional experience, touching on much of what we do ... At the heart of this objective is our ability to implement policy driven decisions around the core academic function of the university, through effective coordination and the capability to ensure that processes for implementation are

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- members of the University community who are witness to ill-considered and unfounded accusations of racism to speak out promptly against such labelling; and
  - those who are victims of unfounded charges of racism, to lodge a complaint with the University Discrimination and Harassment Office (Phone: 650-3530).”

Principal’s Circular, June 2005

rigorously followed ... It is urgent that we now go further than the two climate surveys we have had recently and to use them as important data for us to work actively through transformative dialogue toward creating an institutional environment at UCT experienced as being more open, more honest, more trusting, more accommodating, more creative at the same time that it continues to be no less robust as an academic institution. We must open more spaces for such dialogue on campus that are designed to have us cross many boundaries of what is discussable both on campus and beyond. The pursuit of truth and the expression of ideas should flourish even more and better in such an environment. It is in such an environment that we must achieve higher throughput and graduation rates, and higher research outputs”.<sup>2</sup>

The pursuit of truth and the free expression of ideas – the essence of T B Davie’s formulation of academic freedom in the 1950s – can only advance if the university is a “safe space”, free of unfair discrimination.

In looking to the future, a key challenge will be the “rhetoric of participation”: how can controversial issues be argued without the form that debate takes forcing closure? This is an issue raised, from different perspectives on academic freedom, by both Higgins and London. Higgins (2000a) notes that academic freedom is in danger of becoming a “received idea” – a concept for which the speaker’s position is assumed in advance, leading to the neglect of the substance of the argument. And London complains that, in its resolution decrying unsubstantiated allegations of racism, it is the Academic Freedom Committee that is contributing to the closure of debate: “I find the position of the Academic Freedom Committee wholly unhelpful. At best, it is extremely naïve and, at worst, it will be perceived as another attempt by the institution (through one of its highly-regarded committees) to close down debate on racism at UCT”. In this respect, it must be noted that the relationship between academic freedom and freedom of speech within the university is far from resolved. There is continuity between the position taken in the mid 1980s, when Senate resolved, in the cause of academic freedom, to limit the freedom of speech (through disciplinary action) of those within the University who advocated the academic boycott, and the current debate, where the Academic Freedom Committee has proposed constraints on those who may use their freedom of speech to allege racism.

Finally, it is notable that the limit cases of academic freedom remain ambiguous. This was noted by Higgins (2000b) in his overview of contemporary writing on the issue, and by du Toit (2000b), who reminded us that the concept of academic freedom “is related to, though by no means synonymous with, the basic right to freedom of speech ... Academic freedom may actually require important restrictions on general freedom of speech”.

This can be illustrated through a simple mind experiment. Imagine a situation in which a lecturer, evoking the “classic” formulation of academic freedom as the right to decide what to teach without interference or hindrance, teaches that members of the university community of a race different to her or his own are genetically inferior and are therefore not qualified to take part in the lecturer’s classes. Should the university act to defend the academic freedom of the lecturer, or should the university take

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<sup>2</sup> Professor Njabulo S Ndebele, Vice Chancellor. “Living Transformation”, October 2005.

action against the lecturer in the interests of those students whose academic freedom has been violated by their exclusion? If the university does take action against the lecturer, then how can academic freedom be an absolute value? And if the university does not take action, how can it be defending academic freedom? This contradiction is inherent in the current terms of reference of UCT's Academic Freedom Committee, which require that it "promote academic freedom, including university autonomy, within and outside UCT, and to take appropriate action when it is infringed".

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