

ACADEMIC FREEDOM IN THE “INCENTIVISED UNIVERSITY”: THE CASE OF SOUTH AFRICA

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ABSTRACT

In the *Incentivised University* (2021), Muller argues that the current dominant approach to higher education systems based on “incentivisation” is both philosophically and practically flawed. This article examines the issue of academic freedom in South Africa through the lens of that critique, although its analysis and prescriptions are likely to be relevant to other countries as well. While academic freedom is enshrined in the South African Constitution, the structure and functioning of the higher education system – and the conduct of universities – is driven by an incentive-based framework. The article argues that there is an irreconcilable tension between the “incentivised university” and academic freedom. In many respects, South Africa exemplifies this through the low priority given to academic freedom by university management, and institutional cultures that are hostile to internal dissent or criticism. The article proposes six steps to substantively embody academic freedom in universities: explicitly recognise that academic freedom extends to internal matters and individual academics, and is not just a matter of guarding institutional autonomy from external interference; reorient universities towards institutional cultures that substantively embody academic freedom rather than being driven by extrinsic incentives; change the funding system; designate and empower an independent institution outside universities to conduct regular institutional surveys of the state of academic freedom; educate and train all those within academic institutions on academic freedom; and create an independent body, with investigative and enforcement powers, to deal with violations of academic freedom.

Keywords: Academic freedom, incentives, managerialism, institutions, South Africa.

In a recent book entitled *The Incentivised University: Scientific Revolutions, Policies, Consequences*, Muller (2021) argues against the logic of trying to attain intellectual and scientific progress through extrinsic incentives for higher education institutions and academics. The book argues that rather than using and emphasising incentives and the metrics that accompany them, the focus should be on attaining and maintaining high standards for norms

and conduct within higher education institutions and communities. The argument is not specific to a particular national higher education system, but the book does consider how the harms caused by using incentives to steer the pursuit of truth and knowledge can vary in subtle ways across disciplines, societies (countries) and institutions. In this article I propose to extend that analysis to consider the issue of academic freedom within an “incentivised university” and the relevance of this to South Africa.

In essence, the article argues that the logic of incentivising the activities and trajectory of higher education institutions is fundamentally incompatible with academic freedom. The article begins by discussing prevalent definitions and international evidence on academic freedom. It then briefly summarises the thesis of *The Incentivised University*, noting that the roots of academic freedom and incentivisation in higher education are essentially distinct – they do not share a rationale or foundational principles. It then proceeds to examine the contrast between these two approaches within and outside a university. First, it examines the implications of the two approaches in domains *external* to the university: in scholarly communities, the policy space and the broader public sphere. Second, it examines the implications in domains *within* the university – most notably, in appointments and promotions, teaching, administration and self-governance. Where the logic of incentivisation and the principle of academic freedom are able to co-exist, it is an uneasy and incidental coexistence. However, in many important instances the two are in conflict.

The analysis then turns to a more concrete examination of these issues in the South African case. Although academic freedom is protected by the South African Constitution, there are no corresponding mechanisms within the higher education system or higher education institutions to enforce that protection. In contrast, the incentive-driven approach to “steering” institutions and academics is embedded in specific national and institutional structures, which are well-resourced and enforced as an explicit part of institutional managers’ primary responsibilities. The inevitable consequence, I suggest, is that the incentive-driven approach prevails at the cost of academic freedom. The article concludes with six suggested steps that would remedy this situation.

INTRODUCTION

Academic freedom is a fundamental pillar in many accounts of the nature and social role of universities. To the extent that it relates to an individual’s ability to pursue knowledge about the world unhindered, one could consider it a fundamental human right. One justification for it is that to advance knowledge and identification of truth, academic freedom must be protected

from unwarranted external pressures – especially from powerful social actors for whom such pursuit may be inconvenient or unwelcome. This, in turn, can be linked to a justification based on social value: increasing our knowledge of the world is valuable to society as a good in itself (epistemic value) and in practical ways. The many technological benefits derived from the advancement of scientific knowledge are an obvious example of this. I refer to this kind of justification as an “epistemic” one: relating to advancing knowledge in society.

Academic freedom as a social compact

In this sense, whether at the level of the individual or the institution, academic freedom is a protection that results from academia having special status in society, and it is a reason for assigning that special status. Societies grant special protection to academics so that they may pursue and transmit knowledge and engage with matters of public interest freely – in a way that other members of society may not be able to – because this is deemed valuable for society. At the same time, having academic freedom allows academics and academic institutions to act in ways that support the assignment of special status. By leveraging academic freedom, individuals and institutions can make valuable contributions to society, strengthening the case for their special status. Scott describes an interplay of this kind in the development of academic freedom in the United States in the early 20th century: “The deal negotiated with the state and businesses rested on the idea that progress was achieved best by an autonomous faculty, critical of and unburdened by prevailing public beliefs” (Scott 2024, 152). Du Toit (2007) suggests conceiving academic freedom, particularly institutional autonomy, as a “social compact”.

One implication of such formulations, which is not typically mentioned in the literature, is that if academics and academic institutions fail to make substantive use of academic freedom, there may be a social basis for withdrawing the privileged protection of academic freedom. In practice this could take various forms, such as abolishing the protection altogether, narrowing its scope, hollowing out the concept, imposing barriers, and acting in ways that violate academic freedom directly. In this sense, academic freedom should not be taken for granted or seen only as a fundamental right. It also comes with the responsibility to put that right to use *for society at large*, not merely in service of individual or institutional self-interest.¹

Given this, it should not be surprising that although academic freedom is widely recognised to be fundamental, the scope and substantive protection provided by academic

¹ This should not be misread, especially in the current context where ‘social impact’ is in vogue, to mean that academics have to demonstrate the direct practical value of their work for society. The responsibility to exercise the right of academic freedom allows for purely epistemic contributions and creative ones that do not necessarily ‘advance knowledge’ but still add value to society broadly conceived.

freedom provisions vary across countries. Such variation is due not just to different political systems (Berggren and Bjørnskov 2022) or institutional and legal provisions, but to differences in definition.

Academic freedom as a fundamental right

An alternative approach to academic freedom is a “rights-based” approach in which one or more dimension of academic freedom is treated as a fundamental human right. The definition adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) is a particularly important example of this given this organisation’s formal, multilateral, rights-based mandate:

“Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized recognised human rights applicable to other individuals in the same jurisdiction.”

Despite this, academic freedom has arguably not received enough attention at the multilateral level (Altbach 2001). On the African continent, its importance was recognised in the Kampala Declaration (CODESRIA 1990). However, one could not claim that implementation of those admirable principles in countries across the continent has been a success story (Mamdani and Diouf 1994; Mama 2006).

A new dataset and index have attempted to provide a global overview of cross-national variation (Spannagel and Kinzelbach 2023), including through an analysis of constitutional provisions for academic freedom or components thereof (Spannagel 2023). The researchers distinguish between three types of provision: academic freedom, freedom of science and university autonomy.

According to this index, South Africa has progressed from being in the bottom 20–30 per cent of countries in 1973 to the top 20–30 per cent by 2023 (Kinzelbach, Lindberg and Lott 2024). This is significant but unsurprising progress given the transition from apartheid to democracy in the interim period. Countries like Portugal, Spain and Chile emerged from dictatorships during the same fifty-year period and showed similarly large increases. Other African nations also appear to have improved by these measures, with large regressions being seen in South Asia (India and Bangladesh) and more minor regressions among “Western countries” (the United Kingdom, the United States and the Netherlands).

A tension exists internationally between the emphasis on institutional autonomy and the focus on the freedom of individual academics. In UNESCO’s definition and associated documents, the emphasis is squarely on individual academics and communities thereof. The statement “The enjoyment of academic freedom requires the autonomy of institutions of higher education” suggests that institutional autonomy is *not* an end in itself but rather a means to the end of protecting academic freedom at “lower” levels – those of the individual academic and student, and sub-communities of academics and students.

In contrast, the declaration of The United Nations Global Colloquium of University Presidents (2005) – while powerful and containing clear statements about the freedom of scholars and students – emphasises that “autonomy of universities is *the guarantor* of academic freedom in the performance of scholars’ professional duties” (my emphasis). That is not generally true, of course, if infringements of academic freedom are internal and potential intervention mechanisms are blocked by institutional autonomy.² The difference between these statements on academic freedom reflects the fact that university leaders are the most likely potential source of infringements of academic freedom *within* institutions – merely by virtue of their powers if nothing else. It is hardly surprising, therefore, that these leaders are more inclined to emphasise external threats than internal ones.

ACADEMIC FREEDOM IN SOUTH AFRICA

As already noted, the South African Constitution enshrines the right to academic freedom. Section 16(1)d of the Constitution states, in the Bill of Rights, that:

“16. (1) Everyone has the right to freedom of expression, which includes—
d) academic freedom and freedom of scientific research”
(Republic of South Africa 1996).

A clear statement of this kind in legislation that takes precedence over all others elevates South Africa into a select group of countries. It is one reason that the country ranks so highly on the new academic freedom index. An obvious problem, however, is that neither the Constitution nor any other legislation provides further details. That lacuna could be resolved through legal precedent and case law, but the South African courts have not fully detailed this foundational

² It is this kind of dynamic that the philosopher Paul Feyerabend appeared to have in mind when he provocatively suggested that the state should intervene in scientific and intellectual research in order to combat the ‘tyrannical’ nature of the internal dynamics of those communities (Feyerabend 1987; 1996). There are unresolved tensions in Feyerabend’s account but even these provide some interesting insight into such questions (Shaw 2021).

provision’s legal implications and protections. Existing case law is very limited but it does, rightly and reassuringly, appear to lean towards broad interpretations of the protections provided by this clause.³

There has not been a comprehensive survey of how academic freedom has been interpreted by the courts or in official institutional policy documents in South Africa. That would be a valuable contribution to the local and international literature on the subject, but is beyond the scope of this article. The absence of a definitive and detailed interpretation of the academic freedom provision, whether in legislation or in a ruling by the Constitutional Court, means that there has not been a definitive set of requirements that institutions have felt obliged to reference and implement in their policies and approaches.

One additional aspect of the phrasing in the Constitution that is worth noting is that it implies that academic freedom need not be limited to those in formal academic posts: it is a right that “everyone” has and that is enshrined under the broader umbrella of “freedom of expression”. Therefore, an individual’s freedom to engage in academic expression or research is protected as a fundamental right – whether or not the person is in an academic post. In my view, this is an unrecognised strength of the formulation because it accounts for the possibility that a member of the academic community or scientific community may not be a member of an academic institution. Moreover, and perhaps unwittingly, it also accounts for the possibility that violation of academic freedom could involve expelling individuals from such institutions.

Literature on academic freedom in South Africa

While there is substantial literature on academic freedom in South Africa in the three decades since the formal end of apartheid, it can be summarised as having two main parts. The first revolves around a very specific contestation (Council on Higher Education 2008; Du Toit 2000). On the one hand, some have emphasised that academic freedom means protecting universities from interference by the state (Higgins 2001). On the other, some suggest that this formulation has been misused to insulate universities from various forms of transformation and accountability that are necessary in the post-apartheid era (Hall 2006). The second part of the literature is more idiosyncratic and addresses specific, high-profile cases where academic freedom was violated or was alleged to have been violated. This second part overlaps with the first because many of these cases occurred in the era when the post-apartheid transformation of universities began. Examples of such cases include the “Mamdani Affair” at the University of

³ Chetty v. Adesina, No. 33/2007, High Court of South Africa (Eastern Cape), <https://www.saflii.org/za/cases/ZAECHC/2007/98.pdf>

Cape Town (Mamdani 1998; Jansen 1998), the “Makgoba Affair” at the University of the Witwatersrand (Mamdani 1997), and the conflict between the same Makgoba, now as vice chancellor, and several senior academics at the University of KwaZulu-Natal, which was perhaps the most polarised conflict of all (Makgoba and Mubangizi 2010; Chetty and Merrett 2014). One notable case unrelated to transformation concerned the apparent persecution of an academic for raising institutional governance issues at Rhodes University (Southall and Cobbing 2001). In more recent times, the issue of decolonisation has become more topical than transformation and raises some critical additional challenges for the academic freedom debate (Heleta 2022).

Within these two main components of the literature on South Africa, the previously mentioned tension is apparent between emphasising *individual* academics and scholars as the fundamental bearers of the right, and emphasising *institutions*. Perhaps to an even greater degree than is the case internationally, South African university managers have been keen to emphasise their autonomy as de facto representatives of higher education institutions while showing comparatively little interest in the protection of individual academics – except in a handful of cases of persecution or alleged persecution of individuals within the professional or personal networks of senior academic managers themselves.⁴

Consider the following statement by the Academy of Science of South Africa on academic freedom from 2010:

“Nonetheless, new threats to academic freedom have recently emerged in South Africa. The new threats are in three areas: (1) the *averredly* intrusive effects of government regulations, (2) *apparently* excessive influence of private sector sponsorship of the universities, and (3) *perceived* limitations of freedom of speech within the universities. The right of academics to criticise university administrations has been particularly contentious. Taken together, these concerns suggest that the values entrenched in the constitution and in education practice are being eroded by government policy, funding agencies, sponsors and donors, and by institutional management.” (Academy of Science of South Africa 2010, my emphasis).

The italicised adjectives suggest that undue state interference had been established, whereas other potential violations of academic freedom were contentious or subject to different perceptions and interpretations. Unsurprisingly, a body composed mostly of senior academics, including academic managers, would be inclined to equivocate about internal violations of academic freedom. Meanwhile, the claim that the state was violating academic freedom through

⁴ Muller (2024), for instance, argues – somewhat controversially – that one recent high-profile case was not actually a violation of academic freedom but rather that “the concept [of academic freedom] was misused to protect a member of powerful networks within the South African academy from legitimate criticism and accountability”.

its regulations and funding mechanisms in the post-apartheid period (Jansen 2005) remains, in fact, highly contentious.

Legislative framework and accountability

The Constitution imposes obligations on the state relating to higher education:

“29. (1) Everyone has the right—
 (a) to a basic education, including adult basic education; and
 (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.”

“Further education” here includes university education. Other parts of the Constitution, and associated legislation like the Public Finance Management Act (Republic of South Africa 1999), impose a range of other duties on the state, meaning that it cannot simply transfer funds to universities without some oversight of the higher education sector. Those and other responsibilities have been interpreted and elaborated in the Higher Education Act (Republic of South Africa 1997). Indeed, it is this Act that makes many of the more notionally democratic “self-governance” structures within universities a formal requirement: if institutional managers attempt to disestablish such structures the Act would be the basis for a legal challenge.

The Act does enable “ministerial interventions in higher education institutions” but only on administrative grounds. Seemingly dramatic powers such as the ability to close public higher education institutions would need to be used in a rational way in accordance with the Promotion of Administrative Justice Act (Republic of South Africa 2000) and with the constitutional provisions captured in the preamble of the Higher Education Act.

If the Higher Education Act (Republic of South Africa 1997) has one evident and overarching weakness it is not its treatment of institutions but rather its treatment of academics, who are classified as “academic employees” and whose rights and responsibilities are entirely delegated to “applicable labour law”. This clearly fails to adequately capture the constitutional protection of academic freedom, but this weakness has largely been neglected in the extant literature.⁵ The framing of the role and rights of academics merely within generic labour law is itself indicative of the neglect in practice of academic freedom as it pertains to individual academics.

The only aspect of legislation that addresses this, albeit indirectly, is the stipulation that the “majority of members of a senate must be academic employees” (Republic of South Africa

⁵⁵ A notable exception is Southall and Cobbing (2001), which I discuss further below.

1997, s28.4). In principle, this should provide a partial safeguard against abuses by institutional managers – but in practice it appears to have been circumvented fairly easily in some institutions.

An alternative, or complementary, avenue to fulfil the public accountability requirement is through national and provincial legislatures. However, numerous studies have noted the limited oversight capacity of South African legislatures in practice. A further challenge is that universities appear reluctant to participate in public accountability processes. A recent report of the Portfolio Committee on Higher Education of Parliament noted that:

“The Committee has observed an emerging culture of some form of resistance to account to Parliament by some institutions of higher learning, and often, institutional autonomy is used to repel public accountability. The Committee further noted that universities are beginning to emphasise their statutory powers and institutional autonomy whenever Parliament calls them to account. Concerns have been raised within the higher education sector of what is perceived as an oversight infringement on institutional autonomy and interference at universities by Parliament and politicians. There have been calls by the South African Union of Students (SAUS) to revisit the notion of institutional autonomy by universities as public universities often use this concept to evade public accountability.” (Parliament of South Africa 2022)

Despite some university managers and many academics regularly berating the state and Parliament for not being transparent enough, obtaining even the most basic university documents can be difficult and South African universities score very poorly on formal institutional disclosure requirements (Crous 2017). Based on this author’s direct experience, internal financial information – such as departmental financial balances and distribution of funds – is often unavailable even to academics within those departments and institutions. While the present article focuses on academic freedom, broader failures of accountability and transparency within universities contradict efforts by university managers to dismiss the notion that internal dynamics may be negative or harmful. The two sets of issues are sometimes connected: an early post-apartheid example of an apparent violation of academic freedom, and a shift to “corporate authoritarianism” to conceal gross breaches of corporate governance, was the “Shell affair” at Rhodes University noted above (Southall and Cobbing 2001).

THE INCENTIVISED UNIVERSITY AND ACADEMIC FREEDOM

Marginson (2014) argues that academic freedom should be understood “as concrete university practices nested in specific relational environments” (2014, 24). In doing so, he pushes back against the most common, normative expression of academic freedom to argue that descriptive accounts of academic freedom are at least as important. Marginson is also interested in these

questions across countries and cultural contexts – with a particular focus on comparing the United Kingdom and China. He examines seven aspects of nation states that influence higher education systems in important ways: the character of the nation-state, educational culture, the role of the state in higher education, the financing of higher education, the dynamics of research, hierarchy and social selection, and the fostering of world-class universities. Although I will not dwell on such considerations here, the nuanced differences between British and Chinese academic freedom he discusses – such as how academics critique the state – may provide valuable insight into different cultural approaches *within* the South African academy.

For our purposes, the key point is that if one conceives of academic freedom as a right *ex ante* – as we can do in South Africa given the existing constitutional provision – the question then is: *what* relational environment is conducive to the practices that produce or allow academic freedom?

Academic freedom through the lens of The Incentivised University

In *The Incentivised University* (2021), Muller argues against what he suggests is a growing modern tendency to determine the priorities and steer the behaviour of academics and universities through quantitative metrics and extrinsic incentives. The analysis links the philosophy of science literature on scientific progress to the higher education literature on managerialism, neoliberalism, the influence of metrics (such as university rankings), research output incentives and related mechanisms for “steering” higher education systems, institutions and scholarly activity.

The book posits a framework in which external parties seek to steer scholarly activity towards the more rapid development of socially valuable knowledge, then demonstrates that such approaches face fundamental philosophical and practical problems. A philosophical problem is that since the truths of interest are unknown *ex ante*, it is unclear how external parties could steer scientific researchers towards it – or assess when they are failing to do so. A key practical problem is that quantitative metrics used for this purpose are often inadequate proxies for what is socially and intellectually valuable. Moreover, using such metrics to allocate reward necessarily undermines the correlation between the metric and the actual desired outcome.

In light of those arguments, Muller concludes that higher education systems globally should move away from this model.⁶ The alternative, which he briefly sketches, is to focus instead on cultivating desirable institutional norms and cultures that provide a conducive

⁶ Beiter (2019) comes to similar conclusions, but starting with academic freedom as a fundamental right.

environment for the pursuit of knowledge in the public interest – along with intrinsic motivation for researchers.

A final point worth noting is that Muller emphasises the importance of contextual variation in determining the extent of the harm that the “incentivised university” model could cause. In particular, he argues that less well-established and less well-resourced higher education systems – with lower and more variable quality – will likely suffer greater harm by trying to drive institutional behaviour through extrinsic incentives.

Now let us return to the question of academic freedom, which is not addressed directly in Muller’s book. It should be reasonably evident from the preceding discussion that the fundamental basis for these two approaches – a higher education system founded on academic freedom versus one driven by extrinsic incentives – is entirely different. More than that, the institutional culture of the incentivised university is necessarily hostile to academic freedom (Olssen 2022) since *by its definition* academic freedom means the right to pursue scholarly activities without – or in disregard of – external interference.

The initial hope of the state- or university-level bureaucrat may be, as with the parallel concept of “nudging” (Thaler and Sunstein 2003; 2021), that individuals will act in the desired fashion without having to be coerced. However, the nature of the incentive system is such that a failure of the individual to respond as desired will have adverse effects, even if only in relative terms, for intermediaries. Suppose an academic declines to respond to publication incentives and decides to work on an intellectual project that will produce a single article in seven years’ time: their head of department and dean will suffer the consequences. In that case, the university will receive less money (in the South African case) and perform less well in the rankings. Therefore, an incentive is created for these intermediate actors to coerce or punish the academic for not “being incentivised”.

Similar issues arise when it comes to outward-facing activities such as “social impact”. All else equal, academics who are more modest about the direct value of their research will likely have lower impact. That will result in marginally lower status for the university and therefore – in the current environment – for the prestige of the principal or vice chancellor. That attitude, too, is unlikely to be tolerated without some attempts at coercion.

In these examples, we are conceiving of a scholar who simply does not cooperate. However, one could imagine an academic who speaks out, internally or externally, against institutional mechanisms that reward incentive-driven activities. Such a stance poses an even greater threat to intermediaries within the system. Recall that the UNESCO definition includes “the liberty of individuals to express freely opinions about the institution or system in which they work”. This is consistent with governance principles in which universities are ultimately

run by the community of academics, along with representation from students and non-academic workers, *through* management. Yet this vision is at odds with the idea that academics and institutional managers act on the basis of extrinsic incentives designed to dominate their motives and control their behaviours.

THE INCENTIVISED UNIVERSITY IN SOUTH AFRICA

In many respects, South Africa represents a valuable case study of how the dynamics of the incentivised university are inherently *incompatible* with academic freedom. For instance, a great deal has now been written on the harms – such as predatory publishing and other forms of rent-seeking behaviour – caused by the publication incentive scheme that forms part of the block grant allocation formula (Vaughan 2008; Muller 2017; Tomaselli 2018; Kerr and de Jager 2021; Mouton and Valentine 2017). The significant weight that university management place on university rankings is evident in numerous press releases over the last decade in which institutions celebrate their purported successes, and it has also been the subject of some scholarly debate and analysis (Soudien 2021; McKenna 2024).

Other scholars have made similar observations, through the somewhat narrower lenses of “managerialism”, “corporatisation” or “bureaucratic authoritarianism”. For example, Southall and Cobbing refer to “the managerial revolution and the shift to corporate authoritarianism”. They side with Du Toit (2000) and others who emphasise *internal* threats to academic freedom, but argue that such accounts do not go far enough. The following excerpt of their argument is striking:

“Administrative authoritarianism, which is inherent to the new managerialism, represents a major attack upon academic freedom in that it aspires to subject individual academics to centralised control, and interprets dissent and criticism as insubordination, whilst itself remaining, largely unaccountable” (Southall and Cobbing 2001, 34)

To concretise the concern about internal violations, consider the following recent example of which this author had direct knowledge and involvement. At one of South Africa’s largest commerce faculties, the faculty management tabled a policy – under the umbrella of research ethics – that would forbid academics from mentioning the names of private corporations in their research without prior permission from those corporations. The implication was that under such a policy an academic could not, for example, write a book entitled “Anglo American and the Rise of Modern South Africa” (Innes 1980), or a article entitled “Peripheral Capital Goes Global: Naspers, Globalisation and Global Media Contraflow” (Teer-Tomaselli, Tomaselli and Dlodla

2019), without permission from Anglo American or Naspers.⁷ Nor could they write a case study of a regulatory issue that involved a particular company without ethical clearance, even if all information used was in the public domain. Remarkably, few academics in a faculty of hundreds opposed this proposal. Some of those who did merely asked for an exemption or expedited process of permission for their work, or the work of their research units, but did not question the broader principle. The remaining tiny minority invoked academic freedom as a basis for rejecting the proposal, but “management” were reluctant to acknowledge that any infringement of academic freedom was implied.

This incident, which effectively sought to unconstitutionally place a generic circumscription on the academic freedom of hundreds of academics in relation to their research, received no public reporting or media coverage. Why would it when such matters are kept hidden from the public and when, in some institutions, any academic who raised the matter in public may be threatened with a disciplinary hearing for “leaking confidential information”? Nor are the objections and responses of staff who did speak up reflected accurately in the faculty minutes. In various ways, this example illustrates the accuracy of concerns expressed by African scholars decades earlier regarding the harmful influence of market actors (Zezeza 2003). Suppose this is representative of what goes on in South African universities on a yearly basis, which I believe it is. Then there is good reason to believe that academic freedom infringements are widespread internally while being concealed from oversight bodies and the public.

Now, some may object that the above example is merely one anecdote and cannot be relied upon to reflect the South African higher education system as a whole. On the face of it, such a concern has merit, as any empirical researcher would appreciate. But before conceding that point let us briefly reconsider the details. The event occurred in one of the largest faculties and universities in the country. Hundreds of academics participated in the process of considering the proposal. Only a tiny minority objected and many others evinced no understanding of academic freedom in general or the specific issues raised in relation to this case. These point to a severe, systematic failure, not an isolated, ad hoc occurrence.

Nevertheless, systematic evidence is indeed needed and, despite the many controversies about academic freedom in the post-apartheid era, it is striking that such evidence has not been gathered. One positive step in that direction is a recent survey of institutional cultures at eight South African universities, commissioned by the Council on Higher Education.⁸ Although the

⁷ These references are simply examples to illustrate the point and did not arise in the instance discussed.

⁸ The findings of the report were presented at the CHE’s Higher Education Conference 2024: “Deepening the Discourse on Academic Freedom, Institutional Autonomy and Public Accountability South African Higher Education” (28 February 2024).

study did not directly assess academic freedom, its findings appear to confirm the “bureaucratic authoritarianism” and its chilling effect on debate, agency and legitimate dissent. The researchers found a “rigid hierarchy of authority” in which “obedience is expected of subordinates”. They also note a culture of coercion and micro management linked to an emphasis on “quantifiable deliverables”, including student graduation and research output.

TOWARDS ACADEMIC FREEDOM IN SOUTH AFRICA

Despite a strong constitutional provision, regular assessment and active upholding of academic freedom have been neglected in the post-apartheid era, except in relation to protecting institutional autonomy from the state or for use in partisan, quasi-political disputes (Muller 2024). I have argued, consistent with earlier literature, that the focus on institutional autonomy and neglect of the freedom of academics themselves is likely the result of two factors. The first is the excessive influence of university managers, who invoke academic freedom – in both legitimate and illegitimate ways – to protect themselves from interference or accountability. The second is that the post-apartheid culture of the higher education system has become a jumbled mix of lingering apartheid-era insularity and autocratic institutional cultures along with the managerialist, extrinsic incentive-driven funding and pursuit of superficial measures of prestige by vice chancellors and their management teams. The recent institutional culture survey conducted on behalf of the Council on Higher Education points to dynamics that are extremely unlikely to be conducive to academic freedom.

What is the way forward, then, for South African higher education? I propose six steps that need to be taken to meaningfully translate the constitutional provision and commitment to academic freedom into reality within universities.

The first step is that organisational principles must explicitly recognise that academic freedom extends to dynamics within institutions, including between management and individual academics.

The second step, consistent with what has been proposed in addressing the harms of the “incentivised university”, is to reorient the focus of universities towards building institutional cultures that substantively – rather than superficially – reflect the academic freedom provision in the Constitution and universities’ own stated organisational principles. Similar conclusions have been reached in other areas, such as addressing gender-based violence, harassment and discrimination – where institutions may perform well on rhetoric but poorly in implementation. This necessarily means that the pursuit of extrinsic incentives and prestige, whether subsidies for research output or placement on global university rankings systems, must be displaced as institutional priorities.

In principle, universities should be able to do this themselves – individually and collectively. After all, they have institutional autonomy! In reality, given the evident effect of higher education funding systems and policies and the failure of universities to coordinate principled action of this kind so far, the third step needed to address this failure is changing the funding system (and potentially relevant policy documents). Public oversight structures should all play a part – from the Council on Higher Education to the Department of Higher Education and Training to Parliament, along with coordinating bodies such as Universities South Africa and the Academy of Science of South Africa.

A fourth step is that the state of academic freedom should be the subject of regular institutional surveys conducted by an appropriate public, external organisation. The disjuncture between South Africa’s position on the global academic freedom index and institutional realities reflects the importance of a more detailed, locally specific assessment. Moreover, this again demonstrates the limitations of global rankings. It is crucial that the public organisation that conducts or oversees such surveys be outside the institutions surveyed, but not within the state – since that could raise concerns about political or other interference.

Fifth, academics, students and non-academic employees must be educated and trained to be better informed about matters relating to academic freedom. There has been no systematic assessment of university induction or training programmes for any purpose, and no study has examined whether institutions provide academic freedom training for their staff. However, I hypothesise that few institutions, if any, mention, emphasise or explain the fundamental role of academic freedom in higher education; at most, academic freedom is referred to in passing in institutional policy documents. Of course, such education should not be limited to new entrants, since senior incumbents are – by definition – likely to be a greater part of the problem, either actively or through inaction. Greater awareness and appreciation of the importance of academic freedom may contribute to increased mobilisation of academics themselves, rather than relying on the state or quasi-public bodies to “impose freedom” upon them (Hayes 2022).

Finally, the sixth step is that an independent body should be created outside universities to which academics can take cases concerning the violation of academic freedom. This is the most novel of the six proposed steps and likely the most controversial. However, universities have not shown the inclination or ability to set up adequate internal or external mechanisms to address this problem. There are few, if any, universities where an academic would have much chance of bringing a complaint against a collection of powerful line managers who had violated that individual’s academic freedom. As in private corporations and most state institutions, human resource departments in universities unfortunately appear to see themselves as functionaries of management rather than upholders of the Constitution.

While in principle the judicial system should act as the protector of academic freedom, the reality is that litigation is too expensive and too slow to address the vast majority of possible violations of academic freedom. Suppose an academic begins receiving poor performance assessments after criticising proposals by a Dean in a faculty meeting: is it realistic to expect them to pay potentially millions of rand in legal fees to take that complaint all the way to the Constitutional Court (if necessary) over a period of years? Bearing in mind that managers responsible for academic freedom violations can often use public financial resources, from within universities, to defend themselves. Do current generic provisions of labour legislation adequately cover such scenarios? Although this deserves more extensive analysis, I suggest that the answer to both questions is in the negative and hence an alternative accountability structure is needed with significant investigative and enforcement powers.

While it is concerning that South Africa has failed in the post-apartheid era to move more decisively and comprehensively in the direction of widespread, substantive pursuit and protection of academic freedom *within* institutions, the country possesses many of the legal, intellectual, political and institutional resources to do so. In moving away from the misguided and harmful current model of incentivised universities, academic freedom should be one of the main priorities in building high quality institutions in the fourth decade of democracy. Success will be measured by substantive, transformative action – not rhetoric.

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