



Regulatory Bodies, Academic Freedom and Institutional Autonomy in Africa: Issues and Challenges – The Nigerian Example

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Abstract

Academic freedom is often described as a four-fold right of a university 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. It also entails the freedom of a university to select its own staff and to determine its own standards, as well as the freedom of both staff and students to free expression in their teaching, studying, publishing and research. Institutional autonomy, on the other hand, is the freedom an educational institution enjoys in managing its internal affairs without undue interference from outside bodies or persons, especially from the government or its agencies. An effective enjoyment of academic freedom, however, requires institutional autonomy. In recent times, Nigerian universities have witnessed many issues challenging their academic freedom and institutional autonomy such as summary dismissal of university teachers for being critical of government educational policies and other related issues. Against this background, this article argues that the establishment of regulatory bodies such as the Nigerian Universities Commission, the Joint Admission and Matriculation Board and the like has eroded the previous autonomy and freedom enjoyed by the universities in the four cardinal ways mentioned above. The article advocates a system which adequately guarantees academic freedom. It also commends to Nigeria and other African countries the South African position which guarantees the right to academic freedom and scientific research in its Constitution.

Résumé

La liberté académique est souvent présentée comme le droit d'une université à déterminer pour elle-même, *qui* peut enseigner, *comment* enseigner, *quoi* enseigner, *qui* est admis dans l'enseignement. Elle implique aussi la liberté d'une université de sélectionner son propre personnel enseignant et de

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déterminer ses propres normes, ainsi que la liberté d'expression des uns et des autres dans l'enseignement, la publication et la recherche. D'un autre côté, l'autonomie institutionnelle signifie la liberté d'une université de gérer ses affaires internes sans ingérence extérieure, en particulier du gouvernement et de ses agents. Or, les universités nigérianes subissent ces dernières années de nombreuses contraintes affectant liberté académique et autonomie institutionnelle. Dans ce contexte, cet article soutient que la création de certains organismes réglementaires, telles que la Commission des Universités nigérianes et la Commission Conjointe d'Immatriculation, a érodé l'autonomie et la liberté existant jusque-là dans les universités. Il plaide pour un système qui garantit la liberté académique, prenant en exemple la situation sud-africaine qui garantit le droit à la liberté académique et la recherche scientifique.

Introduction

Since the Second World War, there has been a global emphasis on human rights, which led to the passing of the Universal Declaration of Human Rights and the signing of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. These have been reflected in regional human rights treaties and human rights guarantees contained in national constitutions.¹ The Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, constitute the International Bill of Rights, and collectively, they provide for the right to education at global level.²

The right to education is given wide recognition in a number of important international and regional human rights instruments.³ The UDHR, for instance, states that the right to education is for all people and states further that elementary education shall be free and compulsory while higher education shall be accessible to all on the basis of merit.⁴ In the same vein, in its articles 13 and 14, the ICESCR also guarantees the right of everyone to education. Although the issue of academic freedom is not explicitly mentioned in article 13 of the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) deems it appropriate and necessary to make some observations about the issue because in its experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom.⁵

According to the Committee, the right to education can only be enjoyed if accompanied by the academic freedom of staff and students.⁶ The enjoyment of academic freedom requires the autonomy of institutions of higher

education.⁷ The twin concepts of ‘academic freedom’ and ‘institutional autonomy’ are among the most important issues concerning the existence, mission and role of the university throughout the world.⁸ Thus, universities have always considered the two concepts to be indispensable values and have, therefore, defended them as such.⁹ Ajayi, Goma and Johnson posit that the two concepts relate to the protection of the university from day to day direction by government officials, specifically on the selection of students; the appointment and removal of academic staff; the determination of the content of university education and the control of degree standards; the determination of size and rate of the growth; the establishment of the balance between teaching, research and advanced study, the selection of research projects, and freedom of publication; and the allocation of recurrent income among the various categories of expenditure.¹⁰ No one familiar with the operations of the university in the discharge of its mission and role in society can doubt the value of academic freedom and institutional autonomy.¹¹

In this article, an attempt is made to examine the meanings, content and challenges of academic freedom and institutional autonomy in Africa, using Nigeria as an example. The article contends that academic freedom and institutional autonomy, if properly practised, can better guarantee or strengthen the right to education. The article is divided into five parts. Following this introduction is the second part which examines the meanings of the terms, ‘academic freedom’ and ‘university autonomy’. The part also discusses institutional accountability. In part three, the article examines academic freedom, institutional autonomy as well as the issues challenging academic freedom in Nigerian universities. Academic freedom and its interdependency with other human rights are discussed in part four while the conclusion forms the last part.

Meanings of Academic Freedom and Institutional Autonomy

Academic Freedom

‘Academic freedom’ as a concept defies absolute definition.¹² It is observed that the word ‘academic freedom’ has often caused confusion because it comes from a medieval intellectual tradition which pre-dates most of the current meanings of the word ‘freedom’.¹³ In this regard, Kaplan and Schrecker note as follows: ‘there is little consensus regarding the meaning of academic freedom although there is agreement that it is something worth protecting. The concept has been invoked in support of many contrary cause

and positions. It, for example, was used to justify student activism and to repress it, to defend radical faculty and to defend their suppression, to support inquiry into admissions or promotion or tenure decisions and to deny such inquiry. It is, at best, a slippery notion, but clearly a notion worth analysis'.¹⁴ Notwithstanding the lack of consensus on what it means, various writers and scholars have, however, attempted given working definitions of academic freedom.

According to Smith, academic freedom has been described as a fourfold right of a university: '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'.¹⁵ It also entails the freedom of a university to select its own staff and to determine its own standards, and the freedom of both staff and students to free expression in their teaching, studying, publishing and research.¹⁶ Nicol submits that academic freedom means the freedom of the university to select its teachers and students, to set the contents and standards of its curriculum and research and to provide a favourable atmosphere where professors and students are free to be involved in creative processes leading to discovery of new truths and the confirmation of old ones.¹⁷ In the same vein, Tight posits that 'academic freedom refers to the freedom of individual academics to study, teach, research and publish without being subject to or causing undue interference...'¹⁸

Ajayi et al., also define academic freedom as 'the freedom of members of the academic community, individually and/or collectively, in the pursuit, development, and transmission of knowledge'.¹⁹ It is opined that in the pursuit of knowledge, academics may not be hindered from following the approach which they think is most fruitful with regard to scientific or scholarly discovery. It guarantees the right of academics to freely teach according to their conscience and convictions.²⁰ In this regard, Russell states that academic freedom is 'the freedom for academics within the law, to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy...'²¹ Academics have to teach and do research, in the course of this, they have to express certain views which may not be popular but which may nevertheless be valid. This freedom requires that they should pursue the truth without any fear of reprisals.²² It is a freedom to follow a line of research where it leads, regardless of the consequences.²³ On this point, O'Hear submits that 'academic freedom amounts to no more than a right supposedly given to academics to say and teach what they believe to be true'.²⁴

Similarly, students have to learn and in the process they may ask questions or express certain views. Academic freedom, therefore, entails that they should not be punished for asking those questions or expressing those views.²⁵ The purpose of academic freedom is to enable both academics and students to do their job effectively.²⁶ Goodlad postulates four aspects of academic freedom namely: (i) the freedom of students to study: an issue concerning access; (ii) the freedom of students in what they learn and how they learn it: an issue concerning curriculum and pedagogy; (iii) the freedom of faculty (members of the lecturing staff) to decide what to teach and how: issues concerning course approval, validation, and accreditation; and (iv) the freedom of faculty to carry out research: an issue concerning choices to be made both by faculty themselves and by those who fund their researches on the relative intellectual, practical, financial and other merits of the claims of different programmes and projects for time and attention.²⁷

Institutional Autonomy

Like the term ‘academic freedom’, ‘institutional autonomy’ is also susceptible to the problem of precise definition. According to Ojo, ‘university autonomy may be defined as that freedom granted each university to manage its internal affairs without undue interference from outside bodies, persons, or, most especially, from the government that in most parts of Africa, sustains it financially’.²⁸ Institutional autonomy implies: (a) the freedom of universities to select their students and staff by criteria chosen by the universities themselves; (b) autonomy to shape their curriculum and syllabus, and (c) the freedom to decide how to allocate, among their various activities, such funds as are made available to them.²⁹

The CESCRC states that ‘[a]utonomy is that degree of self-governance necessary for effective decision-making by institution of higher education in relation to their academic work, standards, management and related activities’.³⁰ University autonomy relates to the corporate freedom of an institution while academic freedom is concerned with both the autonomy of the university and the freedom of teacher and student in learning and in research.³¹ In this context, Ajayi submits that university autonomy does not mean the right of the individual professional but the rights of the institution to govern itself.³² University autonomy is further defined ‘as the freedom and independence of a university, as an institution, to make its own internal decisions, whatever its decision-making processes are, with regard to academic affairs, faculty and student affairs, business affairs, and external relations’.³³ It means self-government by a university.³⁴ For a university to play a mean-

ingful role and discharge its responsibilities effectively, it must enjoy a high degree of institutional autonomy, in addition to academic freedom of its academic staff.³⁵ As part of its autonomy, it must have the freedom to run its own affairs, without external interference; it must have the right to organize its internal affairs, to make decisions, and to establish its own academic programmes.³⁶

The content of institutional autonomy may be summed up thus: 'the principle of institutional autonomy refers to a high degree of self-regulation and administrative independence with respect to student admissions, curriculum, methods of teaching and assessment, research, establishment of academic regulations and the internal management of resources generated from private and public sources. Such autonomy is a condition of effective self-government'.³⁷ In this respect, Rendel submits:

Academic freedom for an institution usually includes autonomy or self-government according to the terms of its constitution, with power to determine academic policies, the balance between teaching and research, staffing ratios, the appointment, promotion and discipline of staff at all levels, the admission and discipline of students, curricula, standards, examinations and the conferring of degrees and diplomas; and with control over the material resources needed to undertake these activities.³⁸

It should be noted, however, that academic freedom in its broadest sense includes university autonomy, but the two terms are not necessarily synonymous.³⁹ While university autonomy relates to the corporate freedom of an institution in society, academic freedom on the other hand is concerned with both the autonomy of the university and the freedom of teacher and student in learning and in research.⁴⁰ In principle, it can be argued that academic freedom and university autonomy cannot be separated. The close relationship between the two concepts cannot be denied since the two go hand in hand.⁴¹ Tight explains that the view that the two concepts are mutually supporting and that it is desirable to encourage both if each is to flourish, remains the best summary of the symbiotic relationship between the two.⁴²

It is submitted that the two concepts, though closely related are, however, not the same for the following reasons: first, the actual content of academic freedom and university autonomy differ in the sense that the former refers to the rights of the individual academic, whereas the latter refers to those aspects of the right to be pursued by the institution. Secondly, although autonomy over academic-related matters includes matters of primary importance to the individual lecturer, academic freedom applies to everybody involved in the practice of science and not only to lecturers. Thirdly, for the

fact that an autonomous university may restrict the academic freedom of its lecturers, autonomy, therefore, is no guarantee of academic freedom; it is, however, a question whether academic freedom can flourish in the absence of autonomy.⁴³

Institutional and individual academic freedoms are both essential for a conception of academic freedom which implies that all decisions concerning the production of knowledge within institutions of learning must, ultimately, be taken by academics. Smith declares that decisions about the hiring of academic staff and the admission of students are as integral to this process as the decisions that individual lecturers take about the truth of various theories they wish to propound.⁴⁴ Therefore, the university's right to decide who will teach involves not only the hiring and firing of lecturers but also the right to make decisions about their conditions of service, their status in the institution and their access to its resources.⁴⁵ Russell points out that interference with the university's right to determine its own academic standards by, for example, choosing how many students to accept and deciding the standard of its degree leaves it without real academic freedom.⁴⁶ Corroborating this position, Smith asserts that without the institutional right to decide who may be admitted to study and who may teach, the research priorities and capacities of individual academics will inevitably be significantly restricted.⁴⁷

Working from the various definitions propounded by scholars as stated above, one can, therefore, conveniently conclude that academic freedom in its broadest sense encompasses university autonomy. The two concepts go hand in hand and each is essential for the effective enjoyment of the other.

Institutional Accountability

An important component of institutional autonomy is institutional accountability. The CESCRR states that issue of institutional autonomy must be consistent with systems of public accountability. According to the committee, '[s]elf-governance or institutional autonomy must be consistent with systems of public accountability, especially in respect of funding provided by the state. Given the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability. Where there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible'.⁴⁸ It is submitted that the proportion of public income that goes into university budgets requires universities to be accountable. It is essential for governments to know how the money is spent, what the results of teaching are, whether or not the students are really well-educated when they gradu-

ate, and the result of research, whether or not they can be put to good use by society and whether or not their quality stands up to international comparison and standard.⁴⁹

However, the major problem is how to reconcile the autonomy of the university with government control of finance. The state is answerable for public funds and, therefore, has a specific duty and responsibility to allot public funds in a manner which assures the efficiency of the educational system and an economical use of available resources.⁵⁰ Since government provides funds to universities, it is logical that it should know how the money is spent.⁵¹ Ajayi et al., submit, paradoxically, that teaching and research seem to suffer both when universities are entirely autonomous and when they are rigidly supervised.⁵² It is admitted that academics as decision-makers need a partner to whom they should be accountable. This partner may be a state bureaucracy, or their own university administration, or a foundation or any authority to which they must periodically demonstrate the scientific and social relevance of their activities and which in turn grants them the necessary autonomy and resources while mediating social demands.⁵³

The experiences across Africa, however, show that the issue of institutional accountability poses dangers to institutional autonomy in the sense that government finance officers, who may at times be ill-equipped to make educational decisions often, take crucial decisions which have lasting adverse effect on educational institutions.⁵⁴ In reality, most African governments use financial control to influence and sometimes to direct their universities on the rate of growth both in terms of capital development and student intake, the staffing of universities and the remuneration payable to academic staff.⁵⁵ It is, therefore, submitted that a degree of financial autonomy is essential for the effective operation of the universities.⁵⁶

Academic Freedom in Nigerian Tertiary Institutions

There is no specific constitutional provision regarding academic freedom in Nigeria. This is unlike the position in South Africa where the constitution expressly guarantees the right to academic freedom. The Constitution of the Republic of South Africa, 1996 provides: '[e]veryone has the right to freedom of expression, which includes ... academic freedom and freedom of scientific research'.⁵⁷ In the Nigerian situation, the concept of academic freedom can be inferred from the provision of section 39(1) of the Constitution of the Federal Republic of Nigeria, 1999 which provides for the freedom of expression and the press. The section states: '[e]very person shall be entitled to freedom of expression, including freedom to hold opinions and

to receive and impart ideas and information without interference'.⁵⁸ Courts have given expansive interpretation to section 39 of the constitution which guarantees the freedom of expression as including the right to establish private schools. Thus, in *Anthony Olubunmi Okogie v Attorney-General of Lagos State*,⁵⁹ it was held that the word 'medium' as used in the constitution is not limited only to the orthodox mass communication media but could reasonably include schools. The court held, accordingly, that any statutory abolition of private primary schools would constitute a violation of the right of proprietors of those schools to freedom of expression. A similar position was taken in *Adewole v Alhaji Jakande & Others*.⁶⁰

Further, Nigeria is a signatory to various international human rights instruments which bear on the right to academic freedom.⁶¹ Article 19 of the ICCPR, 1966 for instance, provides for freedom of expression and to hold opinions from which the concept of academic freedom can also be inferred. The article states:

- '1. Everyone shall have the right to hold opinions without interference.'
- '2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in form of art, or through any other media of his choice'.⁶²

Article 15(3) of the ICESCR also obliges the states parties to respect the freedom indispensable for scientific research and creative activity. It is submitted that the combined provisions of section 39 of the 1999 Nigerian Constitution, articles 19 and 26 of the UDHR, article 15 of the ICESCR and article 19 of the ICCPR collectively guarantee academic freedom in Nigeria.⁶³ However, unwarranted government interference and abuses of academic freedom have eroded the autonomy and quality of higher learning institutions in the country. For example, the summary expulsion of university professors and lecturers for being critical of government educational policies and other national issues epitomizes a gross violation of academic freedom.⁶⁴ In such a hostile environment, the academic community is often careful not to overtly offend those in power. This contributes to the perpetuation of a culture of self-censorship.⁶⁵

Similarly, the establishment of many regulatory bodies in the Nigerian tertiary education sector has compromised the ideal concept of academic freedom and institutional autonomy in the country. The Nigeria University Commission (NUC), for instance, is charged with the responsibility of advising the federal and state governments on all aspects of university educa-

tion and general development of universities in Nigeria.⁶⁶ In addition, this body is vested with the power to disburse money to universities in the country.⁶⁷ The functions of the NUC are elaborate and are expressly stated in section 4(1) of the NUC Act. The duties include advising the government and making inquiry into the financial needs, both recurrent and capital, of university education in Nigeria; receiving block grants from the federal government and allocate them to federal universities; taking into account, in advising the federal and state governments on university finances, such grants as may be made to the universities by state governments and by persons and institutions in and outside Nigeria; undertaking periodic reviews of the terms and conditions of service of personnel engaged in the universities; and making recommendations thereon to the federal government, where appropriate, etc.⁶⁸

In the process of performing these functions, the institutional autonomy of Nigerian universities has been compromised. Also, undue rigidity which is capable of hampering the smooth operation of the universities has been introduced. With this arrangement, an unnecessary barrier is placed between the ministry in charge of education and the universities. The commission is to perform its functions of advising the president and governors of the states through the Minister of Education.⁶⁹ In the process of enforcing the formulated policies, some institutions have been starved financially and this is contrary to the ideal of academic freedom and institutional autonomy.

Also, the Joint Admission and Matriculation Board (JAMB) was established for the purpose of conducting examinations for entrance into the Nigerian universities and other higher educational institutions throughout the country. The institutional autonomy to decide who to admit and on what criteria has invariably been transferred from the institutions to this regulatory body. In terms of the JAMB Act, the body has the sole responsibility to set the admission standard and to determine whom and when to admit.⁷⁰ Many factors such as a quota system, educational disadvantaged states policy and federal character have been introduced into admission process, thereby putting merit in second position in some cases. While JAMB determines the number of students each university is to admit, the NUC determines those courses that are to be offered, who will teach them and the qualifications of those to teach those subjects.⁷¹

It is submitted that this arrangement not only profoundly affects various elements of academic freedom and university autonomy; in many respects it completely erodes their exercise. Now in Nigeria, universities may not themselves decide which courses to offer, who will teach them, what re-

search will be conducted, and to whom they will award their qualifications. The state (through NUC) approves or disapproves a university's applications for all these matters and, by approving or rejecting programmes, it decides in effect the direction which a university will be specializing.⁷² A bureaucrat, rather than the university, decides whether a particular lecturer is fit to teach. Also, the state (through JAMB) prescribes admission requirements (and eventually selects and allocates students), assessment methods and criteria and, in effect, decides to whom qualifications should be awarded.⁷³ It is submitted that this constitutes a gross violation of the ideal concept of academic freedom and institutional autonomy which calls for redress.

It is accepted that the grant of tenure to teachers and researchers who have successfully completed a period of probation is a vital aspect of academic freedom.⁷⁴ Tenure is a status which the teacher could take to a new post and retain on promotion until retirement. However, the experience of Nigerian academics is not compatible in this regard. The dismissal of 49 lecturers and professors of the University of Ilorin⁷⁵ in May 2001 during the Obasanjo regime for participating in strike action called by the national body of the Academic Staff Union of Universities (ASUU) is a good illustration in recent times. However, following a prolonged legal battle, the Nigerian Supreme Court declared their dismissal a nullity and ordered their reinstatement.⁷⁶ This was not the first time that the Nigerian government dismissed academic staff on issues relating to academic freedom. Going down memory lane, in 1973, members of the National Association of University Teachers (NAUT) which was the forerunner of the present Academic Staff Union of Universities (ASUU), embarked on a nation-wide indefinite strike to press home their demand for a review of their poor conditions of service. The Gowon-led military government, instead of addressing the issue, responded by sacking the lecturers, giving them 24 hours within which to vacate their official residence.⁷⁷

Also, between 1988 and 1990, ASUU was officially banned by the Federal Military Government of Nigeria. Not daunted, academics continued to organize and networked at both local and national levels under a new name: the Association of University Teachers (AUT). They were able to coordinate their struggle against the World Bank University Sector Loan Facilities and the federal government's commitment to rationalize and retrench staff in the universities. The Obafemi Awolowo University Chapter of the Association on 20 April 1990 hosted a national conference on the World Bank Loan issue. At the conference, academics from various universities agreed

to collectively resist the World Bank loan, and they also decided to openly assert their rights to freedom of association.⁷⁸

The morning after the conference, the military coup attempt of Major Gideon Orka occurred. Two key members of the organizing committee of the conference, Professor Omotoye Olorode and Dr Idowu Awopetu, were framed by government and were immediately arrested and detained as alleged coup suspects.⁷⁹ This was seen by everyone as an open attempt to cow the union in its campaign against unpopular government policies and decisions. Earlier in March 1988, a radical sociology lecturer and anti-apartheid activist from Ahmadu Bello University Zaria, Dr Patrick F. Wilmot along with Ms Firinne N. C. Adelugba of Bayero University, Kano, were abducted and deported from Nigeria on 8 March, 1988 for being critical of government policies.⁸⁰

Academics and universities staff suffered greatly under both the military and civilian regimes in Nigeria. In 1992, ASUU embarked on strike to press home their demands for better condition of service, separate salary structure (Universities Academic Staff Salary Structure) and general improvement on the state of the universities in the country. Reacting to this, the government announced the dismissal of all striking lecturers through a newly enacted decree which categorized university education as essential services and retrospectively prohibited universities teachers from embarking on strike action.⁸¹ The salaries of universities teachers were stopped and dismissal letters were issued to all the lecturers who refused to return to work. All this was done in defiance of a court injunction restraining the government from arbitrarily terminating the appointments of the university lecturers.⁸² This impasse was not resolved until the end of Babangida's regime when Professor Abrahams Imogie was appointed the Secretary for Education to replace Professor Nwabueze who was the then Minister for Education. Imogie directed all the vice-chancellors of Nigerian universities to formally write to each academic staff, withdrawing the earlier letters served on them.⁸³

It is observed, however, that there is hardly any country in the world whose government does not retain some forms of control over its universities. Eso posits that this accords with common sense, as the universities are not separate governments per se but exist for the service and good of the country.⁸⁴ In the same vein, Ajayi et al., submit that pragmatism dictates certain limitations which academics and their universities must accept and put up with in practice.⁸⁵ In Nigeria, the need for efficient management, accountability and periodic evaluation are forcing their way to centre stage,

especially in the face of strangulating stringency and declining resources. A major issue then is the extent to which these pose threats to academic freedom and university autonomy.⁸⁶ It is also observed that academic freedom and institutional autonomy have their own limitations as there is no meaningful freedom without a limitation. It should be pointed out, however, that there should be only limited control of universities by government agencies.

The unsavoury experiences violating academic freedom are not peculiar to Nigeria; violation of academic freedom is in fact a common feature of most African countries. For example, summary expulsion of over forty university professors and lecturers from Addis Ababa University, Ethiopia, in the mid-1990s epitomizes a gross violation of academic freedom and illustrates the intolerance of academic freedom that governments in many African countries have.⁸⁷ Examples may also be taken from South Africa, especially during the apartheid era. While it lasted, apartheid educational policy impacted adversely on the academic freedom and institutional autonomy in South Africa.

In 1957, when the National Party Government made clear its intention of applying the principle of racial separation in university education, the University of Cape Town and the University of the Witwatersrand unequivocally declared their opposition in a booklet titled *The Open Universities in South Africa*.⁸⁸ The publication emphasized four essential freedoms of a university, namely, the right of the university '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'.⁸⁹ As a result of the moves by government to close the doors of these universities to African, Asian and Coloured students, during the 1957, the fourth aspect of the four freedoms, to wit, 'freedom to determine who may be admitted to study' was given much emphasis.⁹⁰ The apartheid education system has been criticized as criminal, oppressive and a violation of academic freedom.⁹¹ In this regard, Polanyi contends that '[t]o exclude black students from a university is an insult to their human dignity, it is inhuman. To force them into native reserves under the supervision of white authorities is oppressive. To pretend that this is done in order to preserve their native culture is intellectually dishonest. To demand the participation of universities in a programme of inhumanity, oppression and intellectual dishonesty is a violation of academic freedom'.⁹²

During the apartheid era, academics were subjected to trial in violation of their freedom of expression and academic opinions. Trial and prosecutions for expressing one's academic views is capable of limiting individual's academic freedom. The case of *S v Van Niekerk*,⁹³ in which Dr van Niekerk

of the Law School of the University of the Witwatersrand was tried for contempt of court, is a classical example. The contempt arose from the article he published in the *South African Law Journal*⁹⁴ in which he discussed the racial factor in the imposition of death penalty in South Africa. Although, he was acquitted on the grounds that he had not intended to be contemptuous of the court, the judgment was a warning or restraint against pursuing research of this kind by any scholar. The judgment has been criticized by the council of the Society of University Teachers of Law of South Africa as an attempt on the part of the authorities to discourage academic examination of the judicial process.⁹⁵

The inhibitions on freedom of speech (academic freedom) resulting from the possibility of contempt of court charges were further emphasized in a sister case of *S v Van Niekerk*.⁹⁶ In that case, the appellant, a professor of law at the University of Natal, was charged before Fannin J in the Durban and Coast Local Division with the two crimes of contempt of court and attempting to defeat or obstruct the course of justice. The proceedings arose out of a speech he delivered at a public meeting held in Durban City Hall on 9 November 1971. This meeting was directed against certain aspects of the Terrorist Act, 83 of 1967 (more especially, detention for interrogation without trial and solitary confinement) and to the circumstances in which various people had died while detained under that Act. The meeting had in attendance between three and five thousand people.

He spoke from a typewritten speech, a copy of which he handed to the press. In it, he supported a 'demand for an open judicial enquiry into possible abuses under the Terrorist Act', strongly condemning certain provisions of the Act, equating the obtaining of information from detainees with the procuring of evidence by torture. Secondly, he criticized what he considered to be a reprehensible inaction on the part of lawyers regarding those provisions, specifically including the judiciary. Thirdly, he advanced a 'solution' which he had exhorted the judiciary to adopt, including an exhortation to all judges that they should, in effect, ignore the testimony of all witnesses who had previously been detained under the Act. The whole tenor of his speech was criticism of the inaction of lawyers (including judges), and a call for protest and action against those provisions which he regarded as otiose. He criticised the judges for not raising their voices in protest.

The 10 November, 1971 issue of the *Daily News* (a newspaper circulating in Durban and elsewhere) carried a fairly comprehensive report of the City Hall Meeting and of the resolutions passed thereat. Reference to a petition supporting this request, and which, inter alia, made mention of 'the

Pietermaritzburg Terrorist Trial', was also included in the newspaper report. This latter, under the banner heading 'Appeal to the Judiciary', incorporated a brief summary of appellant's speech.⁹⁷ He was convicted on a contempt charge and on a charge of attempting to defeat or obstruct the course of justice for inviting judges to reject the evidence of witnesses held for lengthy periods under the Terrorism Act 83 of 1967. He was sentenced to pay a fine of 100 Rand with an alternative of one month's imprisonment.⁹⁸ Confirming the judgment on appeal, the court, Botha, JA held: 'for all the foregoing reasons, I accordingly come to the conclusion that the appellant was rightly convicted of contempt of court'.⁹⁹

Security law also impacted greatly on academic freedom in South Africa during apartheid days. The Publications and Entertainments Act 26 of 1963 and the Suppression of Communism Act 44 of 1950 were the two foremost statutes proscribing literature in South Africa during apartheid. In terms of the Publications and Entertainments Act, the Publications Control Board was empowered to declare any literary work 'undesirable'. During this period, it was reported that over 26,000 works, many of which were books of accepted literary quality, were banned in South Africa.¹⁰⁰ Similarly, under the Suppression of Communism Act, the writings of any person listed or prohibited from attending any gathering, or who was formerly resident in South Africa and who the Minister of Justice was satisfied was directly or indirectly furthering any object of communism, might not lawfully be used either as references for teaching purposes or as sources for scholarly writings.¹⁰¹

The consequence of this Act was that unless with the permission of the Minister of Justice, many works of well-known South African scholars could not be distributed, discussed in the lecture rooms or used as source of academic research work.¹⁰² Restrictions as mentioned above limited the scope of open debate in a number of disciplines in the universities, and inhibited the free flow of ideas and scholarly inquiry.¹⁰³ The limitations on freedom of research under the above circumstances are obvious. In some case, several academics restricted under the Suppression of Communism Act were excluded from both teaching and research in terms of their restriction orders. Others who were given an exemption to teach were prohibited from publishing without ministerial consent.¹⁰⁴ These limitations deterred some scholars from entering certain fields of study (especially contemporary South African Literature and social sciences) or prompted them to pursue less significant inquiries.¹⁰⁵

It is submitted, however, that with the provisions of section 16 of the South African Constitution, academic freedom and freedom of scientific research has become a constitutionally guaranteed right which is binding on the state. It is a right which the state must respect, protect, promote and fulfil.¹⁰⁶ Both staff and students are entitled to this right which the state or institutions may not derogate from except to the extent which the bill of rights is constitutionally limited.¹⁰⁷ For any limitation to this right to be acceptable, it has to be reasonable and justifiable in an open and democratic society.¹⁰⁸ Having a provision such as this in the Nigerian constitution as well as in the constitutions of other African countries will further strengthen the enjoyment of academic freedom in the continent. It is submitted that the autonomy of the university requires that it should have absolute power to determine who may be admitted to study. Power to conduct examinations to determine who should be admitted to study should be left with the universities or other institutions. In South Africa for example, there is no central body conducting examinations for all the universities in the country. With this, the universities determine the criteria for admission and they admit credible candidates.

In Nigeria, data show that larger percentage of candidates who obtain very high scores in JAMB entrance examinations fail to perform well in the universities and are eventually withdrawn from the universities. This accounts for the recent post-JAMB examinations introduced by some universities in Nigeria. Also, most high scorers in JAMB examinations fail to pass the individual university conducted post-JAMB exams. It is therefore recommended that JAMB be scrapped and its duties be transferred to various universities as was the situation before 1978 when JAMB was established. As to the National Universities Commission, it now determines who is to teach in addition to determining the courses to be taught through accreditation of those courses. For instance, the NUC recently ordered that all lecturers in Nigerian universities must as from the year 2010 possess a doctoral qualification; otherwise, they would no longer be allowed to teach in the universities.

This directive has put undue pressure on professional faculties such as Law, Medicine, Engineering and many more which traditionally based their promotion on professional competence and publications. In enforcing this directive by the NUC, all Nigerian universities have implemented the policy of not allowing academic staff promotion beyond the grade of Lecturer I, and in some others, Senior Lecturer level unless they possess doctoral degree. The disastrous effect of this policy, apart from violating academic

freedom, is that many of the affected academics would either resign or transfer their services to other sectors of economy thereby leading to a brain-drain in those professional faculties.

The Core of Academic Freedom and its Interdependency with Other Rights

At the core of the right to academic freedom is the right of the individual to do research, to publish and to disseminate learning through teaching, without government interference.¹⁰⁹ It is submitted that the right to academic freedom implies a positive duty of the state to promote research and teaching by providing support to functional academic and scientific institutions, or at least the financial and organizational back-up needed to exercise the right to academic freedom and scientific research.¹¹⁰ It is submitted that one of the reasons for establishing universities is to realise academic freedom.¹¹¹ If the state could prescribe to universities that no research critical of the government may be funded by the university or that no researcher critical of the government may be appointed, academic freedom would be left stranded.¹¹² To achieve academic freedom, a right to a degree of institutional autonomy is essential.

The contents of academic freedom in any country may be summarised as follows: freedom to teach without outside interference. It includes the content, process and methods of teaching, as well as the evaluation (assessment) of those taught. Admission requirements, standards and criteria for awarding qualifications are logical corollaries of this right;¹¹³ as is freedom to do research without outside interference. Research has been described as a serious and systematic attempt in terms of contents and forms to find the truth, and includes all research related activities, including preparatory, management and supporting actions, and dissemination of results through publication;¹¹⁴ freedom to decide who shall teach and conduct research. This implies peer evaluation according to academic criteria and compliance with professional and ethical norms,¹¹⁵ and the right to tenure, which means that when an academic complies with reasonable criteria, he or she is entitled to a permanent position.¹¹⁶

It is submitted that all human rights are fundamental to the realisation of academic freedom, thus academic freedom and all other human rights/freedom are indivisible. Thus, academic freedom cannot exist in a society which is not free because violations of general liberty will almost always affect the freedoms of the university.¹¹⁷ Freedom of person, freedom of movement, freedom of speech and freedom of assembly are all fundamental to the

university in the pursuit of the truth.¹¹⁸ Asserting the interdependency of academic freedom with other rights, Malherbe posits:

[I]t means that academic freedom forms part of the key freedom rights such as privacy, belief, opinion and conscience, expression, freedom and security of person, and freedom of assembly, association and movement, all of which protect individual freedom, the cornerstone and founding value of any civilized and democratic state. As sure as freedom of movement allows the individual physically to move about freely, academic or intellectual freedom, together with the freedom of thought, conscience, opinion and expression, ensures that we may follow wherever the explorations of the mind may lead us.¹¹⁹

Although it is not the business of the university to engage in politics, it is submitted, however, that the correct philosophy is that the university autonomy and academic freedom does not mean a university's seclusion from the rest of the world.¹²⁰ A university should be permitted to experiment with unorthodox views and ideas and to assemble peacefully to protest where necessary.¹²¹ Academic freedom includes the right of both staff and students to express their views, either publicly or within the confines of the university, not solely on matters affecting the university but also on matters of general public interest.¹²²

Conclusion

The Nigerian Constitution does not specifically provide for academic freedom as a constitutional right as obtainable in South Africa, but provisions supporting the concept may be drawn from other rights provided for in the constitution as well as from the various international human rights instruments that Nigeria has adopted. There is the need for the right to be better guaranteed. In the past, Nigerian academics were used to organising conferences with a particular emphasis on academic freedom and institutional autonomy. This has declined lately and it is therefore suggested that for adequate guarantees of academic freedom, the concept should be a subject of discussions from time to time among academics and within institutional setting.

The centralisation of the control of the universities in Nigeria has eroded the autonomy which universities normally enjoyed worldwide. The National Universities Commission Act and the Joint Admission and Matriculation Board Act for example, in their functions have directly or indirectly eroded the autonomy of Nigerian universities in the context examined in this article. It is conceded that some of the functions performed by these bodies are beneficial to the Nigerian educational system. However, for the fact that these

functions traditionally belong to the universities world-wide, transferring these functions to the regulatory bodies has eroded the concept of academic freedom and institutional autonomy, thereby opening tertiary educational institutions to various dangers and compromising their autonomy. The arrangement as obtainable now in Nigeria violates the four essential features of academic freedom namely, the right of the university 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. This calls for a redress.

Although academic freedom is not a right without limitations, to make educational institutions functional, there should be a limited control of universities by government agencies. To make academic freedom meaningful and relevant, universities and other educational institutions should, on their own initiative, engage in periodic evaluation of their programmes, performance of their institutions and of their teaching and research staff. In tune with the principle of accountability, there should also be a periodic evaluation and appraisal of university programmes so as to ensure their relevance and responsiveness to development. Periodic evaluation will save educational institutions from decadence and make them more relevant to the society in this age of globalisation.

Notes

1. Govindjee, A., 'Lessons for South African Social Assistance Law from India: Part 1—The Ties that Bind: The Indian Constitution and Reasons for Comparing South Africa with India', (2005) 26(3) *Obiter* 575-576.
2. See art 26, UDHR; arts 13 & 14, ICESCR, and art 19(2), ICCPR which though not expressly providing for the right to education, but the provision of the article is wide enough to encompass the right to education.
3. See art 10 of the Convention on the Elimination of Discrimination Against Women (CEDAW) 1979; arts 23, 24 and 29 of the Convention on the Rights of the Child (CRC) 1989; art 17 of the African Charter on Human and Peoples' Rights (ACHPR) 1981; African Charter on the Rights and Welfare of the Child 1990; the UNESCO Convention Against Discrimination in Education 1960; the World Declaration on Education for All on 9 March 1990; European Convention 1953; American Declaration of the Rights and Duties of Man 1948 among others. Apart from the human rights law, other laws such as refugee law and humanitarian law, migration law and trade law equally regulate education.
4. Art 26 of the UDHR 1948.
5. Committee on Economic, Social and Cultural Rights (CESCR) General Comment No 13: the Right to Education (E/C.12/1999/10 of 8 December 1999), para 38.
6. General Comment No.13, para 38.

7. General Comment No.13, para 40.
8. See Ajayi, J.F.A., Goma, L.K.H. & Johnson, G.A., 'The African Experience with Higher Education', The Association of African Universities, Ghana, 1996:167.
9. Ibid.
10. Ibid., pp. 167-168.
11. Ibid., pp. 168.
12. See *The Open Universities in South Africa and Academic Freedom 1957-1974 – A Review* by the Academic Freedom Committees of the University of Cape Town and the University of Witwatersrand, Juta & Co, 1974:4.
13. See Russell, C., *Academic Freedom*, London & New York, Routledge, 1993:1.
14. Kaplan, C. & Schrecker, E., eds., *Regulating the Intellectuals: Perspectives on Academic Freedom in the 1980s* (Praeger, New York, 1983:6).
15. Smith, N., 'Constitutional Academic Freedom' (1995) 112(4) *South African Law Journal* 678-690 at 680; see also, Albert van de Sandt Centlivres et al., ed., Committee, *The Open Universities in South Africa*, 1957:11-12.
16. See Birley, Richard, Freethan Memorial Lecture (1970:4), citing with approval the features of academic freedom that are contained in a resolution of the Council of the University of Rhodesia of 10 December 1965; see also, *The Open Universities in South Africa and Academic Freedom 1957-1974*, op. cit., p. 3.
17. Nicol, 'Academic Freedom and Social Responsibility', in Kertesz, S.D., ed., *The Task of Universities in a Changing World*, Notre Dame University Press, Notre Dame, 1972:406.
18. Tight, M., 'So What is Academic Freedom?', in Tight, M., ed., *Academic Freedom and Responsibility*, Society for Research into Higher Education & Open University Press, Milton Keynes, 1988:132.
19. See Ajayi et al., op. cit., at 242.
20. Ibid.
21. See Russell, op. cit., at 18; see also, Horn, P., 'Academic Freedom within the University', The Eleventh E.G. Malherbe Academic Freedom Lecture delivered at the University of Natal (2 August, 1978) 4; Turner, 'The Price of Freedom', in Tight, ed., op. cit., at 106.
22. Proposing the Amendment to the Education Bill of 1988 (England), Lord Jenkins of Hillhead (as Chancellor of Oxford University) claimed for academics: 'the freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions'. See Russell, op. cit., at 1-2.
23. Ibid, at 18.
24. See O'Hear, 'Academic Freedom and the University', in Tight, ed., op. cit., at 6.
25. Dlamini, C.R.M., 'University Autonomy and Academic Freedom in Transition: The British Experience', (2001) 16 SAPR/PL, 343-361 at 356.
26. See the CESCR which asserts as follows: '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 human rights applicable to other individuals in the same jurisdiction. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds'. See CESCR General Comment 13 para 39.

27. Goodlad, 'Four Forms of Heresy in Higher Education: Aspects of Academic Freedom in Education for the Professions', in Tight, ed., op. cit., at 49.
28. See Ojo, J. D., *Law and University Administration in Nigeria*, Malthouse Press Ltd, Lagos, 1990:67.
29. See University of Sokoto (now Uthman Dan Fodio University, Sokoto) Memorandum submitted by Senate to the Presidential Commission on Salary and Conditions of Service of University Staff, February, 1981:20.
30. General Comment No. 13 para 40.
31. See *The Open Universities in South Africa and Academic Freedom*, op. cit., p.2.
32. See Ajayi, J. F. A., 'Academic Freedom and University Autonomy in Nigeria Today: A Historical Survey and A Search for New Strategies', A Lecture delivered at the Academic Staff Union of Universities Conference in Kano, Nigeria (1980).
33. See Ajayi et al., op. cit., p. 243.
34. Ibid.
35. Ibid., p. 169.
36. Ibid.
37. See the South Africa Department of Education, *Education White Paper 3*, 1997:7.
38. Rendel, 'Human Rights and Academic Freedom', in Tight, ed., op. cit., pp. 74-75.
39. See *The Open Universities in South Africa and Academic Freedom*, op. cit., pp. 2.
40. Ibid.
41. Malherbe, R., 'A Paper Prepared for Higher Education South Africa', 18 June 2003:12.
42. Tight, 'So what is academic freedom?', in Tight, ed., op. cit. pp. 123.
43. Malherbe, Higher Education South Africa, op. cit., at 12; Malherbe, R., 'A Fresh Start II: Issues and Challenges of Education Law in South Africa', (2000) 4, *European Journal for Education Law and Policy*, pp. 57-68 at 61; Rendel, 'Human Rights and Academic Freedom', in Tight, ed., op. cit., pp. 80.
44. See Smith, op. cit., pp. 680.
45. Ibid, pp. 685.
46. See Russell, op. cit., pp. 107.
47. See Smith, op. cit., pp. 680.
48. General Comment 13 para 40.
49. See Ajayi et al., op. cit., pp. 170.

50. Ibid.
51. Ibid, pp. 171.
52. Ibid, pp. 172.
53. Ibid.
54. Ibid, pp. 171.
55. Ibid.
56. For example, universities should be allowed a fair of measure of autonomy in deciding on the allocation of general university subventions among the departments and institutes.
57. See section 16(d) of the Constitution of the Republic of South Africa, 1996. It is observed that the first part of section 16 is intended to grant everyone a generous measure of expression protection, including freedom of the press and other media, freedom to receive or impart information or ideas, freedom of artistic creativity, academic freedom and freedom of scientific research. As a result the concept of 'expression' should encompass, amongst other things, the display of paraphernalia, the publication of photographs, dancing, dress, the propagation of controversial academic and other opinions. See Govindjee, A., 'Freedom of Expression', in Govindjee, A. & Vrancken, P., eds., *Introduction to Human Rights Law*, LexisNexis, Durban/Johannesburg/Cape Town, 2009:119 - 120.
58. This is in contrast with the position in South Africa where section 16(d) of the 1996 South African Constitution expressly provides for the right to freedom of expression which includes inter alia, academic freedom and freedom of scientific research.
59. (1981) 1 NCLR 105.
60. (1981) 1 NCLR 262.
61. Both Covenants ratified on 29 October 1993.
62. See also, article 19 of the UDHR 1948 which also provides that 'Everyone has the rights to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'.
63. Although, section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 provides that no treaty between the Federation and any other country shall have the force of law except if the treaty has been incorporated into domestic law by the National Assembly. See also, *General Sani Abacha v Chief Gani Fawehinmi* (2001) 1 CHR 20. It is submitted that having ratified the ICCPR and ICESCR, the provision of these treaties which guaranteed academic freedom, are applicable in Nigeria by virtue of its obligations under international human rights law and rules of customary international law. See Dixon, M. & McCorquodale, R., *Cases and Materials on International Law*, New York, Oxford, 2003:28.
64. See Teferra, D. & Altbach, P. G., eds., *African Higher Education*, Indiana University Press, Bloomington & Indianapolis, 2003:11.
65. Those who courageously speak their mind and express their views often find themselves facing dictators capable of using terror, kidnapping, imprisonment, expulsion, torture, and even death to silence dissident voices. See Teferra & Altbach, eds., *op. cit.*, p. 11.
66. See Preamble to the NUC Act, Cap N81 Laws of the Federation of Nigeria (LFN) 2004.

67. See section 4 of the National University Act Cap N81, LFN 2004.
68. See section 4(1)(a)-(l) of the NUC Act.
69. See section 4(1)(a) of the NUC Act.
70. See section 5 of the JAMB Act Cap J1, LFN 2004.
71. See section 4(1)(b) of the NUC Act.
72. For example, in 1985 the government enacted Decree 16 of 1985, establishing the National Minimum standards and conditions for the accreditation of the universities courses and programmes. The Decree sought, in the first instance, to harmonize all programmes and courses across the universities and in the second instance, empowered accreditation panels to inspect courses, facilities and staffing to determine compliance with minimum standards. The report of the panels were then to serve as the basis for the selection of departments, programmes and facilities to be closed down in order to ensure standards and remove 'duplication'. The staff of closed departments, faculties and programmes were then to be retrenched as part of the rationalization exercise. See Ya'u, Y.Z., 'Academic Staff Union of Universities under Attairu Jega: A Leadership Profile', Centre for Social Science Research & Development, Lagos, 2004:19.
73. The JAMB Act provides for the functions of the Board and provides that it shall be responsible for the general control of the conduct of matriculation examinations for the admissions into all Universities, Polytechnics and Colleges of Education in Nigeria; appointment of examiners, moderators and invigilators, members of subject panels and committee and other persons with respect to matriculation examinations and any other matter incidental thereto; placement of suitably qualified candidates in collaboration with the tertiary institutions, collection and dissemination of information on all matters relating to admissions into tertiary institutions. See Section 5(1) & (2) of the Act.
74. See Tight, ed., *Academic Freedom and Responsibility*, op cit., at 75; see also Malherbe, (2000), op. cit., pp . 60.
75. University of Ilorin is one of the federal universities in Nigeria.
76. See *Oloruntoba-Oju & Others v Abdul-Raheem & Others* [2009] 13 NWLR (pt 1157) 83.
77. See Ya'u, op. cit., p. 5.
78. Ibid, p. 23.
79. Ibid, pp. 23-24.
80. Government alleged that Dr Wilmot was a South African spy, a charge nobody even within the government circles was ready to believe given the antecedents of Wilmot as an anti-apartheid activist. See Ya'u, op. cit., pp. 18-19.
81. See Essential Services (Teaching) etc Decree 1992.
82. Ya'u, op. cit., p. 30.
83. Ibid, pp. 30-31.
84. Eso, K., *Thoughts on Human Rights and Education*, St Paul's Publishers, Ibadan, 2008:59-60.
85. See Ajayi et al., op. cit., pp. 245.
86. Ibid, p. 167.

87. See Teferra & Altbach, eds., op. cit., p. 11.
88. During this period, the two universities were 'open universities' in the sense that they admitted students on academic grounds, without regard to race, colour or creed. See *The Open Universities in South Africa and Academic Freedom*, op. cit., p. vii.
89. Ibid, p. 1.
90. The right of the university to select its own teachers, freedom of expression, and many more were advocated. See *The Open Universities in South Africa and Academic Freedom*, op. cit., p. 1.
91. See Ajayi et al., op. cit., p. 73.
92. See Polayi, M. et al., 'Apartheid and the World's Universities: Report on a Meeting held in London, November 1957', Committee on Science and Freedom, Congress for Cultural Freedom, Manchester, 1958, p. 11.
93. 1970 (3) SA 655 (T).
94. 'Hanged by the Neck until you are dead', (1969) 86 *South African Law Journal* 457; and (1970) 87 *South African Law Journal* 60.
95. For the text of the statement of 9 September 1970, see (1970) 87 *South African Law Journal* 467-468.
96. 1972 (3) SA 711 (AD).
97. Pages 714-717.
98. See *S v Van Niekerk* 1972 (3) SA 711 (AD). The judgment has however been criticized as limiting academic freedom and freedom of expression. See Dugard, J., 'Judges, Academics and Unjust Laws', 1972:89, *South African Law Journal*, 271.
99. With Holmes, JA concurring, p. 725.
100. Blanket exemptions from these prohibitions were granted by the Publications Control Board to university libraries, provided the works were not of a 'communistic' nature and provided the books were kept under lock and key in the reference section and were used only for bona fide study and research purposes. See *The Open Universities in South Africa and Academic Freedom*, op. cit., p. 28.
101. Ibid.
102. In this category were the works of Professors Edward Roux, H. J. Simons, M. A. Millner, R. Hoffenberg and B. A. Hepple.
103. See *The Open Universities in South Africa and Academic Freedom*, op. cit., p. 29.
104. Ibid, pp. 29-30.
105. A classic example of the effects of those restrictive statutes was given in respect of the publication of the second volume of a book titled *The Oxford History of South Africa*, published in 1971 by the Clarendon Press of the University of Oxford. After receiving legal opinion, the publishers and editors felt obliged to omit from the South African edition a chapter by Leo Kuper entitled 'African Nationalism in South Africa, 1910-1964'. The chapter contained many quotations from banned persons and organizations, and their publication in South Africa could have laid the local editor and the branch of the publishing house open to prosecution. In view of the legal problem, the editors and publishers decided to produce a separate South African edition in which pages 424-427, in which Professor Kuper's chapter appeared, were completely blank.

A postscript to be added is that subsequent to this publication, the authorities later permitted the international edition, containing Prof Kuper's chapter, to be distributed in South Africa. See *The Open Universities in South Africa and Academic Freedom*, op cit., pp. 30-31.

106. See ss 7(2) & 8 of the Constitution.
107. S 7(3) of the Constitution.
108. See s 36 of the Constitution.
109. Currie, I. & de Waal, J., *The Bill of Rights Handbook*, 5th ed., Juta & Co., Lansdowne, 2005: 370.
110. See de Groof, 'The Freedom of Teachers. Some Notes', in de Groof & Malherbe, eds., *Human Rights in South African Education* (1997) 295; Currie & de Waal, op. cit., p. 371.
111. See Currie & de Waal, op. cit., p. 370.
112. Ibid, p. 371.
113. Malherbe (2000), op. cit., p. 60.
114. Ibid.
115. Ibid.
116. See generally, Malherbe, R., 'A Constitutional Perspective on Higher Education', (1999) (10) *Stell LR* 328 at 346; Malherbe, *Higher Education South Africa*, op. cit., pp. 9-10.
117. See *The Open Universities in South Africa and Academic Freedom*, op. cit., p. 4.
118. Freedom of academic expression, in the sense of freedom for university teachers to teach and to pursue research freely, and freedom for students to debate old and new ideas freely, is simply a special manifestation of the freedoms of speech, assembly and association. See *The Open Universities in South Africa and Academic Freedom*, op. cit., pp. 5-25.
119. See Malherbe, *Higher Education South Africa*, op. cit., p. 8.
120. Birley eloquently expressed this contention as follows: 'It is certainly not the business of a university to become a kind of unofficial political opposition. But this does not mean that it should ignore what happens in the world outside it. The fate of the German universities in the 1930s should be a warning to us. They believed that, as long as they preserved the right of free research and free teaching within their own walls, they did not need to concern themselves about what else was happening in their country. As a result, they did nothing to oppose the rise to power of a political party which made it quite clear that it intended to destroy the academic freedom which the universities enjoyed. I should say that a university today should be deeply concerned about the denial of justice beyond its own walls'. See Birley, *The Universities and Utopia*, 1965:16.
121. See *The Open Universities in South Africa and Academic Freedom*, op. cit., p. 5.
122. Ibid.

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