

SYSTEMIC GOVERNANCE, PUBLIC ACCOUNTABILITY AND INSTITUTIONAL AUTONOMY

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1. INTRODUCTION

University autonomy remains as controversial an issue in South African higher education as it was during the apartheid era. Before 1994, liberal universities¹ in South Africa declared support for the principles of academic freedom and university autonomy, in opposing State education policies and State interference, in particular. Their stance was captured in T.B. Davie's well-known definition of academic freedom as 'our freedom from external interference in who shall teach, what we teach, how we teach and whom we teach' (quoted in Jansen, 2005a:297).

In examining the relationship between the State and the higher education sector in South African since 1994, the chosen starting point is a tension reflected in the Higher Education Act (Republic of South Africa 1997:2): 'it is desirable for higher education institutions to enjoy freedom and autonomy in their relationships with the State within the context of accountability and the national need for advanced skills and scientific knowledge'. The tension at stake may be captured in the question of whether the interpretation of accountability and the measures taken to meet the need for skills and knowledge threaten to undermine academic freedom and university autonomy.

A provocative response to this question has been posed by Jonathan Jansen (2004b), who has argued that both academic freedom – and university autonomy, especially – face an uncertain future in South Africa 'both as concept and practice'. Not mincing his words, Jansen contends that changes in the higher education sector constitute a 'gradual but systematic erosion of historical standards of autonomy that were ingrained within the institutional fabric of universities' (2004b:5), thus redefining conceptions of institutional autonomy as the State systematically acquires new forms of power over the universities through a series of incursions. In a definition that shares Davie's emphasis on autonomy as the absence of external interference, Jansen stipulates: 'I will take *institutional autonomy* to mean the right of institutions to decide for themselves on core academic concerns; and *academic freedom* to mean the absence of external interference in pursuing these concerns' (2004b:4).

In higher education policy since 1994, the relationship between the State and the universities has been defined in terms of 'cooperative governance' and 'conditional autonomy'. Emerging from the apartheid era, notorious for its State interventions in universities, there was a general hope that with the new democratic system that assumed power in 1994 higher education would enjoy a more harmonious relationship with government, as partners rather than antagonists. This would create the ideal space for the development – among other things – of institutional autonomy and academic freedom.

¹ The analysis focuses on universities. This is appropriate given the restructuring of the higher education sector. The presence of private providers and other role players within higher education is acknowledged. Private providers face similar challenges to those of the public institutions, although they are more vulnerable to the pressures of corporate demands.

The National Commission on Higher Education (NCHE, 1996) spelt out the new relationship and it was restated in the 1997 White Paper (3.7) with the following description of cooperative governance, '[which] assumes a proactive, guiding and constructive role for government. It also assumes a cooperative relationship between the State and higher education institutions'. One implication of this is, for example, that institutional autonomy is to be exercised in tandem with public accountability. Another is that the Ministry's role as overseer does not involve responsibility for the micromanagement of institutions. A third implication is that the Ministry will undertake its role in a transparent manner.

Thus, in line with the Green Paper (1996:175) the role of the State is in 'supervising the higher education system to ensure academic quality and maintain a certain level of accountability'. This approach was initially formalized in the Higher Education Act (Act 101 of 1997).

The aim in original policy papers and legislation was clearly to limit the interference of the Ministry of Education.

It is the responsibility of higher education institutions to manage their own affairs. The Ministry has no responsibility or wish to micro-manage institutions. Nor is it desirable for the Ministry to be too prescriptive in the regulatory frameworks it establishes. Diversity and flexibility are important aspects of institutional responses to varying needs and circumstances. It is only in extreme circumstances that the Minister of Education, as the responsible representative of the elected government of the country, would consider intervening in order to assist to restore good order and legitimate governance and management in an institution. (Department of Education, 1997, Section 3.33)

Institutional autonomy in this regard refers to the 'degree of self-regulation and administrative independence that an institution enjoys in making decisions on its goals, programmes and priorities and on the means and procedures by which these will be pursued' (Department of Education, 1996, Chapter 4, Section 4.2). This includes independence in methods of teaching and assessment, research, establishment of academic regulations and the internal management of resources generated from private and public sources. However, such autonomy is 'limited by the demands of accountability: by the requirement to demonstrate responsible actions to one or more constituencies and in particular to account for how funds have been spent' (Department of Education, 1997, Section 1.24).

Commentators, including the Council on Higher Education (CHE), have paid close attention to this new construal of institutional autonomy. In their report to the CHE, *Governance in South African Higher Education* (2002, Chapter 5), Martin Hall, Ashley Symes and Thierry Luescher rehearse the argument for conditional autonomy. They note how the National Commission on Higher Education (NCHE) distinguished three categories of relationships between State and higher education institutions: State steering of institutions that are largely autonomous, 'direct State control in the public interest', and 'State interference', supposedly as under apartheid.

The authors of the CHE Report prefer to see the apartheid era as ‘a combination of direct State control and pronounced institutional autonomy’ (Hall *et al*, 2002: 87). The Report claims that

the evolution of South African higher education policy [from 1997 to 2001] marks a path from a comparatively loose system of State steering, with guarantees of autonomy, block grant funding and the expectation of self-regulation by individual institutions, to a system of conditional autonomy in which substantive autonomy (academic freedom) continues to be guaranteed while the State exercises increasing control over procedures of funding and academic accreditation. (Hall *et al*, 2002: 92-93)

The Report continues:

If, however, conditional autonomy is to prove an effective balance between, on the one hand, the needs of the State to direct higher education in the interests of development and, on the other hand, the needs of institutions to preserve and defend an environment in which teaching and research can prosper without outside interference, then the rights and responsibilities of the academic sector must be guaranteed and asserted. (Hall *et al*, 2002: 93)

Nico Cloete (in Cloete *et al*, 2002: 91) comments on the NCHE’s argument for the State to adopt a relationship of cooperative governance with civil society in which the State would take the leadership role:

Cooperative governance has implications for relations between the State and higher education institutions. It seeks to mediate the apparent opposition between State intervention and institutional autonomy. The directive role of the State is reconceived as a steering and co-ordinating role. Institutional autonomy is to be exercised within the limits of accountability. A cooperative relationship between the State and higher education institutions should reconcile the self-regulation of institutions with the decision-making of central authorities. The viability of such reconciliation depends to a significant degree upon the success of a proposed intermediary body with delegated powers, and of proposed structures for consultation and negotiation. The State uses financial incentives and other steering mechanisms as opposed to commandist measures of control and top-down prescription (after Kraak, 2001).

Such readings of notions of cooperative governance and of conditional autonomy, of State steering reconciled with significant self-regulation, could be justified by the requirement to transform the sector in pursuit of a broader goal of social justice in a new democracy. But given Jansen’s declared stance that the pursuit of these new principles has eroded institutional autonomy, the question is posed: Does conditional autonomy as expressed in South African higher education policy and its implementation to date constitute both a significant reduction in university autonomy and hence in academic freedom?

The assumption is that there is an inextricable relationship between the State and the university, and that each has a set of commitments or obligations to honour. Generally, the State seeks to implement a programme of social justice and redress, which includes ensuring that more people have access to tertiary education, and recommending that the universities contribute to the country’s social development (this has implications for what is taught and how it is taught, and

so there are implications for curriculum and pedagogy). The university, in its turn, privileges the notion of academic freedom, because this is a prerequisite for the integrity of teaching and research. Will the State's attempts to discharge its obligations compromise the universities' attempts to discharge theirs? There does seem to be a potential problem of compatibility here and it appears that the notions of 'cooperative governance' and 'conditional autonomy' are attempts to manage (if not resolve) this key tension in the relationship between the State and the university.

How can these shared goals be established and these discrete interests defined? The principles of *deliberative democracy*, which are outlined in Section 2, have critical implications for the notion of university autonomy; these are applied in an analysis of the notions of conditional autonomy and accountability. The implications of deliberative principles for universities and their relationship with the State are outlined in Section 3 of this chapter. Accepting the symbiotic relationship between 'the university' and 'the State', the argument is that the establishment and maintenance of a system of *deliberative democracy* are indispensable if the relative autonomy of the tertiary sector is to be sustained under these conditions of interdependence. The structures and practices of deliberative democracy, regulating the relationship between 'the State' and 'the university', may ensure that the definition of university autonomy is continually negotiated, and that the extent of State and university prerogatives is continually reassessed.

In addition to commending a deliberatively democratic relationship between the State and the university, this chapter also claims that the internal dynamics of today's university, which encompass the dual emphasis on teaching and research, are best promoted by fostering a climate of deliberation. This is an implicit acknowledgement that university autonomy cannot simply be equated with academic freedom, for an autonomous institution is quite capable of imposing its own forms of restrictive orthodoxy upon its members, thereby precluding particular kinds of debates and extensions of understanding. The customary construal of the relationship between university autonomy and academic freedom assumes that academic freedom is vulnerable only when university autonomy is threatened from the outside. This assumption is interrogated, along with the assumption that if university autonomy is conditional, so must academic freedom also be conditional.

In Section 4 of this chapter, the ways in which policy measures since 1997 provide for cooperative governance and conditional autonomy are explored, considering the extent to which these measures offer conditions in which principles of deliberative democracy can be met. This leads into a concluding discussion of the central claim that, if the State and the universities adhere to deliberative principles and procedures, then neither cooperative governance nor conditional autonomy is *prima facie* a threat to academic freedom.

The chosen methodology can be described as falling within a framework of normative political theory. This is, thus, an argument in applied political philosophy. It reflects on selected policy

developments in higher education since 1994, with reference to issues like ministerial powers, university governance, funding, quality assurance, reporting and the regulation of curricula – as well as other pressures on universities internationally. This is done in order to assess how these developments reflect key normative concepts in higher education policy, especially that of the conditionality of university autonomy. The assumption is that policy development at its best is a deliberative process, in which early articulations are significant, sometimes as much so as are the final formulations. And the chapter reflects iteratively on the notions of university autonomy and academic freedom as the discussion proceeds.

2. DELIBERATIVE DEMOCRACY

An exploration of the interpretation of conditional autonomy that has been reflected in key aspects of higher education policy and its implementation draws on theories of deliberative democracy as the most significant trend in normative democratic theory since the 1980s. However, it should be borne in mind that the avowed intention in policy since 1994 has been to transform the higher education system ‘in the spirit of an open and democratic society’. One of the fundamental principles guiding this process is democratization, which ‘requires that governance of the system of higher education and of individual institutions should be democratic...’ (Department of Education, 1997: 11-12).

A starting point for the recent focus on deliberation in theories of democracy is the rejection of what deliberative theorists call the aggregative model of democracy,² dominant since the mid-twentieth century, which interprets democracy as essentially an electoral device in which the often selfish preferences of individuals are aggregated in favour of parties and policies chosen, because they are seen as most likely to advance the perceived interests of the majority. Aggregative democracy can take various forms, ranging from stark winner-takes-all “majoritarianism”, at one end of a continuum, to forms of aggregation that are mediated by proportional representation, at the other.

Emphasizing the principle of deliberative *publicity*, Seyla Benhabib writes that: ‘Democracy, in my view, is best understood as a model for organizing the collective and public exercise of power in the major institutions of a society on the basis of the principle that decisions affecting the well-being of a collectivity [sic] can be viewed as the outcome of a procedure of free and reasoned deliberation among individuals considered as moral and political equals’ (Benhabib, 1996: 68). Benhabib adds that behind this model of discourse lies the idea that norms are only valid if agreed to by those likely to be affected by them. In arriving at a set of agreed norms, all participants must have the same right to participate, to initiate debate, to ask questions and interrogate, to question the issues selected for discussion, and to question the rules of discursive procedure and how they are applied (Benhabib, 1996: 70). For most deliberative theorists, deliberation is required not only to arrive at agreed norms, but also to make decisions. For James Bohman (1996: 27), public deliberation is ‘a dialogical process of exchanging reasons for the

² Iris Marion Young (2000: 18), for example, distinguishes between deliberative and aggregative democracy as the two central models of democracy in contemporary political theory, emphasizing that they are ideal types.

purpose of resolving problematic situations that cannot be settled without interpersonal coordination and cooperation'. Gutmann and Thompson emphasize the principle of *reciprocity*, which 'holds that citizens owe one another justification for the mutually binding laws and public policies they collectively enact' (2004: 98).

For some of its proponents, deliberative democracy has primarily been developed as a justificatory theory, offering principles of democratic deliberation, but others 'have become increasingly interested in the problems of institutionalisation' (Bohman, 1998: 401). For Benhabib (1996: 87), deliberative democracy 'has inspired a number of social and political theorists to envisage new institutional designs'. The interest in deliberative theory takes up both its justificatory and its institutional dimensions. It is noted too that while some deliberative theorists emphasize the fact that deliberation is procedural, others (for example, Gutmann & Thompson [2003: 30]) insist that 'any adequate theory must include substantive as well as procedural principles'.

Where should deliberation take place? Deliberative theory focuses mainly on the relationships between citizens and government. Its proponents' opinions vary on the range of issues and forums that should conduct themselves according to deliberative norms. While some (for example, Rawls, 1993) prefer to restrict the ambit of deliberation to constitutional essentials, others include laws, policies, administrative decisions and moral principles within its scope, proposing deliberative democracy as a model not only for government but also for a wide variety of organizations and relationships. Benhabib (1996: 74) sees deliberation as taking place in

a plurality of modes of association in which all affected can have the right to articulate their point of view. These can range from political parties, to citizens' initiatives, to social movements, to voluntary associations, to consciousness-raising groups, and the like. It is through the interlocking net of these multiple forms of associations, networks, and organizations that an anonymous "public conversation" results. It is central to the model of deliberative democracy that it privileges such a public sphere of mutually interlocking networks and associations of deliberation, contestation, and argumentation.
(emphasis in original)

In their comment on where deliberation takes place, Bohman and Rehg observe that theorists pursuing a participatory approach to democratic politics by developing a deliberative theory 'took their cue from a variety of deliberative contexts and motifs: direct democracy, townhall meetings and small organizations, workplace democracy, mediated forms of public reason among citizens with diverse moral doctrines, voluntary associations, and deliberative constitutional and judicial practices regulating society as a whole...' (1997: xiii). Even more emphatically, Gutmann and Thompson (1996) argue that deliberation should take place in any setting where citizens regularly attempt to make decisions collectively about issues of public interest. Such multiple forums 'include not only legislative sessions, court proceedings, and administrative hearings at all levels of government but also meetings of grass roots associations, professional associations, shareholders meetings, and citizens' committees in hospitals and other similar

institutions' (1996: 12-13). In 'middle democracy', they locate much of democracy's moral life; here, decisions are made not only by legislators, bureaucrats, ministers and judges, but also by civic associations and interest groups. In a later work (Gutmann & Thompson, 2004: 61), they expand their account of deliberative contexts and institutions to include 'the whole range of intermediary institutions – those that act on citizens (such as the media, health-care organizations, professional sports), those in which citizens act (interest groups, private clubs, trade unions, professional associations), as well as those in which they work (corporations, small businesses, government agencies, military service)'.

The commonly held view of deliberative theorists that deliberation should be extended across civil society as a public good is reflected in South African public philosophy. The anti-apartheid struggle tradition developed models of consultation in which leaders of trade unions and civic organizations sought mandates, consulted and reported back to constituencies. This tradition is evident in the 1996 Constitution's provision for public consultation by the provincial and national legislatures, and was enacted in the process of public consultation about the Constitution itself. Another significant feature of the Constitution, for the purposes of this discussion, is that it is not thoroughly "majoritarian", for example, in its provision for proportional representation and for judicial review.

Significantly for the present purposes, Gutmann and Thompson locate universities in the terrain of middle democracy, stating recently that '[i]n many voluntary associations, including churches and synagogues, colleges and universities, deliberation still may be desirable even if it should not be externally mandated' (2004: 35). The claim here is that, in this land of middle democracy, universities of all places should be deliberative in their own governance and in their relationships with other organizations, including the State.

To this expansive, deliberative interpretation of democracy it might be objected: a cabinet minister, controlling a government department and its bureaucracy, is the legitimate authority, elected by the majority. Such a position appeals, with some justification, to an aggregative model of democracy, at least at a formal level. Clearly, especially in the South African context and given a history of "illegitimate" minority government, the major source of legitimacy is majority rule through the electoral process, qualified though this is. But for deliberative theorists, "majoritarianism" has its limitations and, especially when considered substantively, legitimacy also resides in ongoing processes of rational deliberation among citizens.

In her examination of the philosophical underpinnings of democratic legitimacy, Benhabib argues that in complex modern democracies legitimacy derives in the first instance 'from the free and unconstrained public deliberation of all about matters of common concern' (1996: 69). Legitimacy in decision-making derives from free and equal participation by citizens in the process of deliberation. Benhabib reverses a common assumption about majority rule:

in many instances the majority rule is a fair and rational decision procedure, not because legitimacy resides in numbers but because if a majority of people are convinced at one point on the basis of reasons formulated as closely as possible as a result of a process of discursive deliberation that conclusion A is the right thing to do, then this conclusion can remain valid until challenged by good reasons from some other group. It is not the sheer numbers that support the rationality of the conclusion, but the presumption that if a large number of people see matters a certain way as a result of following certain kinds of rational procedures of deliberation and decision-making, then such a conclusion can be shown to be rational until shown to be otherwise. (1996: 72)

Gutmann and Thompson make ongoing deliberation a further condition for legitimacy:

If representatives refuse to subject their decisions to public deliberation (either prospectively or retrospectively), then they have no legitimate basis for claiming to the citizens on whose behalf they are acting that their decisions are right. (2004: 45)

Deliberation not only lends legitimacy to decisions about matters of public interest. It also brings crucial epistemic advantages to democratic processes. By ensuring that decisions are collectively made, it provides relevant *information* from more than one perspective. Still addressing the epistemic, Benhabib's account of the relationship between reason and preferences in public deliberation points towards a deliberative interpretation of *accountability*. For Benhabib, the formation of coherent preferences can only follow from a process of deliberation:

When presenting their point of view and position to others, individuals must support them by articulating good reasons in a public context to their co-deliberators. This process of *articulating good reasons in public* forces the individual to think of what would count as a good reason for all [the] others involved. ... Nobody can convince others in public of her [sic] point of view without being able to state why what appears good, plausible, just, and expedient to her can also be considered so from the standpoint of all involved. (1996: 72)

This need for ongoing reiteration of reasons among all affected is at least partly a result of the incomplete understanding that bedevils all attempts to address both problems and scarce resources through deliberation. No one participant or group of participants, including ministries and bureaucracies, can have full and privileged access to the range of information and perspectives required for rational decision-making. Even far reaching reporting requirements may provide data that is of limited value without inclusive participation in interpreting it.

Other potential objections to a call for a deliberative relationship between citizens and government officials could be that it denies the right and necessity for the State to make decisions, and that government could be paralysed by having to engage in endless deliberation, unable to implement policies. There is no denying that government has to act, sometimes in response to crises that require prompt and urgent action. As a number of deliberative theorists accept, 'deliberation is no substitute for action.... [D]eliberating before deciding is no guarantee that the action taken will be the right one. But deliberation does encourage attention to relevant values, and to this extent it increases both the legitimacy of democratic decision-making and the likelihood that the decision will be a morally reasonable one' (Gutmann & Thompson, 2004: 179).

What characterizes deliberative decision-making, is that reasons are given, at some point, to justify the decision, whether before action is taken or subsequently. While secrecy or confidentiality are sometimes required and can, under some circumstances, improve the quality of deliberation (Chambers, 2004), the assumption is that wherever possible reasons will be given. Where there is no justification for secrecy, the presentation of reasons for decisions should indicate why opposing opinions were rejected, and the explanation should be relevant and cogent. A deliberative approach to public reason would include debate about the circumstances under which information would not be made public. Deliberative principles also require that the reasons given be accessible and understandable to the public. Yet, while conceding the right of officials to make decisions, deliberative theorists emphasize the demands that a deliberative process makes: for officials to commit to an ongoing and dynamic process of public justification over time. This is likely to begin with an initial reiterative process of policy development, in which proposals are made and are responded to, information is collected and evaluated, often through more than one round of deliberative exchange. Policies, decisions and demands made by different ministries and other bodies ought to cohere and not to place conflicting demands on the institutions they regulate and influence. Deliberation should result in decisions that are binding for some time, but it should allow for issues to be reopened after a reasonable interval for further deliberation. As mistakes are corrected, retrospective deliberation can legitimately call officials to account once implementation has been monitored. Acknowledgement of the possibility that rejected opinions may turn out to have been right requires that decision-makers test their own views in due course, acknowledging the possibility that they may need to revise decisions later (Gutmann & Thompson, 2004: 58). As circumstances change, new information may prompt changes in policy or shifts in its application.

Bohman and Rehg note of Habermas's contribution to the development of deliberative theories of democracy: 'in constitutional regimes, government officials are at least constrained by the arguments and reasons that have held up in the public sphere. Insofar as a broadly dispersed, "subjectless communication" among citizens is allowed to develop in autonomous public spheres and enter into receptive representative bodies with formal decision-making power, the notion of popular sovereignty – a democratically self-organizing society – is not beyond the pale of feasibility' (1997: xv). In his article in their collection, Habermas (1997) distinguishes between communicatively generated power and administratively employed power. This distinction is pertinent to an analysis of how conditional autonomy of universities should be deliberatively interpreted.

3. DELIBERATION AND THE UNIVERSITY

So far, the discussion of deliberation has focused broadly on where it should take place, how it should be done, and about what sorts of matters (in the view of this paper: in most institutions, following principles of publicity, reciprocity, reason-giving and reiteration – and about all issues affecting the public interest). So far, the argument has been that much of the obligation to deliberate must be attributed to the relationship between universities and government and its officials in the bureaucracy. But the intention is not to suggest that deliberative obligations lie only, in the case of education, with the ministry and its bureaucracy. The discussion now turns

to South African universities as deliberative organizations, beginning with their educational role in a democracy.

As deliberative theorists have long recognized, democracy cannot thrive without a well-educated citizenry. An important part of democratic education is learning how to deliberate well enough to be able to hold representatives accountable. Without a civil society that provides rehearsal space for political deliberation, citizens are less likely to be politically effective (Gutmann & Thompson, 2004: 35).

Deliberative theorists look to the schooling system to equip future citizens with the skills and knowledge they need for deliberation: ‘...schools should aim to develop the capacities of students to understand different perspectives, communicate their understandings to other people, and engage in the give-and-take of moral argument with a view toward making mutually justifiable decisions’ (Gutmann & Thompson, 2004: 61). Universities clearly have a role to play in developing these capacities too, but the argument here is that their role needs to be understood more extensively than this; and it is noted that universities have the potential to be deliberative institutions in all three of Gutmann and Thompson’s senses: as contexts that act on citizens, in which they also act, and in which they work.

Firstly, of all institutions, universities should be expected to *be* deliberative institutions; deliberation *per se* characterizes both the educative university classroom and research as a process in which justification through reason, the presentation of evidence and public debate are necessary conditions. As students are inducted into a deliberative environment, they acquire the skills needed to weigh evidence, follow the traditions of reason and justification that characterize their discipline, and to become equals in deliberation with their peers and teachers in a free exchange of ideas. Thus, there are close similarities between the characteristics of deliberation between citizens and their political representatives and deliberation in universities, where it ought to be recognized as a pedagogical approach, which constitutes citizens. Given South Africa’s history, its universities more so than those elsewhere cannot assume that their students arrive to study as autonomous, free citizens. Instead, universities need to pay attention to their potential to model and teach deliberative practices. One way of characterizing academic freedom, sometimes described in current South African educational discourse in terms of substantive autonomy, is in deliberative terms: academic freedom prevails when deliberative conditions are met.

Secondly, the demands of deliberation require that university governance should follow deliberative criteria and processes. Indeed, the tenor of the governance requirements in recent legislation is to promote public deliberation in universities as a feature of open and democratic governance, in which students and stakeholders within and outside the university are to have substantial participation. However, just as the claim that teaching should be deliberative does not require the removal of any distinction between the role and standing of students and their teachers, deliberation in university governance does not necessarily imply a populist interpretation of deliberative

democracy, in which all decisions would have to be publicly debated by all members of a university community, including its students and all its workers. The expectation, rather, is that deliberation takes place within particular publics that are, broadly, accountable to others. In universities as in government, it should be possible to rely much of the time on experts or those delegated to do so to make responsible decisions, provided their claims can be scrutinized, and contested when there may be grounds to question them (see Enslin, Pendlebury & Tjiattas, 2003).

Turning, then, from deliberation as essential to teaching, research and university governance, it must be argued that universities are also institutions that house much of a society's deliberative resources. The expertise and critical role of intellectuals in providing information and fostering and modelling deliberation is indispensable to successful deliberation in the societies they serve. In these respects, they are particularly well equipped to contribute to democracy and social justice. At the same time, it is observed that the reciprocal relationship between deliberative conditions as necessary for academic freedom and also for the university to play its role in exercising and fostering deliberation. It is reasonable both to assert the university's expertise and obligation in providing research and teaching, and to demand that it play its part in exemplifying deliberation to the general public. It is best equipped to critically debate the very nature of the university and the internal goods that define it and should do so publicly and honestly.

These interrelationships lead to a crucial fourth issue. If, as is claimed, deliberation characterizes the work of the university, how ought universities to be regulated? On this issue, it should be noted that the danger (see Enslin, Pendlebury & Tjiattas, 2003) that regulation and accountability systems that are intrusive and demanding can undermine the very deliberative conditions that make universities what they are. These dangers are present from without the university, in the form of an expanding range of bodies demanding accountability. Apart from accountability systems, regulation of universities, through such instruments as funding formulae designed to influence student success, choice of programmes (more Science and Technology and less of the Humanities), and direct intervention in what programmes will be funded for how many students at which institutions, does potentially represent – through its cumulative impact – a degree of conditionality of university autonomy that could threaten academic freedom. In South Africa's case, it is too early to reach hasty conclusions on this score. But it is reasonable to expect a commitment to a deliberative interpretation of conditional autonomy in which the terms of conditionality are debated openly within universities and between them and the State. If this does not take place, and if relationships between State and universities suffer from a deliberative deficit, the trust required between the parties will decline and it is likely that the State will resort increasingly to Habermas's administratively employed power rather than to communicatively generated power.

For universities to act accountably – a key feature of their current conditional autonomy – they ought to meet not only the requirements of reporting and quality assurance, to which the discussion returns later. They ought also to demonstrate a capacity for deliberative reflection about their purposes. To what extent do they see their mission as one of developing critical individualism, in

the face of pressures to produce manpower geared to the supposed development needs of the country, which are largely interpreted in terms of producing graduates with skills defined in relation to the sciences? Are they sufficiently reflective about the pressures of managerialism and corporate models of institutional purpose and governance? This deliberative requirement relates to a consideration of controversies about the status of knowledge itself at many of today's tertiary institutions, powerfully depicted in Bill Readings's (1996) notion of the 'university of dissensus'. The passionate and inconclusive nature of this controversy can only be directed and accommodated through the interminable processes of democratic deliberation about the values and purposes of the university sector itself.

Threats to university autonomy are also present from within, in the form of the international vogue for performativity and managerialism that is pursued within universities, which generally have not waited to be prodded in this direction by the State. While such regimes are favoured by State policies internationally, in pursuit of making institutions account for their expenditure of State subsidies and in requiring universities to meet manpower needs, they can discourage academic freedom by the sheer weight of meeting demands for endless accounting for academics' time, and by stifling innovation and imaginative teaching through specification of standardized outcomes for programmes and qualifications (see, for example, Standish, 2005). To these threats to deliberation, the growing intrusion of the market and its distinctively non-deliberative characteristics can be added. As State funding declines and universities become more dependent on funds they are required to raise for themselves, they become increasingly beholden to corporate sponsors, and corporations as key players in a market orientated, international economy are notoriously unaccountable, positioning themselves beyond the reach of public deliberation about their conduct; although some would argue that not being beholden to the State only for funding could reduce the dangers of State interference in autonomy. As the imperatives of the market intrude in the affairs of universities, the danger increases that they will account for themselves as an exercise in accounting as marketing, resorting to 'spin' rather than self-critical assessment of their performance, and allowing unbridled market forces to influence decisions about curricular and research priorities. So if the conditional autonomy of our universities is indeed under threat, it would be naïve to attribute its causes solely to State intervention.

4. GOVERNANCE AND REGULATION OF HIGHER EDUCATION

Deliberative democracy has been defended as a framework for the work of universities and for their relationship with the State. In returning now to policy on the governance and regulation of higher education, the question as to whether provisions established in South Africa for this purpose are compatible with a deliberative democracy perspective is considered.

The Green Paper (Department of Education, 1996, Chapter 4:1-2) bases its proposed structures and relationships on the following assumptions:

- No single actor or agency can claim sole responsibility or authority for determining the policies and priorities of the higher education system.
- Competing and complementary interests, interdependence and common goals must be recognized.
- Participation and effectiveness must be balanced.
- Power, shared accountability and responsibility require cooperative behaviour from all participants.

These governing assumptions of cooperative governance, as a key feature of the new higher education framework, appear to be compatible with deliberative democracy. Deliberative theories emphasize the point that participation in deliberation is open to all affected by decisions, as free and equal partners in a reciprocal process of rational justification, based on norms and information that are publicly debated. Where agreement cannot be reached, those in the minority cooperate by accepting the outcome of the deliberative process, but the issue is open to later reconsideration. Authority is shared and as far as possible it is communicatively generated. Deliberative participation is not intended to prevent decision and action; participation does not trump the requirement that decisions be made after the issues have been addressed through a process of public reason. The four assumptions seem to imply that there must be a distribution of responsibility between agents (*inter alia*, the representatives of the State and the university) for the achievement of shared goals and for the protection of discrete interests.

Are these assumptions followed through in the formulation of policy provisions for cooperative governance? Roles and responsibilities for higher education governance are divided between the government through the Minister of Education, the Department of Education, the Council on Higher Education and other bodies which the minister may appoint to act on his or her behalf, and individual higher education institutions and the bodies they appoint to manage the functioning and governance of the institution, centrally the council and senate.

The White Paper of 1997 accords to the Minister of Education the role of driving policies and strategies for higher education transformation; and the Higher Education Act (1997) legislates roles and responsibilities for the Minister, who is empowered to determine higher education policy in consultation with the Council on Higher Education. The Minister may also determine the scope and range of operations of public higher education institutions, private higher education institutions and individual public or private higher education institutions (Section 3). The Higher Education Act gives the Minister authority to establish a university, technikon or college (Section 20), merge public higher education institutions (Section 23), and close public higher education institutions (Section 25). Ministerial approval is required should a public higher education institution wish to conduct its teaching and research activities beyond its seat. The Act provides the Minister with the power to appoint an independent assessor should this be requested by the council of a public higher education institution, or if circumstances arise that involve maladministration or threaten to seriously undermine the effective functioning of the institution.

As an independent advisory body, the Council on Higher Education (CHE) was created to facilitate the transformation of the system. It was intended to play a leading strategic role in the transformation of the system in accordance with the vision and goals of the Ministry. Clearly the potential of the CHE to contribute to and facilitate deliberation is considerable. The CHE is described in the White Paper as a ‘major statutory body established to provide independent, strategic advice to the Minister of Education on matters relating to the transformation and development of higher education in South Africa, and to manage quality assurance and quality promotion in the higher education sector’ (Section 3.15).

Reflecting further on the principle of shared responsibility, the division of responsibilities between the CHE and the Department of Education is described in the White Paper as providing ‘two important protections for higher education institutions: first, against the Department's intrusion on the autonomy of institutions; and second, against a punitive approach to the reduction of differences between institutions on the basis of input factors and qualitative performance’ (Section 3.30). The Green Paper suggests the CHE's role is as a “watchdog” over the Department's relations with institutions, so that if problems arise, they can be brought to the attention of the Minister and Parliament (Section 4.4.8).

Among the Ministry, the Department of Education and the CHE there is provision, then, for a sharing of responsibilities and authority. A crucial issue is how, through the principle of conditional autonomy qualified by accountability, this authority is shared with the higher education institutions, through policy provisions for their governance and through requirements for reporting on their activities.

The Higher Education Act makes detailed provision for the governance of universities, specifying governance structures that include a council, a senate, a students' representative council and an institutional forum. The required structure, role and responsibilities of the council of a public higher education institution led to the restructuring of many university councils in the 1990s to be more stakeholder driven and representative. This allows for a widening of participation in deliberative processes. Taken together with provisions for shared responsibilities among the Ministry of Education, the CHE and the Department of Education, there is, formally at least, *institutional* provision for deliberation. To what extent is this also reflected in the more fundamental aspect of provision for deliberative *justification*? Posing this question now moves the discussion in this and the following section from a focus on the principle of cooperative governance to that of conditional autonomy.

That institutional autonomy is qualified by the principle of public accountability, requires that institutions receiving public funds should be able to report how, and how well money has been spent; that they should demonstrate the results they achieve with the resources at their disposal and that institutions demonstrate how they have met national policy goals and priorities (Department of Education, 1997: Sections 1.25, 1.25).

Public accountability having been elaborated in terms of institutions being held responsible for their conduct to their own governing bodies, the institutional community and to the broader society, much store is set by reforms in institutional governance in the new policy framework, reflecting the assumption that appropriate governance structures are in some way necessary to both conditional autonomy and to the demands of public accountability. But, and this is reflected in some of the observations made in the CHE Report, *Governance in South African Higher Education* (2002), the existence of such structures is a necessary, but not a sufficient condition of institutional autonomy, conditional or otherwise. And putting these structural provisions in place does not necessarily create conditions for deliberation either within those institutions or between them and the Minister and the Department of Education. Neither does the Minister's requirement for frequent and comprehensive *reporting* from the institutions, as stipulated by the Higher Education Act.

In the White Paper, it was envisaged that institutions would be required to produce three-year rolling institutional plans developed in accordance with the national plan. These are to include the institutional mission, proposed programmes, enrolment level targets by programme, race and gender, equity goals and proposed measures to develop new programmes and human resource development plans and developmental plans for new programmes. They will also include plans for academic development, research development and infrastructural development (Section 2.13, 2.14). Triennial plans of institutions will encompass all their planned enrolments – both publicly and privately funded. The plans will show the fields and levels of study in which institutions plan to expand or contract their enrolments according to their missions and goals and in response to changing demands. In addition, institutions are required to develop strategic plans outlining their plans for their future development and providing evidence of progress towards the attainment of these goals. These plans should include a Mission Statement, an academic development plan, an equity plan, a capital management plan and a plan for the improvement of performance (Section 4.61).

Taken together with the CHE's initiative in establishing a framework for monitoring and evaluation (see Discussion Document, April 2004), it is clear that there are multiple requirements on higher education institutions to report and to account. As with other policy provisions, including the structures that comprise the institutional framework for cooperative governance, the extent to which these demands will lead to higher education institutions conducting themselves in a deliberative manner is not yet clear. On the contrary, requiring that institutions report extensively and frequently may foster a climate of performativity (Barnett & Standish, 2003) that undermines institutional opportunities and willingness to deliberate.

The potential role of the CHE in fostering a climate of deliberation cannot be underestimated. Its record in promoting deliberation through research into the higher education sector (promoting the epistemic benefits of deliberation), and its efforts in fostering communication are an encouraging feature of current deliberation about higher education issues. Assigned responsibility for quality assurance in higher education in South Africa by the Higher Education Act, the CHE's permanent

sub-committee, the Higher Education Quality Committee (HEQC), has demonstrated commitment to deliberative principles through its consultative procedures in the development of its framework and criteria for institutional audits (CHE, 2004a, 2004b) and in the deliberative processes being followed in the first rounds of institutional audits. However, there is as yet insufficient evidence that the three-year rolling plans are receiving deliberative uptake from the Ministry or the Department of Education. It is noted too that deliberative accountability implies that institutions report publicly, that they are seen to deliberate about their performance, and that the principle of reciprocity applies to all, including the State. In addition, they are required to account for their performance in a manner that includes re-evaluation of policy direction and implementation strategies.

To sum up the discussion in this section: the formal provisions for cooperative governance are compatible with deliberative democracy and may foster it, although there is room for deliberation and action about how they could be implemented so as to achieve their deliberative potential.

5. CONCLUSION: CONDITIONAL AUTONOMY AND ACADEMIC FREEDOM

This discussion of conditional autonomy in the context of cooperative governance is concluded by returning to the central question: does conditional autonomy, as expressed in South African higher education policy and its implementation to date, constitute a significant reduction both in university autonomy and in academic freedom?

In observing that many regard the demands on universities made by external policies as an erosion of university autonomy, Jansen (2004a: 297; 2004b: 6-8) states that Government:

- has required that qualifications be reformatted to match the requirements of the National Qualifications Framework;
- influences how students will be taught by requiring the specification of learning outcomes;
- has given itself the authority through the Programme and Qualification Mix to decide which institutions may teach what;
- has established bureaucratic structures that constitute a series of barriers to the approval of new developments;
- has signalled that the funding formula will privilege some disciplines over others;
- has acquired the right to decide how many students may enter universities by capping enrolments;
- requires participation in a new quality assurance system, which regulates the credibility of qualifications and institutions;
- has carried out a far-reaching programme of mergers and incorporations; and
- has intervened in institutions to restore order.

It is significant that Jansen describes these measures as demonstrating an “interventionist” position on the part of the State.

Although Jansen associates these measures with the accountability requirement of current policy, not all of them can be construed as matters of *accounting*. All can be interpreted as evidence of the State ‘steering’ the sector, as against – to recap a distinction noted in Section 1 – ‘direct State control’ or ‘State interference as a combination of direct State control and pronounced institutional autonomy’.³ Given Jansen’s account of university autonomy and academic freedom, in which he defines academic freedom as the absence of external interference, one can appreciate why he concludes that academic freedom is being eroded by State interference.

But Jansen’s position is problematic. First, the examples that he cites do not demonstrate that *academic freedom*, as deliberation, has been eroded in higher education institutions through these measures. The prerogatives acquired and exercised by the State do extend the principle of conditional autonomy beyond the now standard stipulation that it be qualified by accountability, but his claim that they constitute a significant reduction in academic freedom is exaggerated; so too is his associated suggestion (2004b: 15-16) that South African universities are coming under so much pressure to account for themselves that they may be in the process of ceasing to be universities at all. As Andre Du Toit has argued (2005), universities ‘come in a striking variety of forms and mixes including their basic relations to the State and the political economy’.

As Jansen himself implicitly concedes, there is no neat correspondence between institutional autonomy as traditionally interpreted (the absence of outside intervention) and the existence of a deliberative climate within an institution. While direct State control could plausibly undermine deliberative conditions, it is conceivable that State steering can allow or even promote a climate of deliberation. Whether the steering measures taken by the State are those most likely to promote its higher education aims is a question that requires public deliberation.

Secondly, given that academic freedom deliberatively exercised can be undermined from within institutions, by ideological orthodoxy or managerialism, academic freedom defined and defended exclusively in terms of the absence of outside interference does not assist in assessing the current state of the university. The issue is rather whether the degree of conditionality now attached to the autonomy of the sector threatens the deliberative conditions required for universities to perform their research and teaching roles.

This poses a challenge to the universities themselves in promoting academic freedom in a context of institutional autonomy conditioned by the State’s role in steering the sector. A defence of deliberative democracy indicates that much of the work required for promoting academic freedom in South African universities ought to be viewed as a matter of fostering research and teaching that meet the principles of deliberation, of governance that is deliberative, and of deploying their deliberative resources to meet their obligations to contribute to social justice. The resources that universities have had to commit to internal restructuring and to mergers and incorporations provides only some of the explanation for their weak performance of the function that they, of all national institutions, are best equipped to play – public deliberation.

³ Conditional autonomy with an emphasis on accountability does not correspond neatly with the notion of State steering that, while distinguishable from State intervention, goes beyond the requirement that universities give account for themselves.

What necessary conditions would need to be met if future engagement with issues of university autonomy and its defence in the face of justifiable conditionality is to be appropriately deliberative, on the part of all key constituencies? This chapter suggests, first, that deliberation needs to engage realistically with the key values that underpin the system. Second, among the questions that need to be asked in doing so are: how, given their resources, can universities best pursue the goal of social justice, and what part can they best play in national development? Universities' research resources could play a far greater role in supporting the epistemic demands of deliberation for policy making and implementation. There are grounds to criticize the performance of South African universities since 1994; in spite of the critical traditions that some of them claim to exemplify, they have not been sufficiently engaged with either deliberative redefinition of their relationship with the State nor with other crucial issue about social justice, especially HIV/AIDS. While debate may continue internally in closed institutional environments, it is not sufficiently translated into the public arena. The universities are vulnerable to the criticism that they fail to exercise their own citizenship through prompting public deliberation. Doubts must be raised about the extent to which the universities themselves are behaving in a sufficiently deliberative manner, modelling, as they should, the virtues of free public reason to the citizens of a democracy. The universities themselves might regret the growing conditionality of their autonomy, but they also have an obligation, individually and as an organized sector, to be more internally deliberative, and to contribute more of their deliberative capacities to the benefit of the broader society, ultimately fostering ongoing public debate about the very terms of their conditional autonomy.

Defending their autonomy is thus not merely a matter of persuading the State to restore lost prerogatives, but of exercising their obligation to demonstrate accountability in a deliberative fashion, and one that eschews managerialist assumptions and resists the threats posed to academic freedom by the market and corporatization.

Having called on the universities to defend their academic freedom in the first instance by promoting deliberative conditions within the institutions and in the pursuit of their obligations to society, the paper ends with a concession to Jansen's argument. While the extent to which the State's actions in the framework of conditional autonomy for universities has undermined academic freedom has been questioned, there is no doubt that the measures that Jansen lists as evidence for his claim that institutional autonomy has been reduced indicate that the State has increased its power over this sector. This creates possibilities for future abuse of this power, of a shift from the communicatively generated power implied by cooperative governance towards administratively employed power. This is a key problem that requires ongoing deliberation.

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