

# A critical review of the relationship between academic freedom and democracy in Ghana's public universities: From pre-independence to the Fourth Republic

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*Abstract:* The present work undertakes a critical assessment of academic freedom at Ghana's public universities. Attention is placed on how the laws enacted to regulate the functioning of public universities have influenced or are likely to influence respect for academic freedom in public universities in Ghana. The paper seeks to articulate a correlation between the democratic credentials and the level of respect for academic freedom on the country's university campuses. Three key decisions taken by the present government which threaten academic freedom are discussed. They are: the incidents leading to the closure of the Kwame Nkrumah University of Science and Technology (KNUST) in October 2018; the tensions arising in the Technical University Teachers Association of Ghana (TUTAG); and the unsuccessful attempt by the government to enact the Public Universities Bill 2020. To deal with the threat to academic freedom through managerialism, the paper calls for the democratisation of academic freedom on university campuses. This is premised on the fulfilment of responsibilities attached to the enjoyment of academic freedom by members of the academic community—the university, academics and students—towards each other. The place of the State, as the principal duty-bearer in the academic freedom matrix, is considered as pivotal in facilitating this process.

**Key words:** Academic freedom; public universities; democracy; managerialism; governmental interference.

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## 1 Introduction

The work discusses the history and phases of university education in the former Gold Coast and now Ghana. It notes that Ghana began on a good note regarding respect for academic freedom. However, as the veneration for liberal democracy embodied in Ghana's Independence Constitution waned and Ghana gradually morphed into a one-party state and later into different forms of military dictatorship, the quality of respect for academic freedom dwindled and got watered down over time. After successive overthrows of constitutional governments from 1966 to 1981, the country returned to full democracy in 1993 with the promulgation of the 1992 Fourth Republican Constitution. Currently, substantive rules on academic freedom have been consolidated in the constitution and governing statutes. However, despite the explicit recognition, for the first time, of "academic freedom" in the Fourth Republican Constitution, the decisions of the government since the establishment of the Fourth Republic have compromised academic freedom.

The paper focuses attention on the three case-studies that threaten academic freedom under Ghana's Fourth Republic: the incidents at the Kwame Nkrumah University of Science and Technology (KNUST), the TUTAG tensions, and the controversies surrounding the Public Universities Bill. Finally, the work deals with the subject of managerialism and concludes with recommendations.

## 2 Defining academic freedom and establishing its relationship with democracy

Academic freedom is defined as a freedom carved out for the academic community to provide access and opportunity for the conduct of scientific enquiry and dissemination of the findings thereof. The dissemination is done principally through teaching, publication, and applying these findings to promote human welfare. The enquiry and dissemination are to be done within the remits of public order, professional ethics and social responsibility and without restraint or the threat of sanctions by government and other power brokers (Appiagyei-Atua, Beiter, and Karran 2015a).

Protection of this freedom is largely shaped by the democratic conditions in a particular State. Conceptions of democracy are based on the fundamental ideas of popular sovereignty, accountability and collective decision-making, all geared towards respect for human rights and fundamental freedoms. Therefore, the democratic credentials of a country are determined by the incorporation of different rights protections. It follows then that in principle, the more democratic a society is, the higher the level of respect for academic freedom. That is to say, democracy should guarantee respect for academic freedom. Alternatively, academic freedom can be used to fight for greater respect for other rights and freedoms in

the larger society. Thus, the paper talks about two types of relationships between democracy and academic freedom. In the first, democracy gives birth to academic freedom. In the second, academic freedom gives birth to democracy.

Bergan supports the first example when he considers academic freedom to be the heart of democratic society which is hardly conceivable without academic freedom (Bergan 2002, 49). In the second situation, because of the privileged position of academics, they can provide expert criticism of governments and ensure that they are accountable for their actions. Appiagyei-Atua *et al.* espouse this second approach through the composite theory which talks about the dual benefit of academic freedom (Appiagyei-Atua, Beiter and Karran 2015b). First, the traditional benefit—when knowledge is produced to meet societal needs. Second, when academic freedom becomes the measuring rod for society to enjoy similar rights commensurate with its own needs, thereby invoking a duty on the academic community to use its freedom to promote other rights (Appiagyei-Atua, Beiter, and Karran 2015b, 325-326). Busia and Degni-Segui also lend support to this second proposition by arguing that no severe analyst can deny the crucial implications of the protection of academic freedom for the broader democratic and human rights discourses and struggles, and even the quest for economic development, in contemporary Africa (Busia and Degni-Segui 1995, 13).

At the same time, academic freedom is threatened by the rising trend of “managerialism” in higher education. The main changes occasioned by managerialism are represented by the loss of academic freedom, shared governance, collegiality, academic tenure, and professional autonomy (Deem 1998). This phenomenon tends to create some difficulty in using the democracy matrix to gauge the state of academic freedom in even more advanced democratic nations (Beiter, Karran, and Appiagyei-Atua 2016).

In this paper, academic freedom is used in the generic sense. The article anchors the generic definition of academic freedom on four pillars: institutional autonomy, self-governance, individual rights and freedoms (for both academics and students), and tenure.

### **3 Formation of UG, KNUST and UCC**

The University College of the Gold Coast (UCGC) was established through the University College of the Gold Coast Ordinance of August 11, 1948. The purpose for its establishment was, among others, to “provid[e] for and promot[e] university education, learning and research” (University of Ghana, n.d.). It later became the University College of Ghana (UCG) after independence and, four years after gaining independence from British colonial rule, the UCG evolved into the University of Ghana (UG) through the University of Ghana Act, 1961 (Act 79) on October 1, 1961.

After UG, the next public university to be established was the Kumasi College of Technology (KCT) in 1951 which started following a recommendation in the Watson Commission report to that effect (Colonial No. 231, 1948). The college was granted full university status and renamed the Kwame Nkrumah University of Science and Technology (KNUST), through the Kwame Nkrumah University of Science and Technology, Kumasi, Act 80 (1961), and later Act 559 (1998).

The third, the University of Cape Coast (UCC), first opened as the University College of Cape Coast (UCCC) in 1962 and was affiliated to the University of Ghana. It became a full-fledged university, Ghana's third, under the University of Cape Coast Act, 1971 (Act 390).

#### **4 The state of academic freedom within the public universities**

##### ***1948 to 1957***

The British authorities sought to entrench UCGC's right to academic freedom right from its birth, though it was not embodied in the Ordinance establishing the institution itself. Governor Sir Gerald Creasy, the then colonial representative in the Gold Coast, emphasised at the opening of the University College that the UCGC was "an autonomous institution, entirely independent of the Government" (Agbodeka 1998, 6).

However, for the first 13 years of its existence and until it was converted to a university, the UCGC was supervised by two institutions in Great Britain. One was the Inter-Universities Council, which served the UCGC in an advisory capacity and approved all academic appointments, in fulfilment of the requirements of the Asquith Commission. The other was the University of London for approval and control of details of degree regulations. The latter arrangement placed the University College under the suzerainty of the University of London. The UCGC's first Principal, Mr Mowbray Balme, criticised this arrangement as being "[s]ingularly ill-suited because of its autocratic constitution in which the Vice Chancellor, with the connivance of the professors, make absolute decisions" (Austin 1976). In other words, the UCGC did not enjoy institutional autonomy due to the suzerain nature of the relationship it had with the University of London. The case with KCT was no different as it was also affiliated to the University of London. However, the colonial authorities sought to extend the academic freedom principles founded on unwritten norms from UCGC to KCT.

At the Tananarive Conference of 1962 organised by African states in conjunction with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) to map out a strategy for African universities, academic freedom found its way into the communiqué issued at the end

of the event (UNESCO 1962). Initially, African leaders unequivocally expressed the need to promote academic freedom within the universities (UNESCO 1962; Dlamini 2002). Dr Kwame Nkrumah, the first President of the Republic of Ghana, did the same. For example, he is on record saying:

We know that the objectives of a university cannot be achieved without scrupulous respect for academic freedom, for without academic freedom there can be no university. Teachers must be free to teach their subjects without any other concern than to convey to their students the truth as faithfully as they know it... We therefore cherish and shall continue to cherish academic freedom at our universities. (O'Brien 1964, 488).

Ironically, the Nkrumah government resorted to autocratic rule and was met with dissent on the university campuses. Events began to unravel when, in 1960, Ghana declared itself a republic and jettisoned the 1957 Independence Constitution to make way for the 1960 Constitution. Neither constitution guaranteed respect for academic freedom. The 1960 Constitution saw only trifling references to human rights, contained under article 13 thereof on "Declaration of fundamental principles".

The coming into force of the 1960 Republican Constitution saw the downward spiral of Ghana's democracy (Walters 1997, 227) with its corresponding negative effect on academic freedom. Subsequently, Nkrumah is quoted as saying, "[i]f reforms do not come from within, we intend to impose them from outside, and no resort to the cry of academic freedom (for academic freedom does not mean irresponsibility) is going to restrain us." (Mkandawire 1997, 18).

The Nkrumah regime schemed to water down academic freedom in the new University Acts. Among other changes, the position of Chancellor of the University was reposed in the Head of State under section 4 of the University of Ghana Act, making Nkrumah the first Chancellor of the University. The university council was given the power to appoint the Vice-Chancellor with the approval of the Chancellor (Act 79, s 6).

The Chairman of the University Council was appointed by the Chancellor and was vested with the power of acting as Chancellor in the absence of the Chancellor (Act 79, s 5). Also, the Chancellor was part of the University Council. Thus, the presence of the Chancellor in the Council was conspicuous. Moreover, the Council was packed with government officials or government appointees. Further, under section 10 of Act 79, the University Council was given broad powers "[t]o do or provide for any act or thing in relation to the University which it considers necessary or expedient in its capacity as the governing body".

As a result, violations of academic freedom at the three public universities, especially the University of Ghana, were rife. Among other developments, the top echelons of university administration were also captured by the government. Some teaching staff were dismissed under controversial circumstances and without due process after being accused of involvement in “subversive activities” (Appiagyei-Atua, Beiter, and Karran 2015a, 64-65). The government also planted spies in the classrooms to report on “dissident” lecturers. The national student representative body, the National Union of Ghana Students (NUGS), was replaced by another body which was more compliant to the whims of Dr Nkrumah (Finlay 1968). In an address to the 1966 congregation of the University of Ghana, the Vice-Chancellor (VC), Dr. Alexander Kwapong, had this to say:

As you all know, this institution has been subjected to the most merciless and persistent attacks by the regime of Kwame Nkrumah. When it seemed that all of the several institutions of this country had fallen before the resistless advance of his totalitarian power, this institution appeared to be one of the few but most important bastions of freedom still left in the country ... Academic freedom was held up to be a shibboleth behind which imperialist, colonialist and neo-colonialist agents and their stooges sheltered, and in the rapid march towards the new socialist paradise and African unity, there was no place for this outworn bourgeois concept (Kwapong 1966, 545).

### ***1966 to 1972***

Following the overthrow of Nkrumah in 1966, the basic laws of the three existing public universities at the time remained in place. The new Head of State and Chairman of the National Liberation Council (NLC), Lt. General Ankrah, assumed the position of Chancellor of the three universities between 1966 and 1967, a position he later handed over to the co-chair of the NLC, Brigadier Afrifa. However, the military regime that took over the reins of government did not use the provisions of these laws to suppress academic freedom in practice.

Ghana returned to constitutional rule in 1969 following the coming into force of the Second Republican Constitution. This Constitution, however, did not introduce any reform of the laws regulating the functioning of the public universities. Among the few innovations in the constitution which affected the university directly was the establishment of a new office of the Ombudsman whose functions included investigating any action taken by, or on behalf of, public bodies, including higher education institutions (1969 Constitution, art 11).

Also, under the Second Republic, article 49(b) of the Constitution vested the appointment of the Chairman and other members of the Council for

higher education in the ceremonial President. However, again relying on the 1961 Act for UG and for KNUST, Mr Akufo-Addo, the President of the Republic, was made the chairman of the University Council. Thus, the trend set by Nkrumah in law, with respect to government intrusion in university governance, did not change very much.

In the case of UCC, section 9(3) of the 1971 Act establishing it as a full-fledged university under the second Republic gave the President the power, acting in accordance with the advice of the Prime Minister, to constitute the university council. The Chancellor was appointed by the President in consultation with the university council (Constitution 1969, s 5(1)). The Pro-Chancellor as Chair of Council was appointed by the President acting on the advice of the Prime Minister (Constitution 1969, s 6(1)). The Vice-Chancellor was appointed by the President on the advice of the Prime Minister and on the recommendation of the university council (Constitution 1969, s 7(1)).

### **1972 to 1981**

The 1969 Constitution was overthrown in 1972 by the National Redemption Council (NRC) headed by Col Kutu Acheampong who also assumed the position of Chancellor of the three universities when he assumed power. When the NRC morphed into the Supreme Military Council (SMC), it sought to introduce a new form of governance structure dubbed the "Union Government" which was a power-sharing arrangement between civilian politicians, the police and the armed forces, thus doing away with partisan politics. The proposal was vehemently opposed by important stakeholders in the country, including university students who saw it as a surreptitious attempt by the military regime to perpetuate itself in power. Violent student demonstrations led to the closure of Ghana's universities. In reaction, the government of the day sought to place the universities under the Ministry of Education as a way to control and deny them autonomy.

The most promising change in the quest by Ghanaians for academic freedom in the universities occurred in 1979 when article 55(1) of the Third Republican Constitution granted the University the autonomy to appoint its own Chancellor and barred the President, while he continued in office as President, from holding the office of chancellor or head of any university in Ghana.

However, a new Chancellor could not be appointed at any of the three public universities during this period due to lack of agreement among the university administrations, the National Commission on Higher Education (NCHE) and the Attorney-General. These provisions may have secured greater respect for academic freedom at the public universities. However, that draft amendment to the University of Ghana Act never saw the light

of day. In the end, the then Vice-Chancellor of the University of Ghana, Prof. D. A. Bekoe, concluded that the draft University Act was not going to be attended to 'in the near future' by the government (Memo 1982). Thus, between 1980 and 1981 when the Limann government was in power, there was no Chancellor for the three public universities.

### ***1981 to 1992***

The 1979 Constitution was overthrown two years later through another coup d'état led by Jerry John Rawlings who brought in the Provisional National Defence Council (PNDC). With the overthrow of the Constitution, Rawlings was made Chancellor of all the public universities. The same law, however, introduced some innovative steps under section 7(2) of PNDC Law 239 which saw expansion of the list of membership of the University Council, a positive move towards greater respect for academic freedom. However, the retrogressive part of the arrangement was that all the members of the Council were appointed by the PNDC (PNDCL 239, s 7(1)). Also, both the Chancellor and the Chairman of the University Council were appointed by the PNDC; in the case of the Vice-Chancellor, the appointment was on the recommendation of the University Council (PNDCL 239, ss 5-6).

Similar arrangements were made for KNUST and UCC. In the case of UCC, a three-member interim administration committee body was appointed to serve as the University Council, though the UCC Act was not abolished.

### ***1992 to date***

One of the constitutional reforms brought about in the 1992 Constitution was the explicit introduction of academic freedom in the Constitution. Thus, article 21(1)(b) of the Constitution states:

All persons shall have the right to freedom of thought, conscience and belief, which shall include academic freedom.

The University of Ghana stands out among the three universities as the first and the only public university to institute changes to its basic laws in response to the 1992 Constitution by enacting new Statutes in 2004. However, under this arrangement, the 1961 University of Ghana Act remained in force. Among the innovations introduced in the 2004 Statutes was the power granted to the University Council to appoint its own Chancellor. The Chancellor in turn was vested with the authority to appoint the chairman of the University Council in consultation with the Executive Committee of the Academic Board (s 5(1) 2004 Statutes, UG). This provision fell in line with article 195(3) of the 1992 Constitution



which vests the power of appointment of persons to hold office in a body of higher education, research or professional training, in the council or other governing body of that institution or body.

A new University of Ghana Act (Act 806) finally came into force on October 5, 2010. A year later, the new Statutes of the University of Ghana came into being to replace those of 2004. Under Act 806, the appointment of the Council Chair was placed in the hands of the President and justified under article 70 of the Constitution.

## **5 Establishment of new universities**

Under the Fourth Republic, a number of universities have been set up while other tertiary institutions have been upgraded to university status by the Government. Ghana's fourth university, the University for Development Studies (UDS), was established under the University for Development Studies Act, 1992 (PNDCL 279). The Ghana Institute of Management and Public Administration (GIMPA) was established by the Ghana Institute of Management and Public Administration Act, 2004 (Act 676). It started as a joint Ghana Government/United Nations (UN) special fund project in 1961. Another, the University of Education, Winneba (UEW), was established in September 1992 as a University College under PNDCL 322. On May 14, 2004, the University of Education Act, Act 672 was enacted to upgrade the University College to the status of a full University. Other universities established are the University of Mines and Technology (UMaT), the University of Energy and Natural Resources (UENR), the University of Professional Studies, Accra (set up under the University of Professional Studies Act, 2012), and the University of Health and Allied Sciences, Ho (UHAS), established by an Act of Parliament (Act 828).

In the laws establishing these public universities, at least one common thread which is identified is the power granted the President, purportedly under article 70 of the Constitution of the Republic of Ghana, to appoint the chair and members of the university governing council. Yet a review of article 70 below establishes the illegality of this practice.

## **6 Critique of the UG Act (as amended)**

Against this backdrop, the paper sets out to use the premier university, the University of Ghana, to assess the level of respect for academic freedom in Ghana's public universities using four indicators—institutional autonomy, self-governance, freedom for academics and students, and tenure.

The University of Ghana is established as an autonomous institution with perpetual succession and the right to sue and be sued. The qualification of a Chancellor is provided for in the Constitution; and the President is

barred, while he continues in office as President, from holding the office of Chancellor (Constitution 1992, article 68(1)). The Chancellor is elected by an electoral college which is made up of an equal number of members from the University Council and the Academic Board.

Under the new Statutes of the University of Ghana (2011), statute 4(4) also vests in the President the power to appoint the chairperson and other members of the Council “[i]n line with article 70 of the Constitution”. Yet it is not clear how this provision grants the President the powers to appoint the chairman of the University Council (at UG or at the other public universities mentioned above), for the following reasons.

Under article 70(1)(d)(iv) of the Constitution, the President is given broad powers, acting in consultation with the Council of State, to appoint the Chairmen and other members of a National Council for Higher Education (NCHE).

The government has sought to equate the NCHE to the governing council of a university. However, the two are separate and distinct entities with reference to their character and functions. The NCHE became the National Council for Tertiary Education (NCTE) and has now morphed into the Ghana Tertiary Education Commission (GTEC).

Under article 195, paragraph (1) grants the President of the Republic “the power to appoint persons to hold or to act in an office in the public services”. These public services include the GTEC. However, article 195(3) takes away that power of appointment from the President when it comes to appointing “persons to hold or act in an office in a body of higher education, research or professional training”. It rather vests that power “in the council or other governing body of that institution or body”.

Thus, the university is given the autonomy and the power, under the Constitution, to determine who to appoint to its governing council, which is exactly what the University of Ghana did under its 2004 Statutes, but sought to change under the 2011 Statutes as a result of the insertion of section 8(1) in the new University of Ghana Act of 2010 granting the President the power to appoint the “chairperson and other members of the University Council”.

This provision, though, is incongruous, not only with reference to a careful reading of articles 70 and 195 but also with respect to the fact that the President, in actual fact, does not appoint all members of the University Council. According to section 8(1)(d), the President is only given power to appoint four persons. There are two other members that may be indirectly appointed by the President. The remaining fourteen members of the governing council are appointed by the university, by convocation or unions of the university, including two student representatives.

As a result of this re-arrangement, university councils are now considered as public boards or corporations. Therefore, according to the provisions of the Presidential (Transition) Act, 2012 (Act 843), all persons appointed by the President or a Minister of State as members of Statutory Boards and Corporations shall cease to hold office and the functions of that board or corporation shall cease to exist. Therefore, university councils are also affected, even where universities are in session.

Regarding individual rights and freedoms for academics, the Statutes make specific reference to “academic freedom” for the first time in any University of Ghana Statutes. Among other provisions, the University recognises the right of every employee to freedom of association and the right to demonstrate to protect his/her economic and social interests. Also, the university’s code of conduct for academic staff prohibits harassment or discrimination against a colleague on the basis of religion, gender, race, ethnicity, ideology or disability (University of Ghana 2011, para 7.4). However, there is no particular charter or policy document that spells out the content of academic freedom, as is the case in some other jurisdictions.

There are other provisions of the Basic Laws of the University of Ghana whose operationalisation can suppress the academic freedom of academics, such as 11.1 of the Code which prohibits “unauthorised staff” from giving out “sensitive information about the University to the media without permission from the Vice-Chancellor”. This provision certainly grants too much power to the Vice Chancellor and may go against the constitutional provision for freedom of expression, which incidentally recognises academic freedom in the same provision.

Institutional self-governance, according to the 1997 UNESCO Recommendation, is meant to grant higher-education teaching personnel the right and opportunity to take part in the governing bodies and to criticise the functioning of higher education institutions, as well as the right to elect a majority of representatives to academic bodies within the higher education institution (UNESCO 1997, para 31). Thus, the focus is on the composition and functions of the University Council and the Academic Board (or Senate).

The University of Ghana Council has a single representative from the University Teachers Association of Ghana. One member of the Academic Board is appointed to the Council as representing Convocation. The Academic Board is made up mainly of academics of professorial rank.

Tenure, in brief, refers to job security and the creation of the right ambience to promote job satisfaction. This is guaranteed under section 24(1) of the UG Act which stipulates that “the appointment or promotion of academics shall be based purely on merit, fairness and non-discrimination”.

Students' academic freedom is recognised by the University of Ghana. For example, academics are enjoined to respect students' academic freedom by making conscious efforts to refrain from promoting any political, religious, racial or ethnic ideology in class. They are also to abstain from discrimination against students and should ensure that their relationships with students do not develop in ways that can undermine objectivity in grading, evaluation or assessment. However, there equally are some provisions in the University of Ghana Act that raise questions such as the power vested in the Dean of Student Affairs to grant permission to students before they may join protest marches and demonstrations, within or outside the University (Appiagyei-Atua 2019, 163).

## **7 Academic freedom under threat (2016 to 2020): Three case-studies**

### ***The KNUST saga***

The university authorities at KNUST decided to convert the all-male Katanga Hall and Continental Hall into mixed halls, which move was resisted by the students of those halls. A peaceful night vigil organised by the students to protest this move by the authorities was violently disrupted by campus security forces leading to some alleged molestation against the students. In reaction, the students embarked on a peaceful demonstration which degenerated into violence, destruction of property and subsequent closure of the university (Lartey 2018).

The government then decided to dissolve the KNUST governing council. In its place, it inaugurated a new Interim Governing Council (IGC) to assume the powers of the governing council. The seven-member body included student representation but most conspicuously absent was representation from the University Teachers Association of Ghana (UTAG) and the Teachers Education Workers' Union (TEWU). The Vice Chancellor was also asked to step aside.

However, this decision was not based on law as, under the KNUST Act, the council cannot be dissolved neither can it be replaced by an interim body. The decision to ask the Vice Chancellor to step aside was also not supported by law. The government action was therefore in clear violation of the institutional autonomy and self-governance structure of KNUST.

### ***The technical universities saga***

In 2016, the Technical Universities Act, 2016 (Act 922) was enacted by the previous government which converted six of the ten polytechnics in the country into technical universities (TUs). Yet, the new government which came to power following the 2016 elections sought to place a number

of stumbling blocks in the way of the TUs, most probably to prevent the operationalisation of the new Act.

Among other things, the NCTE issued several draft documents (called the 'Harmonised Statutes') demanding that they be circulated as inputs for approval of the governing councils. The NCTE further directed the governing councils that no substantive appointments shall be made to positions in the Technical Universities until the proposed "Harmonised Statutes" had been approved (MyJoyOnline 2017).

These directives from the NCTE contravened certain provisions of the TU Act. The first is section 26 of the Act which confers the power to enact Statutes on the council of each TU. Therefore, the NCTE letter constituted usurpation of the councils' powers. The directive to ratify the proposed "harmonised" conditions of service also contravenes section 42 of the Labour Act, 2003 (Act 651), which relates to the right of workers to negotiate terms and conditions of employment in Ghana.

Following the opposition expressed by the TUs to the NCTE letter, including taking the matter to court, the Minister of Education came up with an amendment to the TU Act in December of the same year, seeking to regularise, by way of legislation, the very things the NCTE (now GTEC) sought to do. For example, clause 1 of the Amendment Bill provides that:

Section 14 of the Technical Universities Act, 2016 (Act 922) [which vests in the TU governing councils the power to appoint Chancellors for their institutions—KAA] ... is amended by the substitution for subsection (2) of

"(2) The criteria and modalities for the nomination and election of the Chancellor shall be prescribed by the Statutes of the Technical University."

Then clause 6 of the Amendment Bill provides that the previously rejected Harmonised Statutes shall be what would regulate the TUs (Beachfmonline 2018).

### ***The Public Universities Bill 2018***

The Public Universities Bill which was to have passed into law in 2020 (but that goal could not be realised) represents perhaps the most pervasive attempt by a government to subject the university to its ultimate control and caprices, as the Bill affects academic freedom in its entirety.

The first area of concern was the composition of the university council, which was to have majority representation from government with the chairperson nominated by the President through a dubious reference to

article 70 of the Constitution. Obviously, having a controlling stake in the university council would empower the government to influence university appointments, financial commitments, admission of students, and the universities' relations with other external bodies, as council's power to do these is ceased. Moreover, the government representatives on council could form a quorum and a call a meeting on their own to make decisions for the university.

At the end of the day, all the three principal officers of a public university—the Chancellor, Pro-Chancellor and Vice-Chancellor—would be appointed directly or indirectly by the President of the Republic. The Bill also gave a substantial amount of power to the Minister of Education. For example, clause 42 provides that the “Minister may from time to time give policy directives through the National Council for Tertiary Education to the University and the University shall comply”. Further, clause 3(5) of the Bill gave the President the power to dissolve and reconstitute the Council in case of emergencies and appoint an interim council to operate for a stated period, without determining what constitutes an emergency.

It was equally feared that if government powers in the management of university were not checked, research content could be influenced and bidding for contracts could be tampered with, which generally portended ill for the teaching and learning environment on university campuses.

Following a complaint lodged with the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression and the Special Rapporteur on the Right to Education, made pursuant to Human Rights Council resolutions 44/3 and 43/4, the two rapporteurs expressed their concern, among others, as follows:

We are concerned that, if adopted, the Bill would give the effective operational control over public universities throughout the country to the executive power. This may have a negative impact on the right to freedom of opinion and expression and the right to education, including universities' autonomy in the academic, financial and administrative areas. Despite article 43 relating to the need to respect academic freedoms, the Bill poses a grave risk to the enjoyment of academic freedoms in Ghana, and therefore the quality of its education system (OHCHR 2020, 2).

Consequently, the government was forced to beat a retreat, indicating that it was withdrawing the Bill to engage with the stakeholders, as requested by the special rapporteurs.

## 8 Academic freedom, democracy and managerialism

In reality, the Bill sought to shift the organisational structure of the university away from a collegial towards a more managerial, corporatist model of running universities.

In the case of many African countries, where democracy was suppressed over a period of time until its re-emergence in the post-Cold War period, external factors also played their part to introduce managerialism into the university space. These include the stringent International Monetary Fund (IMF) and World Bank (WB) structural adjustment conditionalities of the 1980s and 1990s, the implementation of which enabled these Bretton Woods institutions to become the new dictators of education policies for Africa. Their structural adjustment programs obliged African governments to use the funding relationships with the IMF/WB to further limit the institutional autonomy in universities through cuts to university spending (Kingston et al. 2011).

Unfortunately, the government of Ghana is continuing this trajectory. Yet this approach is fraught with danger, being typically a positivistic approach to the enactment and application of laws which seeks to take morality out of law. It relies on the presence of certain structures of governance, not on the extent to which it satisfies ideals of justice, democracy or the rule of law, or the major stakeholders who will be affected by the law (Green 1999).

A positivistic approach to law-making is akin to the practice of neopatrimonialism, which represents a blend of political system in which the customs and patterns of patrimonialism—a style of authority which is personalised and shaped by the ruler's preferences, rather than any codified system of law—co-exist with rational-legal institutions (Enweremadu 2006).

A number of instances, actions and inactions by the current government indicate that the government is on a trajectory towards illiberal democracy or “democratic dictatorship”. These instances include the incident that attended a by-election held in January 2019, where masked gunmen from the National Security Secretariat assaulted opposition supporters and opened fire at the nearby residence of an opposition candidate in Ayawaso West Wuogon constituency in the capital, Accra. President Nana Akufo-Addo formed a commission of inquiry to investigate the incident. However, the White Paper issued in response to the commission's report brazenly failed to accept some key recommendations on the grounds that the commissioners had failed to address the core terms of reference of the commission (White Paper 2019). In the view of Ijon, one of the reasons for by-election violence provoked by the ruling government was fear of losing an election if it was seen as underperforming (Ijon 2020).

The level of violence which characterised the by-election reared its head during the 2020 general elections, which saw the death of five persons. This is the largest number of deaths recorded in Ghana's electoral history, and some government security forces were involved so their neutrality in the election was questioned (Africa Report 2020).

The role of the Electoral Commission (EC) of Ghana in the several revisions of the presidential election results also raised concerns about the credibility of the EC and the integrity of the election process, affirming the suspicion in some quarters that the EC was doing the bidding of the ruling party (Africa Report 2020). It was also one of the bases for the election petition mounted by the opposition National Democratic Congress (NDC) before the Supreme Court, claiming that the ruling party did not obtain more than 50% of the votes and that the court should order a run-off.

The Supreme Court decision rejecting the petition of the NDC also raised some concerns about the independence and impartiality of the court, due to the frustrations the petitioner's legal team faced in the numerous motions they filed to obtain some evidence and to call for the Electoral Commissioner to testify before the court. This situation resulted in a Member of Parliament (MP) and a member of the opposition's legal team claiming that the attitude of the court, in failing to apply the rules of procedure, indicates that the outcome of the case had been pre-determined. These comments, made in an academic setting, resulted in the Judicial Council of Ghana dragging the MP before the General Legal Council. That step has been denounced by some as constituting abuse of freedom of expression (Amoah 2021).

A number of high-profile corruption cases have also been linked to the government in power. The most prominent is the decision of the Special Prosecutor to resign over allegations of official interference in the independence of his office, specifically with reference to his analysis of corruption and corruption-related offences relating to the controversial Agyapa Royalties Transaction (Knott 2020).

These instances bring to mind a comparison between the Nkrumah and Akufo-Addo regimes. While both embraced democracy and academic freedom, we saw Nkrumah's relentless efforts to suppress academic freedom when he managed to establish a one-party state in Ghana. The irony is that the Akufo-Addo regime is still considered a democracy and there is little or no chance for a "third termism" to emerge in Ghana. Yet democratic collapse happens in various ways. As it stands, Ghana's democratic credentials continue to get diluted and hollowed out, and the citizenry are feeling increasingly disenfranchised (Africa Report 2020; Awuni 2020).



As evidence of the relationship between democracy and academic freedom, Ghana's academic freedom record is simultaneously dipping and the similarities identified between the Public University Bill and Nkrumah's 1961 University of Ghana Act are striking. Among others, one can mention the powers given the President to appoint and control the appointment of the principal officers of all public universities—the Chancellor, the Vice Chancellor and the Chair of Council. Second, the majority of council members were governmental appointees under Nkrumah, the same as what the Public University Bill sought to establish. Third, the presidential power to dismiss members of council or dissolve a governing council. Fourth, the power of the President and the Minister of Education to make directives to regulate the universities.

Many of Ghana's labour and students' unions, and other institutions including the widely respected Ghana Academy of Arts and Sciences, publicly opposed the government's attempts at democratic backsliding. The University Teachers Association of Ghana and the National Union of Ghana Students expressed their concern that the process would make Vice-Chancellors and the universities "puppets of government".

Thus, as in the 1960s when African political leadership invaded the university management space and sought to directly control the university, that objective is not lost on the new crop of political leaders. However, that same goal is being pursued in more subtle, sophisticated, but equally insidious ways.

## **9 Conclusion and recommendations**

The findings of this paper point to a poor picture of the state of academic freedom when Ghana moved from a liberal constitution at the time of independence to an authoritarian, one-party state, and later to military rule. At present, the recognition of academic freedom in the Constitution has not guaranteed a high level of respect for academic freedom, though the country has chalked up some successes in its democracy rankings. The situation is attributed to the introduction of managerialism in university governance. In March, the Global Public Policy Institute's 2020 Academic Freedom Index awarded Ghana a high "B" ranking for academic freedom. Unless academic institutions can self-govern without state interference, the quality of Ghanaian higher education and research will be downgraded, along with Ghana's international standing. This trend is likely to cripple respect for academic freedom, which may have a ripple effect on respect for democracy in the larger society, while also hurting the research potential of the country's universities which is already relatively low. This will likely have a ripple effect on the continent—where Ghana is an exemplary model—and send a wrong message to countries in the West African sub-region and the continent as a whole.

Claude Ake has noted that academic freedom aims at the transformation of society in a manner which “maximises the prospects of freedom from personal domination, self-determination, concrete rights and democracy” (Ake 1994, 23). Indeed, academic freedom is the conduit through which knowledge construction, teaching and research quality, the excellence of universities, the leverage of economic growth, and the strengthening of national democracy are realised.

In light of the above, the article recommends a return from the managerialist to the collegial approach because, based on experience, the undue political intrusion on the university space has only led to atrophy in African universities.

This approach calls for the democratisation of academic freedom on university campuses which will ensure that the university, along with its academics and students, who are entitled to the enjoyment of their academic freedom subject to meeting their responsibilities, will fulfil their obligations towards each other. The State, which is the principal duty-bearer, also owes obligations to the university, academics and students. However, its principal duty is to the university, as expressed in paragraph 19 of the UNESCO Recommendation: “Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source” (UNESCO 1997). Fulfilling that obligation will guarantee the protection of academics and students from having their rights abused by university management and thereby ensure that academic freedom is democratised within the university space. Achieving this goal will help improve democracy in the larger society as it will enable students to leave the campus with a better-informed understanding of the concept and apply it at the workplace, in the marketplace and in national and local politics. Academics will also not limit the enjoyment of academic freedom to the university campus, but join gown to town to support the larger society in fighting for their greater freedom.

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