UNIVERSITIES AS THE ‘CRITICS AND CONSCIENCE OF SOCIETY’[[1]](#footnote-1): THE CHALLENGES AND THREATS TO ACADEMIC FREEDOM AND UNIVERSITY AUTONOMY IN TODAY’S HIGHER EDUCATION SECTOR

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The defining characteristic of the university is its commitment to open and independent inquiry. This characteristic also distinguishes the nature of university research, which unlike partisan research seeks knowledge and understanding in a completely unrestricted manner. The same principles of unfettered inquiry apply to teaching and the dissemination of knowledge. This commitment to the pursuit of truth gives universities all over the world their universal values and enables them to embark on the important paths of regional and international cooperation which are so important to the vitality of the modern university. (UNESCO, Centre European pour l’Enseignement Superieur, SINAIA Statement on Academic Freedom)

Socrates, it is said, chose to die by eating hemlock rather than compromise his deep commitment to free intellectual inquiry and open and fearless debate. While not exhorting modern academics to similar action, this essay collection draws attention to many issues which question the standing of intellectual freedom of academics and universities in modern liberal western democracies. We explore threats to these ideals posed by a commercialised and internationalised higher education system, subject to a plethora of national and global constraints and dilemmas, in many instances ‘cash strapped’ and subject to the whim of successive governments. Here the writers raise, analyse and question issues relating to academic freedom within the current global scenario: its practical effect, and its future in a very different world from which it was first conceived. Unchanged is the sentiment and rationale which spawned the concept in 16th Century Europe through a need to protect academics and universities from religious and political interference and shown by the statement of UNESCO above. Shifting however are notions of what is a university and what is a university education.

Globally, there is much rhetoric surrounding the concept of academic freedom. Most emphasise the common good, the community of scholars and the national importance of the freedom of universities to unfettered pursuit of truth and knowledge. A powerful statement on the meaning of Academic Freedom and the conditions necessary for its protection emerged in 1940 from a meeting between the American Association of University Professors and of the Association of American Colleges:

Institutions of higher education are conducted for the common good and not to further the interests of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition. Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights in teaching and of students to freedom of learning. It carries with it duties correlative with rights.

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society. (American Association of University Professors and the Association of American Colleges and Universities, 1940 Statement of Principles on Academic Freedom and Tenure)

One of the strongest international statements on academic freedom comes from UNESCO:

Institutions of higher education, and more particularly universities, are communities of scholars preserving, disseminating and expressing freely their opinions on traditional knowledge and culture, and pursuing new knowledge without constriction by prescribed doctrines. The pursuit of new knowledge and its application lie at the heart of the mandate of such institutions of higher education. (UNESCO, Paris, 1997 at 30)

The strength of this UNESCO statement is that is neatly picks up on the connection between what is at the heart of a university, pursuit of new knowledge, the notion of a community of scholars free to disseminate and express themselves and the concept of mandate. In other words, academic freedom is a two way street, it goes as much as to the role of the university as it does to the right of a particular academic or student to speak out. Once this fundamental point is understood other matters flow. The university must put in place conditions within that university so that it will meet the statute under which it is incorporated. The university will have to act in ways that enable academics to meet their teaching and research obligations, so that the university can do likewise. To put it simply, if you deny academic freedom to an academic you deny at least partly the capacity of the university to meet its research and teaching objects. If an academic denies academic freedom to a fellow academic that person impinges on the capacity of the university to meet its objects. This also takes us to the related but separate concept of institutional autonomy. As a creature of statute a university must be allowed to meet its statutory objects. If it is not, that university has had its autonomy weakened.

The principle of ‘academic freedom’ has widened and become intermingled with concomitant principles of freedom of speech and freedom of expression, and embodied generally and specifically in constitutions, legislation and university acts of most western liberal democracies. It has long been affirmed by the judiciary, for example in the US, typified in the much quoted statement of Frankfurter J of the US Supreme Court: ‘The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperial the future of our Nation.’ (US Supreme Court 1957, *Sweeny v New Hampshire* 354 U.S. 235*).*

In Europe, the architecture of the Bologna Process continues to embrace the principles of academic freedom by restating the principles in its communiques (Jan de Groof, 2013, referring to Bergen (2005), London (2007), Leuven/Louvain-le-Neuve (2009) and Bucharest (2012)).

In Australia there is no general constitutional guarantee of academic freedom. Other countries such as South Africa, New Zealand, the UK and Ireland[[2]](#footnote-2) gained academic freedom protection during the late 80's and early 90s, but at that time the Australian Vice-Chancellors’ Committee did not support the introduction of such measures. (undated, Professor Brian Wilson). It was only recently that academic freedom in Australia was accorded Commonwealth legislative recognition. In 2011 the Higher Education Support Act 2003 (Cth) was amended to insert a requirement states that universities ‘have a policy that upholds free intellectual inquiry in relation to learning, teaching and research’: s 19.115. Further provision has also recently been made in the *Higher Education Standards (Threshold Standards) 2011* (discussed by Jackson in his essay).

Academic freedom and university autonomy are concepts long held dear in democratic liberal jurisdictions as fundamental precepts to the provision and pursuit of higher education. They are terms which are used frequently in relation to universities usually in tandem with constitutionally protected freedom of speech (particularly in the US under the First Amendment to the Constitution); with institutional self-governance and freedom from state and political interference. They are also accepted as pre-conditions of the pursuit of institutional excellence and the advancement of knowledge through teaching and research activities of universities and their academics.

While seemingly simple and self-evident, academic freedom is fragile and it has, over the decades, proved notoriously difficult to define. It has been said: ‘The concept is both omnipresent and elusive. It is called self-evident but seems, at the same time, in many aspects, miles away from any evidence. Academics often pretentiously claim academic freedom but, unfortunately, for reasons of expediency, often betray it in practice.’ (de Groof, 2013, 156). Is it merely (in the words of one commentator) ‘a woolly blanket’? Or is the concept not only tangible but increasingly essential as the key to the place of higher education systems of the world as the seekers and disseminators of truth and wisdom? Can the principles withstand the counteracting forces they face in the stresses and strains which characterise today’s world of higher education? Are they stealthily being sacrificed or severely limited by economic, social and political expediencies?

The higher education sector globally is now being called upon to respond to phenomena variously referred to as ‘massification’, ‘commodification’, ‘corporatisation’ and ‘managerialism’, accompanied and assisted by the rapidly accelerating impact of technology. In western countries this has led to an ever increasing reliance on the international student dollar, on private philanthropy and on commercially-sponsored research. In turn universities have had to develop a much greater ‘sensitivity’ to the market and market image, perceiving themselves increasingly as pursuing the business of higher education. A new ‘suspicion’ has crept into the traditional relationship between universities and the state which was hitherto founded on strong principles of autonomy and respect for the preserve of the former to decide how, what and where they would deliver education. Governments require of universities ‘more for less’ in terms of accountability for the public dollar spent on teaching and learning, and research.

As perhaps an inevitable outcome of the application of the market model to higher education, it has become fashionable in recent years to apply the supplier/consumer analogy to the university/student relationship (Kamvounias & Varnham 2008, Kamvounias & Varnham 2010 ; Farringdon & Palfreyman 2012). It is easy to see how this perception has taken hold – through the increasingly higher fees able to be charged by universities and the downgrading of liberal arts studies compared to the popularity of courses such as law, medicine and accounting which lead to higher income and status (Norton 2012); through the application of ‘managerialism’ and ‘corporatisation’ in and of higher education, and the entry into the ‘marketplace’ of large numbers of private providers some of which are ‘for-profit’; through the reliance worldwide on the overseas student full-fee paying dollar, and many other social, economic and cultural factors now surrounding the sector. The market-driven environment and accompanying acceptance of the student/consumer model has significant implications for academic freedom and university autonomy. It requires academics to pursue ‘safety’ often at the expense of ‘innovation’ and slavish adherence to market surveys and factors driven by market competition where teaching and research based on exciting intellectual inquiry may take second place to efficiency.

Universities are both creatures of, and help shape their environments and they operate on the shifting sands of the social, political, cultural and economic imperatives which surround them. These essays focus on the threats and proselytise that in the face of such forces there is ever more a need for them to hold fast to their academics’ freedoms, their autonomy and their integrity, while demonstrating flexibility in their way forward. It is not easy. Universities, academics and their students are confronted now with many challenges which go to the very core of their existence and their role in society. A plethora of competing interests and factors not seen by our forefathers have questionably led to a reconceptualization of universities as institutions providing simply a ‘private benefit’ leading to individual advancement in terms of economic and social status, rather than the historical concept of the promotion of the public good of education for the betterment of society.

Considered here are the implications of these changes on the long held and historically sacrosanct concept of academic freedom and university autonomy from the perspective of threats posed by prevailing factors within various jurisdictions but with global relevance. Rather than considering quests by individuals for recognition of rights, we take a wider view to question the strength of the principles in the face of the countervailing circumstances within which they stand. While the essays consider the situations in the UK and Europe, Australia, New Zealand and South Africa, the discussions and arguments are of universal applicability and may be viewed in a wide context.

The themes are progressed through two interrelated strands.

The first argues that academic freedom is curtailed or limited by the demands of commercialisation of higher education and the demands of marketisation lead to a need for ‘safety’ of the academic and their university and the protection of the ‘vulnerable’ student. The focus is also on the freedom of academics in relation to ownership of the works generated by their research as commercialisation leads to a university ‘creep’ to assert ownership over the material generated by academics in both their research and their teaching. It is argued that copyright law provides the means of guaranteeing the freedom of academics to deal with the materials they have created as they wish.

In his essay ‘Free Speech, Academic Freedom and Human Being’ Hayes argues that freedom of inquiry and expression have been restricted by notions of ‘professionalism’ which limit academics to speak out on matters relating to their research alone, and that they have been sacrificed in the need to protect students. He posits that while historically the academic’s freedom included the freedom to venture views on whatever and however they chose, limiting the concept to ‘professionalism’ has divorced it from its relationship with the right to freedom of speech. Marketisation and its by-product, the ‘professionalism’ of free academic thought, has led to the ‘therapeutic university’ (Hayes, 2002; Hayes and Wynyard 2002; Hayes 2004; Ecclestone and Hayes 2008; Barnett 2011). He discusses an institutional discouragement of open debate which is based on the fear that it may cause offence or fail to protect the vulnerable. He stresses that market concepts such as ‘customer satisfaction’ have overtaken the exposure of students to intellectual inquiry and challenge to beliefs and opinion. This trend is put down to the wider social, political and cultural changes which have occurred as a result of not only the commodification and marketisation of universities and the sector generally, but also to ‘the war on terror’ and a perceived need to counter ‘extremism’ in UK universities.

Fraser argues for academic copyright ‘as a pillar of academic freedom’ and suggests a solution to the university’s grab of the academic’s research ‘product’. He approaches academic freedom from the perspective of the common law and contractual relationship between academics and their institutions and the freedom of academics to deal with the materials they create, counterbalanced against the rights and duties contained in copyright legislation (he uses the Australian *Copyright Act 1968* (Cth)). He considers the assertion of rights by universities over academic material created for teaching and learning, and arising from research. In his argument as universities face increasing financial pressures and seek wider sources of revenue in this era of commercialisation and marketisation of higher education, ownership of a wider range of materials created by academics will become ever more attractive. While acknowledging the public role of universities and their institutional uniqueness in the pursuit of knowledge and the creation and dissemination of critical and original research essential to the furtherance of society, he argues strongly for the protection of ownership rights of academics and that in order to flourish they need the ability to ‘deal with their copyright content without fear or favour’. He suggests uniform terms providing for academic ownership of copyright should be introduced at an institutional level, overriding copyright act provisions on employer ownership in the specific context of academic creation of copyright works.

The second strand explores the demands of state regulation and accountability and the effect of political and economic considerations on universities.

In terms of the funding of the freedom of research of individual academics it is argued that the ‘output based’ funding schemes prevailing in many countries restrict experimentation and innovation by encouraging academics to engage in only ‘safe’ research. Within this frame, Butler considers compromises to the freedom of academics posed by the Performance Based Research Funding schemes (PBRS). She argues that these schemes are central to the market driven agenda and they sit alongside and are integral to the other commercial agendas of governments for higher education, such as user-pays, and partnerships with industry for research. While she speaks from a New Zealand perspective she uses comparative examples, and her views have universality as such schemes have been instituted by many governments including the UK to provide the framework for the allocation of government funding to universities. She contends that the system of peer review which forms the basis for such schemes limits research freedom by encouraging conventionality at the expense of innovation. She cites many examples of how peer review favours orthodoxy and ‘mainstream, disciplinary-based, basic, “safe” research at the expense of applied, interdisciplinary or speculative research’(Butler and OECD, 2010, 145). She contends that the PBRS is a flawed funding system because it infringes and places unjustifiable limitations on the autonomy of university researchers to apply their knowledge and expertise in the pursuit of research at their own determination. While acknowledging the right of the state to allocate funds to public universities, and the legitimacy of its establishment of systems to do so, she suggests alternatives which in her view would promote greater research excellence by creating an environment in which academics could follow their instincts, driven by their knowledge, to pursue innovative new research areas.

Jackson in his paper discusses transnational education (TNE), quality assurance and academic freedom. He notes that there are many western universities who are major players in TNE. These universities may have international stand-alone campuses, but in many countries, for example, Singapore and China this model is not allowed, or very few foreign universities are allowed to operate on a completely independent basis. Therefore in most cases the foreign university will have a collaborative arrangement with a local provider and will contract some or all of the teaching to that institution. Invariably that organisation will rely extensively on casual academic staff to teach. On occasion there is no culture of free speech in the overseas country and no real culture of that in the teachers or the students. This places teaching and learning, and especially critical inquiry in the classroom in complete jeopardy. Questioning is already a difficult concept to teach and practice in many international classrooms where language difficulties and polite deference to the teacher is the norm, and unquestioned paternalistic one party government the rule. Jackson concludes by suggesting that to date there is no evidence that quality assurance agencies have done anything about this in the past. He surmises this is because they are ultimately arms of governments with clear briefs to protect TNE and other international student income.

In relief, Higgins essay provides crucial insight into the place of higher education and the part played by academic freedom within the fraught path to democracy in South Africa: ‘… caught as it is between the rock of global higher education policy and the hard place of local political pressures’. He discusses the immense pressures relating to the transition of higher education from the opposing ideas of academic freedom and the relationship between state and university, held by Afrikaans universities, and those instituted to train Blacks, Coloureds and Indians for more subordinate roles. He traces the path from the 1980s with the mounting challenges inside and outside universities to the state and its Apartheid system, and the part played by academics in the disruption. He argues that while the Constitution of democratic South Africa asserts academic freedom it is within the context of freedom of speech and expression generally and it does little in practice to establish boundaries between universities and the state. In fact it leaves open the potential for ‘hegemony’ to be asserted by government for economic, social or political imperatives. Higgins points to new legislation which places university autonomy at the whim of the current sociopolitical climate driven in the interests of ‘public accountability’ as providing a disturbing reminder of the fragility of the principles surrounding the freedom of academics and universities.

As stated at the beginning of this introduction, these essays do not aim to canvas the impact of constraints on the freedom of academics specifically in terms of security of academic employment. One of the authors, Jackson, has conducted a major study on academic freedom in Australian universities and the detail will not be repeated here.(Jackson 2002, Jackson (a) 2005, Jackson (b) 2005, Jackson 2006). Suffice it to say that his conclusion like that of others around the world is that the single most important factor in academic freedom protection is sturdy protection of academics against arbitrary dismissal, a point strongly recognised in the AAUP 1940 Statement. Such protection generally does exist for full time and, on occasion, part time and casual staff through individual university-staff collective bargaining agreements. Many countries, including Australia and Singapore, have a growing for profit private non university college system not renown for cherishing tenure or other protections against arbitrary dismissal.

In any case, such institutions rely extensively on part time and casual staff whose contract may only last for the length of the immediate teaching term. Rather than dismissing an academic for what they may have had to say and attracting litigation and the attention of industrial authorities it is far simpler to let the contract expire through effluxion of time. Even in that bastion of tenure, the United States, non-tenure track workforce numbers are increasing rapidly:

Between 1993 and 2003 the proportion of all new full-time faculty appointments employed on short-term contracts and without prospect of tenure increased from 50 percent to 58.6 percent of those hired. This “restructuring” has been going on since the mid-1970s and shows no sign of slowing down: between 1976 and 2005 the full-time contingent academic workforce grew by 223 percent, the part-time contingent workforce grew by 214 percent, while the tenured and tenure-track workforce grew by just 17 percent. (Head 2011, 323)

The commonality of these essays is their focus on the new ‘commercialisation’ and its counterbalance with the forces that creates the trust which society must have in its academics to apply their intellect and ability with integrity. The issues they raise are underpinned by the tension between the place of individual academics as the creators and purveyors of knowledge and intellectual inquiry to follow their own conscience and their self-determination in relation to their creations, and what is seen by political, social and economic imperatives towards the market good.

CONCLUSION: GATHERING CLOUDS?

Free intellectual inquiry and the freedom of universities to pursue their teaching and research proceeds unquestioned until political, social or economic factors throw a spotlight on their parameters. It is only then that attention is focussed the need for re-examination and protection of the principles. Many instances are outlined in these essays. In Australia in recent times this has been within the context of the debate relating to climate change and the science of global warming. In 2011 hate campaigns were raged against a number of university academics speaking publicly about the results of their research, requiring an affirmation by Universities Australia in a statement stressing the importance of free intellectual inquiry and open debate. Earlier this year there was the very public controversy faced by the University of Sydney in criticism of its failure to discipline academics for their publicly held views on the situation in the Middle East. In a troubling response, the current Federal Minister of Education is quoted in the *Australian* national newspaper as saying ‘each university is responsible for its own governance, but universities should avoid needless controversies that damage their reputation [and] also make Australia look less respectable to our potential student market.’ He also stated that: ‘Obviously, many members of parliament are concerned to ensure that the reputation for high quality that Australian universities have earned over decades is not threatened in any way.’ (*The Australian,* January 14 2014)

Here it is suggested there are so many prevailing factors in the ‘vortex’ of today’s world which conspire to mount on assault, or at the very least, to water down, academic freedom and university autonomy. While it is axiomatic that a right is not dependent upon being earned, it is true also that if academics and universities are to withstand the pressures and be respected as the ‘critics and conscience of society’ they must adhere to the highest standards of ethical and professional conduct in their teaching, research and in their related activities within and outside the university. That is not to urge succumbing (in the words of Hayes) to the ‘narrowing’ of academic freedom by ‘professionalism’ or comment only on specific research or teaching matters, and the fear of ‘stepping out of the box’, of causing offence or of inciting ‘extremism’. Factors such as the need for external funding of research, the tension between the old orthodoxy and the new, the need for political correctness and the role of the media all play a part in the ‘warps and wefts’ of what we simply call ‘academic freedom’. There has been discussion here within different context of the threats posed by increasing managerialism of the sector, with commercial imperatives and the need for funding being met either by government on certain conditions, such as in the PBRS, or by private industry with its own, potentially conflicting agenda.

What is not discussed to any significant extent is the impact of internationalisation of universities or globalisation of the sector, with both the enrolment nationally of students from ‘sanctioned’ regimes (provided for in Australia within the *Autonomous Sanctions Act 2011* (Cth), with the prohibition on ‘export’, which could be by dissemination of research, which may be used for purposes counter to ‘the war on terror’ (provided for in Australia in the enacted but yet to be implemented *Defence Trade Controls Act 2012* (Cth)). What of the freedom of academics to speak or engage with, or universities to teach in societies whose principles run counter to ours, particularly those with less robust systems and respect for human rights or standards of state control? How to maintain strong principles while weaving through the ethical minefield created by the need for the dollar and the maintenance of the highest academic standards expected of universities in a free and liberal society. In this era of global mobility and interaction of universities, academics and students, the maintenance of vigilance in protecting and promoting the principles which underpin western democracies is of utmost importance. The world of higher education is becoming ’borderless’ in physical terms but far behind is a commitment to the ethos of academic freedoms and university autonomy? Jackson has considered these questions within the frame of regulatory regimes in partner jurisdictions. Now, many western universities are setting up campuses in less liberal jurisdictions, academics engaging in collaborative research and teaching on articulated degrees in countries with strongly restrictive regimes, and international universities are establishing campuses and articulations in all jurisdictions. In discussing the internationalisation of the Faculty in the US, Kaplin points to recent controversies involving US academics wishing to travel to teach and research abroad and conversely foreign academics seeking to pursue their intellectual endeavours in the US. He cites as an example the case of *Faculty Senate of Florida International University v Roberts* (574 F. Supp.2d 1331) and *Faculty Senate of Florida International University v Winn* (616 F.3d 1206 (11th Cir. 2010) where academics claimed that a state ban on US scholars to travel abroad to certain countries, violated their academic freedom (Kaplin & Lee 2012). Not far removed is the recent media publicity and criticism faced by the University of Sydney (mentioned above) following a visit by one of its academics to meet with [Bashar al-Assad](https://www.google.com.au/search?biw=1093&bih=479&q=bashar+al-assad&stick=H4sIAAAAAAAAAGOovnz8BQMDgzcHnxCHfq6-gVlZUooSJ4hlGF9WX) and members of the Syrian regime (*The Australian* 2014). In response, while stating that universities ‘do not and should not “endorse the views of any particular academic, Professor Stephen Garton, Provost and Acting Vice-Chancellor of the University of Sydney made the statement:

The mandate of universities in modern democracies is to provide an environment for the development of ideas, rigorous experimentation, the testing of hypotheses, and critical analysis of existing knowledge. Universities are here to encourage open and rigorous discussions designed to advance knowledge - not rubber stamp some ideas as good and others as bad based on the personal views we may hold. (*The Australian,* 10 January 2014)

Finally we return to the place of academics as ‘the critic and conscience of society’ and conclude with words from the New Zealand media which are both deeply disturbing and a ‘call to arms’ for the freedom and integrity of academics worldwide. The item appeared in response to a suggestion made by a management academic at Massey University in New Zealand that the sale of TradeMe (an online competitor to the US eBay) was ‘an opportunity lost for New Zealand’. To the academic’s suggestion that rather than the founder pocketing the millions made from the sale, there could have been profit distribution scheme involving the traders (the worth of Trade Me having been generated by their activity), the *Dominion Post* said:

I’m not sure whether to be appalled that we pay academics to inculcate impressionable students with their madcap ideas, or grateful to Dr Prichard [the academic concerned] for coming forward and revealing himself. It’s useful to know what’s going on in universities. (Du Fresne *The Dominion Post* 2006)

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1. New Zealand *Education Act 1989* Section 162(4)(a). [↑](#footnote-ref-1)
2. *Constitution of the Republic of South Africa 1996* s 16; *Education Reform Act 1988* (UK) s 202; *Education Act 1989* (NZ) s 161: *Universities Act 1997* (Ireland) s 14. [↑](#footnote-ref-2)