



## The Composite Theory: An African Contribution to the Academic Freedom Discourse

Kwadwo Appiagyei-Atua, Klaus D Beiter & Terence Karran

To cite this article: Kwadwo Appiagyei-Atua, Klaus D Beiter & Terence Karran (2015) The Composite Theory: An African Contribution to the Academic Freedom Discourse, South African Journal on Human Rights, 31:2, 315-329, DOI: [10.1080/19962126.2015.11865249](https://doi.org/10.1080/19962126.2015.11865249)

To link to this article: <https://doi.org/10.1080/19962126.2015.11865249>



Published online: 07 Apr 2017.



Submit your article to this journal [↗](#)



Article views: 14



View Crossmark data [↗](#)

# THE COMPOSITE THEORY: AN AFRICAN CONTRIBUTION TO THE ACADEMIC FREEDOM DISCOURSE

KWADWO APPIAGYEI-ATUA,\* KLAUS D BEITER\*\* and TERENCE KARRAN\*\*\*

## ABSTRACT

This article expounds the Composite Theory to define the parameters for the exercise of academic freedom in Africa, informed by its political, historical and cultural circumstances and expressed in the *Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics* and the *Kampala Declaration on Intellectual Freedom and Social Responsibility*. This approach follows in the line of the Special Theory and General Theory postulated to justify the exercise and application of academic freedom in Germany and the United States of America, respectively. The Composite Theory contends that academic freedom in the African context should not only be seen in the narrow prism of protecting the rights of academics on and off the university campus. It includes a commitment to recognise and contribute to promoting the rights of other key actors in the academic freedom equation, to wit, students and the society as a fulfilment of the academic's social responsibility. This role can be fulfilled both within and outside the university campus. Internally, academics shall respect students' right to academic freedom and immerse knowledge-sharing in a democratic ethos. This approach will likely instil in the students respect for democracy, human rights and the rule of law, which they will carry away with them from the university into life within the society. Extramurally, equipped with their knowledge, skills and experience, African academics should take advantage of their privileged positions in society to leave their ivory towers and, where necessary, solidarise with other civil society actors to promote social transformation and human emancipation. This is the guaranteed way to protect academic freedom on the campuses.

**Key words:** democracy, academic freedom, human rights

## I INTRODUCTION

Two main theories on academic freedom, the Special Theory and the General Theory, have been postulated to explain the origin and application of the concept in Germany and the United States of America, respectively. The Special Theory, on its part, recognises the exercise of academic freedom for professors (*lehrfreiheit* – freedom to teach) and students (*lernfreiheit* – freedom to learn) but within the confines of the university. The General Theory, on the other hand, guarantees the exercise of academic freedom not only on the

\* Kwadwo Appiagyei-Atua, Marie Curie International Incoming Fellow at University of Lincoln, UK. The authors are grateful for the Marie Curie Grant which enabled this research work to be published.

\*\* Klaus D Beiter, Marie Curie Intra-European Fellow at University of Lincoln, UK.

\*\*\* Terence Karran, Professor in Higher Education, University of Lincoln, UK & Docent Professor in the Faculty of Education at the University of Oulu, Finland.

campus but also extramurally, through the exercise of the right to freedom of expression. The present article articulates a third theory emanating from the African perspective, the Composite Theory, which expands the traditional scope of the exercise of academic freedom as a tool to promote democracy and human rights in the larger society.

The outline of this article begins with a brief theoretical analysis to identify the stakeholders in the academic freedom equation and their role in the production, dissemination, application, promotion, protection, control and utilisation of knowledge. The theoretical analysis is followed by a discussion on the definition of academic freedom and a historical overview of the origins of the freedom. Thereafter, the work considers the discourse on academic freedom as a relative concept, which is influenced by the historical, political and cultural circumstances of a country or region, so as to set the tone for justifying the Special and General Theories and the postulation of the Composite Theory. The rest of the work is devoted to an analysis of how to apply the notion of relativity for the benefit of the rights-holders, not the duty-bearers, followed by concluding remarks and recommendations. The recommendations focus on how African academics can give meaning to the Composite Theory and contribute to democracy and human rights in Africa in the face of the fledgling democratic experiment that the continent is facing.

## II STAKEHOLDERS IN THE ACADEMIC FREEDOM EQUATION

It is a truism that academic freedom is principally carved out for academics since they are responsible for generating knowledge which needs to be protected to challenge orthodoxy and promote social change and progress. However, it is the university<sup>1</sup> that recruits the academic and provides the environment to obtain funding and the relevant facilities for research which ultimately results in knowledge production. The university is also responsible for admitting students who remain the dominant target group for academics to disseminate and share their findings. These three entities – academics, the university and students – are considered the immediate beneficiaries of academic freedom and the rights-holders in the academic freedom equation.<sup>2</sup>

To ensure the enjoyment of academic freedom, the government (formerly, the ecclesiastical and monarchical authorities), which have/had the means to

1 The work adopts the definition of a university (or institutions of higher education) by the United Nations Educational, Scientific and Cultural Organization (UNESCO), as ‘communities of scholars preserving, disseminating and expressing freely their opinions on traditional knowledge and culture, and pursuing new knowledge without constriction by prescribed doctrines’. Also, Justin Thorens defines a university as ‘an institution created or allowed by society and the State to participate in the development of knowledge and its dissemination through research and higher education for the welfare of mankind’. J Thorens ‘Liberties, Freedom and Autonomy: A Few Reflections on Academia’s Estate’ (2006) 19 *Higher Education Policy* 87, 89.

2 JD Beinart et al *The Open Universities in South Africa and Academic Freedom 1957–1974: A Review* (1974) 25. For some contrary views on whether students are entitled to academic freedom, see E van den Haag ‘Academic Freedom as a Professional Privilege’ (1963) 28 *L&CP* 515, 515–16; and A de Baets ‘Some Puzzles of Academic Freedom’ (2015) 2 & 3 *University Values*.

prohibit the production of new knowledge, monopolise existing knowledge and/or suppress its dissemination in order to maintain their stranglehold on power,<sup>3</sup> is assigned the duty to respect, protect and fulfil the exercise of academic freedom.<sup>4</sup> It is also to be noted that in the context of academic freedom, some rights-holders end up as (secondary) duty-bearers – in this case, the university bearing duties towards academics and students; and, academics towards students.<sup>5</sup>

Another prominent stakeholder in the academic freedom equation is the society, which is the ultimate beneficiary of academic freedom as the knowledge produced is used to solve societal problems and promote social advancement and human welfare.<sup>6</sup>

In sum, these factors should inform a comprehensive definition of academic freedom: identification of the broad stakeholders (academics, the university, students, government and the society) and their role in the production, dissemination, application, promotion, protection, control and utilisation of knowledge.

### III DEFINING ACADEMIC FREEDOM

Academic freedom defies an agreed-upon definition.<sup>7</sup> A definition is usually determined by the background, interest or theoretical focus of the presenter to justify the functions of a particular beneficiary of the freedom. Thus, for example, according to Edward Boyle:

Academic freedom means the absence of discriminatory treatment on grounds of race, sex, religion or politics, and the right to teach according to his own conception of fact and truth rather than according to any predetermined orthodoxy. It involves freedom to publish and subject to the proper performance of allotted duties, freedom to pursue whatever personal studies are congenial.<sup>8</sup>

Also, Thomas Benjamin Davie's classical definition of academic freedom of a university is worth noting, that academic freedom involves 'four essential

3 E Shils 'Academic Freedom' in PG Alltbach (ed) (1991) *International Higher Education: An Encyclopaedia* 1, 6. Also, G Robinson & J Moulton 'Academic Freedom' in L Becker & C Becker (eds) *Encyclopedia of Ethics* 2 ed (2001) 1.

4 This does not take away the responsibility on non-state entities such as the church, individuals, other private entities who violate academic freedom. However, that responsibility is subsumed under the responsibility of the state, under the state's duty to protect. See K Appiagyei-Atua 'Hohfeldian Analysis of Academic Freedom' (draft).

5 Ibid. See also, T Doherty 'Thomas Doherty on Academic Freedom' in *Times Higher Education* (2014) <<http://www.timeshighereducation.co.uk/features/thomas-docherty-on-academic-freedom/2017268.article>>; F Schauer 'The Permutations of Academic Freedom' (2012) 65 *Arkansas LR* 193.

6 Robinson & Moulton (note 3 above) 2; Thorens (note 1 above) 89–90; and JR Searle 'Two Concepts of Academic Freedom' in EL Pincoffs (ed) *The Concept of Academic Freedom* (1972) 86. Also, preamble para 4 of the *Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics*.

7 LG Gerber "'Inextricably Linked": Shared Governance and Academic Freedom' (2001) 87(3) *Academe* 22–4; and MA Latif 'Academic Freedom: Problems in Conceptualization and Research' (2014) 33 *Higher Education Research and Development* 399, 399.

8 Quoted in GR Bozzoli *Academic Freedom in South Africa: The Open Universities in South Africa and Academic Freedom 1957–1974* (1974) 431–32.

freedoms ... [for the university] to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught and who may be admitted to study'.<sup>9</sup>

While the major UN instrument on academic freedom, the *ILO/UNESCO Recommendation Concerning the Status of Higher Education Teaching Personnel (ILO/UNESCO Recommendation)*<sup>10</sup> does not provide a definition of the concept in its definition section, it does recognise two types of academic freedom. First, the *ILO/UNESCO Recommendation* recognises the entitlement of higher-education teaching personnel to the exercise of academic freedom which are broken down into five sets of freedoms:

[i] freedom of teaching and discussion, [ii] freedom in carrying out research and disseminating and publishing the results thereof, [iii] freedom to express freely their opinion about the institution or system in which they work, [iv] freedom from institutional censorship, and [v] freedom to participate in professional or representative academic bodies.<sup>11</sup>

Second, the *ILO/UNESCO Recommendation* recognises 'the institutional form of academic freedom',<sup>12</sup> explained as institutional autonomy and defined as:

that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights ...<sup>13</sup>

Students' right to academic freedom, however, is not featured. This does not imply non-recognition of students' academic freedom but simply because the focus of the document is on teaching personnel, as the name of the instrument itself bears out. We can refer to these two notions of academic freedom as *narrow* or *specific* as opposed to a broad or comprehensive definition. Such a broad definition should incorporate the actors mentioned under the previous sub-topic. Therefore, one can only allude to *narrow* definitions of academic freedom in the *ILO/UNESCO Recommendation*.

In light of the above, academic freedom is defined as a freedom carved out for academics, higher education institutions and students to enable access and opportunity to conduct scientific enquiry and disseminate the findings thereof – through teaching, publication and the application of the findings to promote human welfare – within the limits of public order, professional ethics and social responsibility and without restraint or the threat of sanctions by government and other power brokers.

9 A van de Sandt Centlivres et al (editorial committee) 'The Open Universities in South Africa'. A statement of a conference of senior scholars from universities of Witwatersrand and Cape Town (1957). Compare R Krüger 'The Genesis and Scope of Academic Freedom in the South African Constitution' (2013) 8 *Kagisano* 5.

10 Adopted in November 1997 by the UNESCO General Conference meeting in Paris at its 29th session.

11 *ILO/UNESCO Recommendation* para 27.

12 *Ibid* para 18.

13 *Ibid* para 17.

#### IV HISTORICAL ORIGINS OF ACADEMIC FREEDOM

‘Academic freedom’ was not among one of the distinct rights formulated and recognised as legitimate claims against government when human rights law emerged with the rise of the liberal democratic state in Europe. However, its existence cannot be denied due to its inextricable link to the university.<sup>14</sup> As noted by Terence Karran, ‘the principle of academic freedom [is] an essential pre-requisite for such an institution’.<sup>15</sup> Therefore, as long as the university has existed, so has academic freedom.<sup>16</sup>

John Searle attributes the origin of academic freedom to two theories: the knowledge theory and the institutional theory. With regard to knowledge, he writes that the essence of any theory of academic freedom should hinge on the idea that academics have the right to teach, conduct research and publish their research without interference; and students, the corresponding right to study and learn.<sup>17</sup>

The institutional theory, on its part, according to Searle, is based on the concept of rationality where knowledge is advanced through subjection to the tests of free inquiry in order to validate it.<sup>18</sup> In support, Justin Thorens claims that the university is derived from an idea of ‘an institution created or allowed by society and the State to participate in the development of knowledge and its dissemination through research and higher education for the welfare of mankind’.<sup>19</sup> George Robinson and Janice Moulton also provide two justifications of academic freedom:

First, one can appeal to a higher value – the pursuit of Truth – to argue that we must protect ideas that may be unpopular, controversial or without immediate practical benefit in order to support Truth. Second, one can argue that academic freedom is necessary to benefit human welfare which depends on the discovery and propagation of new knowledge. Since we cannot predict which knowledge will be helpful in the future, all new knowledge should be protected.<sup>20</sup>

Thus, two axioms ultimately emerge: that knowledge is of value and the university is an institution for the furtherance of that value.<sup>21</sup> The conclusion, therefore, is that academic freedom is linked with the university as the freedom is connected to the discovery of new knowledge.

14 For a discussion on the theoretical origins of the concept, see KD Beiter ‘The Doctrinal Place of the Right to Academic Freedom under the UN Covenants on Human Rights’ (2011) *July University Values* 5; A de Baets ‘The Doctrinal Place of the Right to Academic Freedom under the UN Covenants on Human Rights – A Rejoinder’ (2012) *May University Values* 2; and K Appiagyei-Atua ‘The Theoretical Origins of Academic Freedom’ (2014) *July University Values* 5.

15 T Karran, ‘Academic Freedom in Europe: Reviewing UNESCO’s Recommendation’ (2009) *57 British J of Educational Studies* 191, 192.

16 R Quinn ‘Defending “Dangerous” Minds’ (2004) *5 Items & Issues* 1, 1.

17 Ibid 170.

18 Ibid 171.

19 Thorens (note 1 above) 89.

20 Robinson & Moulton (note 3 above) 2.

21 Searle (note 6 above) 186.

YG-M Lulat traces the origins of the modern university system (including think-tanks and research libraries) to Egypt and concludes that it ‘has a lineage that spans millennia and can be traced back to the Alexandrina complex and then to ancient Egypt’s *per-ankh*’.<sup>22</sup> The origin of the *per-ankh* (the House of Light) is traced to circa 2000 BCE and the *Bibliotheca Alexandrina*, circa 332 BCE.<sup>23</sup> Lulat notes that the *Bibliotheca* replica was exported to Europe through the Muslims and it was responsible for igniting the European Renaissance.<sup>24</sup>

Universities also developed in Ethiopia, called the *Metsahifi Bet* (the School of Holy Books).<sup>25</sup> In addition, the Islamic higher education institutions – the *madrasahs* – evolved into universities in North and West Africa.<sup>26</sup> Among these is the oldest existing and continually operating educational institution in the world,<sup>27</sup> the al-Qarawiyyin University in Fez, Morocco (founded in 859 BC). Another is the University of Sankorey, Timbuktu in the Mali Empire which contained the largest collection of books in Africa since the *Bibliotheca Alexandrina*.<sup>28</sup> Ali Mazrui contends that Muslim universities invented academic freedom through the Islamic doctrine of *ijtihad* – the right to analyse and formulate one’s own thoughts and conclusions on a legal, moral or intellectual issue.<sup>29</sup> However, Lulat’s analysis places the Muslims behind the *per-ankh* and the *Bibliotheca Alexandrina*.

Most of these institutions, however, could not survive due to the ‘intrusion of European imperialism’.<sup>30</sup> Thus, Damtew Teferra and Philip Allbach conclude that ‘while Africa can claim an ancient academic tradition, the fact is that traditional centres of higher learning in Africa have all but disappeared or were destroyed by colonialism’.<sup>31</sup> In all these primitive universities, one can infer traces of academic freedom in its crude form.<sup>32</sup> However, no theory was developed to support and justify the exercise of the freedom.

In the European context, universities, belonging to either the *universitas scholarium* (community of scholars) or *universitas magistrorum et scholarium* (community of teachers and scholars), were formed under the sponsorship of the medieval church and to some extent under its authority where faculties

22 YG-M Lulat *A History of African Higher Education from Antiquity to the Present* (2005) 46.

23 Ibid 48.

24 Ibid 50.

25 TT Wagaw *Education in Ethiopia: Prospect and Retrospect* (1979) 21.

26 G Makdissi ‘Madrasa and University in the Middle Ages’ (1970) 32 *Studia Islamica* 255.

27 Recognised as such by UNESCO ‘UNESCO, Medina of Fez’ <<http://whc.unesco.org/en/list/170>>; and the *Guinness Book of Records*. The university was incorporated into Morocco’s modern state university system in 1963. FM Najjar ‘The Karaouine at Fez’ (1958) 48(2) *The Muslim World* 104–12.

28 S Hamdun & N King (eds) *Ibn Battuta in Black Africa* (1998) 52–3.

29 A Mazrui ‘The Impact of Global Changes on Academic Freedom in Africa: A Preliminary Assessment’ in M Diouf & M Mamdani (eds) *Academic Freedom in Africa* (1994) 118, 130.

30 Lulat (note 22 above) 42.

31 D Teferra & PG Altbach ‘African Higher Education: Challenges for the 21st Century’ (2004) *Higher Education* 21, 47.

32 K Appiagyei-Atua & JT Lebbie ‘Academic Freedom in Africa: Linking the Past to the Present and Future’ (2009) 1(1) *University Values* 5, (2009) 1(2) *University Values* 6, and (2010) 3 *University Values* 5.

composed mainly of clerics.<sup>33</sup> Karran, notes that academic freedom, in the shape and form it exists today was not the case in the European universities of the Middle Ages, and its lineal precedent, *libertas philosophandi*, did not appear again until the 17th century and preceded respect for institutional autonomy.<sup>34</sup>

After their destruction through colonialism and other means, the European colonial enterprise only sought to introduce higher education into the African colonies when decolonisation became imminent. The aim was to develop a core of Europeanised elite to maintain, after colonialism, the politico-economic framework put in place by the colonialists.<sup>35</sup> The colonial administrators sought to entrench academic freedom in the university colleges they established. For example, in the case of Nigeria, the 1959 Ashby Commission on Post-secondary and Higher Education in Nigeria recommended, inter alia, that the University of Ibadan enjoyed its autonomy as well as independence from other universities.<sup>36</sup> However, the suzerainty relationship which was established between the colonial colleges and the metropolitan universities affected the enjoyment of academic freedom in the colonial higher education institutions. The first principal of the University College of the Gold Coast berated this arrangement as being ‘singularly ill-suited because of its autocratic constitution in which the Vice-Chancellor (of the metropolitan university), with the connivance of the professors, make absolute decisions for the colonial colleges’.<sup>37</sup>

African leaders also sought to entrench academic freedom in the university. At the Tananarive conference organised to chart a way forward for higher education in Africa, African Ministers of Education described academic freedom as the ‘raison d’être’ of the university.<sup>38</sup> However, it did not take long for Africa’s leadership to invade the university space and destroy its autonomy and the academic freedom of students and professors.<sup>39</sup>

In the peculiar context of South Africa, academic freedom was affected following the decision of the apartheid regime in the 1950s to prescribe the admission criteria to the universities on non-academic grounds, such as race,

33 W Rüegg ‘The University as a European Institution’ in H de Ridder-Symoens (ed) *A History of the University in Europe. Vol. I: Universities in the Middle Ages* (2003) xix.

34 Karran (note 15 above) 192.

35 The Asquith Commission report, which became ‘Britain’s blueprint for the export of universities to her people overseas’ (E Ashby *Universities: British, Indian, African; a Study in the Ecology of Higher Education* (1966) 214) led to the establishment in 1946 of the Gordon College in Khartoum, the University College of Ibadan, Nigeria (1948), the University of the Gold Coast (1948), and Makerere College, Kampala, in 1949.

36 AK Okorosaye-Orubite et al ‘University Autonomy, Academic Freedom and Academic Staff Union of Universities’ (ASUU) Struggles in Nigeria: A Historical Perspective’ (2012) 8(12) *Asian Social Science* 265. Also, in the then Gold Coast, the governor, Sir Gerald Creasy, in his speech during the opening ceremony of the college, emphasised that the University College was ‘an autonomous institution, entirely independent of the Government’.

37 D Austin *Ghana Observed: Essays on the Politics of a West African Republic* (1976) 170.

38 Report of the UNESCO-sponsored Conference on the Development of Higher Education in Africa, Tananarive (1962) UNESCO/CHEA/REPORT chapter 1 para 3.

39 A Sawyerr ‘Challenges Facing African Universities: Selected Issues’ (2004) 47 *African Studies Review* 1.



and suppress dissent and opposition, especially when the anti-apartheid struggle gathered momentum.<sup>40</sup> This development led to the enunciation of the Davie's concept of academic freedom referred to above. One can also note the supplementing of Davie's principle by the notion of freedom of academic expression, that is, 'the freedom for university teachers to teach and to pursue research freely, and freedom for students to debate old and new ideas freely'.<sup>41</sup>

## V ACADEMIC FREEDOM AS A RELATIVE CONCEPT

Academic freedom is recognised as a relative concept, fluid in its conception, definition and application and shaped by the historical, political and developmental circumstances of a country or region. In this regard, William Tierney and Michael Lanford write:

For over a century, academic freedom has been a foundational value for academics in many countries; yet, how it is articulated varies significantly by country or region, as well as by changing temporal contexts.<sup>42</sup>

Thus, definitions of the concept (that is, determining the contours and limitations on its exercise) have developed in response to actual historical circumstances: through reactions by academics, the university and the society as a whole to promote, protect and preserve this freedom from its monopolisation or suppression by the state.<sup>43</sup> The modern origin of the concept is attributed to Germany from where it spread to the US.<sup>44</sup>

### (a) The Special Theory

John Searle has designated the German concept of academic freedom as embodied in the Special Theory. This theory is attributed to Wilhelm von Humboldt<sup>45</sup> who contended against state interference in university matters and prescribed full freedom for the individual to pursue 'self-formation'. Humboldt further advocated for 'the free interchange of individuals through the formation of new social bonds'.<sup>46</sup>

This proposition is said to have spawned what is considered to be the classical understandings of academic freedom: *lernfreiheit* (learning freedom)

40 Some of these stringent measures included the Suppression of Communism Act 44 of 1950 which provided severe penalties for the 'incitement to commit certain actions designed to bring about social and political change'. Such measures suppressed academic freedom. See Krüger (note 9 above) 8.

41 Krüger (note 9 above) 9.

42 W Tierney & M Lanford 'The Question of Academic Freedom: Universal Right or Relative Term' (2014) 9(1) *Frontiers of Education in China* 4, 6.

43 DM Rabban 'A Functional Analysis of "Individual" and "Institutional" Academic Freedom under the First Amendment' (1990) 53 *Law and Contemporary Problems* 227.

44 Searle (note 6 above) 190.

45 German (then Prussian) philosopher, government functionary and diplomat. He is credited with having reformed the Prussian school and university system according to humanist principles and introducing the Humboldtian model of higher education which involves a holistic combination of research and studies: RD Anderson *Germany and the Humboldtian Model* (2004).

46 GC Brandser *Humboldt Revisited: The Institutional Drama of Academic Identity* (2006) 29.

– students’ freedom to choose where (which university) and what (courses) to study; and, *lehrfreiheit* (teaching freedom) – the professor’s freedom to teach and conduct research without interference from the state. These freedoms, however, were to be enjoyed exclusively within the confines of the university and not in the civil sphere. Thus, according to the Special Theory, the professor and the student are not entitled to be politically active in their society. Their principal purpose and relevance was to produce knowledge for the benefit of society in purely scientific matters.<sup>47</sup> It needs to be noted that the political context within which the Special Theory was expounded was not democratic; imperial rule was the mode of governance at the time.<sup>48</sup> Karran notes other cardinal tenets enunciated by Humboldt, including, the notion of the unity of teaching and research (*Einheit von Lehre und Forschung*), and the unity of science and scholarship (*Einheit der Wissenschaft*), together constitute the theoretical and organisational paradigm which became the hallmark of the modern research university in Europe.<sup>49</sup>

### (b) The General Theory

In the US, academic freedom is said to have been influenced by the German experience<sup>50</sup> in reaction to attempts by the university as an employer to control the free speech of academics as employees. It was more about attempts by boards of trustees of universities to control the free speech of academics.<sup>51</sup> The position of the law then was spelt out by Holmes J in 1892 in the case of *McAuliffe v Mayor of New Bedford*:

The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman ... There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him.<sup>52</sup>

‘Academic freedom’ therefore came to fill the void found in positive law in the US at that time. Thus, William Warner van Alstyne notes that with time, the exercise of an academic’s ‘aprofessional political liberties’ evolved as a subset of academic freedom.<sup>53</sup> This approach found expression in the 1915 *American Association of University Professors (AAUP) Declaration* which identified three elements as defining academic freedom: ‘freedom of inquiry and

47 Searle (note 6 above) 190. Also, RF Fuchs ‘Academic Freedom – Its Basic Philosophy, Function and History’ (1963) 28 *Law and Contemporary Problems* 431, 435; and generally, H Röhrs *The Classical German Concept of the University and its Influence on Higher Education in the United States* (1995).

48 Searle (note 6 above) 194.

49 Karran (note 15 above) 193.

50 Searle (note 6 above) 190.

51 Van den Haag (note 2 above) 515.

52 *McAuliffe v Mayor of New Bedford* 155 Mass. 216, 220, 29 NE 517, 518 (1892).

53 WW van Alstyne ‘The Specific Theory of Academic Freedom and the General Issue of Civil Liberty’ (1972) *Faculty Publications Paper* 792 <<http://scholarship.law.wm.edu/facpubs/792>> 141.

research; freedom of teaching within the university or college; and freedom of extramural utterance and action'.<sup>54</sup>

The third element, extramural utterance and action, sets the General Theory apart from the Special Theory as it extends the exercise of the freedom outside the university campus to the realm of the general public. It views the basic role of professors as sharing the results of their independent and expert scholarly investigations with students and the general public.<sup>55</sup> Unlike the German situation, however, the US system evolved in a democratic context.

### (c) The Composite Theory

Just like the German and American experiences, the African notion of academic freedom is shaped by the historical, political and cultural context within which the university was situated – the postcolonial era. Thus, Mama Imam and Ayesha Mama argue that “freedom” is always relative, and determined by the social relations and political economy of the academic world and of the wider society’.<sup>56</sup>

The first attempt by African scholars to develop its own policy document to promote and protect academic freedom came in April 1990 when delegates from six academic staff associations of Tanzanian universities met in Dar es Salaam to proclaim the *Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics, 1990 (Dar es Salaam Declaration)*. The preamble to the *Dar es Salaam Declaration* spelt out how, where and when academic freedom is to be applied:

We, as academics, intellectuals and purveyors of knowledge, have a human obligation and a social responsibility towards our People’s Struggle for Rights, Freedom, Social Transformation and Human Emancipation. Our participation in the struggle of our people is inseparably linked with the struggle for the autonomy of institutions of higher education and the freedom to pursue knowledge without let, hindrance and interference from persons in authority.<sup>57</sup>

Thus, like the *AAUP Declaration*, academic freedom in the African context is also meant to be enjoyed in an extra-mural environment. The difference, however, is that it is connected to the wider concerns of the society for social transformation, democracy, justice, freedom and human rights.

Taking a cue from the Dar es Salaam initiative and in order to broaden and regionalise the discourse, academics from the continent as a whole met in Kampala, Uganda in November 1990 to adopt the *Kampala Declaration on Intellectual Freedom and Social Responsibility (Kampala Declaration)*. Both documents were adopted at a time when African states were in transition to

54 AAUP, Appendix A. General Report of the Committee on Academic Freedom and Academic Tenure (1915). Reprinted in L Joughin (ed) *Academic Freedom and Tenure* app A (1969) 157–76.

55 Rabban (note 43 above) 232. Also WP Metzger *The German Contribution to the American Theory of Academic Freedom* in WP Metzger (ed) *The American Concept of Academic Freedom* (1977). See also, Searle (note 6 above) 175.

56 A Imam & A Mama ‘The Role of Academics in Limiting and Expanding Academic Freedom’ in Diouf & Mamdani (eds) (note 29 above) 73, 74.

57 Para 4 of the preamble to the *Dar es Salaam Declaration*.

democracy after some decades of military, one-party and/or unconstitutional rule.

The *Kampala Declaration*, which shares a lot in common with the Dar es Salaam document, also lays emphasis on seeing academic freedom and institutional autonomy as embedded in wider popular struggles for democracy and human rights. It supports this assertion by providing:

African people are responding to these intolerable conditions by intensifying their struggles for democracy and human rights. The struggle for intellectual freedom is an integral part of the struggle of our people for human rights. Just as the struggle of the African people for democracy is being generalised, so too is the struggle of African intellectuals for intellectual freedom intensifying.<sup>58</sup>

The *Kampala Declaration*, therefore, recognises the symbiotic relationship that should exist between academic freedom and human rights/democracy in general. Thus, cast in a historical context and in consonance with the general concerns of the society, the demand for respect for academic freedom is placed in the larger context of the struggle for human rights and democracy. It is also developed as a ‘standard-bearer for the African intellectual community to assert its autonomy and undertake its responsibility to the people of our continent’.<sup>59</sup> Thus, the *Declaration* sets the standard as a useful reference point that the struggle for academic freedom is an integral part of the general struggle for human rights. African intellectuals, by playing a vanguard role in the human rights struggle and not seeing academic freedom as simply a freedom to be enjoyed within a gated university environment, will help use this freedom to attain larger freedoms for the people as a whole, which will in turn ensure greater protection for academic freedom. Thus, Paul Zeleza rightly observes that:

For scholarly communities reared under colonial and postcolonial despotisms, civil liberties and the rights to education and self-determination are highly prized, and struggles for them have exacted high political and personal costs. These issues have tended to be tied more to the question of institutional autonomy and social responsibility, however, than strictly to internal institutional policing of speech as such.<sup>60</sup>

To sum up, academic freedom in the African context is not simply about the enjoyment of specific rights for academics. It is also about ensuring the equal and effective enjoyment of all human rights, without discrimination, by academics to enable them to contribute to knowledge and find solutions to the complex problems the society faces.

The theory that emerges from the way Africans want academic freedom to be exercised is termed the Composite Theory. It is to carve out an area of freedom within the university but relevant to the society as a whole. That

58 Para 2 of the preamble to the *Kampala Declaration*.

59 Ibid para 5.

60 PT Zeleza ‘Academic Freedom in the Neo-liberal Order: Governments, Globalization, Governance, and Gender’ (2003) 1(1) *J of Higher Education in Africa* 149, 154. Also, A Mama ‘Towards Academic Freedom for Africa in the 21st Century’ (2006) 4(3) *J of Higher Education in Africa* 1,10.

is, academic freedom should have dual benefit for the society. 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 not to remain insular but to use its freedom to promote effective gown-town relationships.

The Composite Theory can also be inferred from the *ILO/UNESCO Recommendation* which provides in para 6 of its preamble thus:

*Convinced* that higher-education teaching personnel, like all other citizens, are expected to endeavour to enhance the observance in society of the cultural, economic, social, civil and political rights of all peoples.<sup>61</sup>

The Association of African Universities also adds its voice in support of the Composite Theory by advocating that ‘higher education has the function of fostering the capacity of individuals and communities to embrace democratic principles, to uphold human rights and to promote sustainable development’.<sup>62</sup>

The Composite Theory becomes even more important for application due to the fact that Africa’s democratic experiment remains fledgling and retrogressing with a number of political leaders finding ways to entrench themselves in power. Discontent has been expressed in almost all elections held in Africa. In Ghana, Kenya, Nigeria, Sierra Leone, Uganda, Zambia and Zimbabwe, election petitions have been brought before the courts. However, each outcome maintained the *status quo*. Also, about 12 regimes so far in Africa have managed legally to doctor the constitutions to extend their stay for a third or many more terms.<sup>63</sup>

It is important to note, however, that the Composite Theory is not directly expressed in the constitutions of African states, neither in the legislation enacted to provide legislative backing for academic freedom. The theory is rather inferred, first, from the rights and freedoms which come together to give scope and meaning to academic freedom, to wit, freedoms of conscience, thought, opinion, expression, movement, assembly, association, etc. See in this instance, para 26 of the *ILO/UNESCO Recommendation* which provides:

Therefore, all higher-education teaching personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement.

In addition, there are the *protective rights* which are designed to protect the exercise of academic freedom.<sup>64</sup> They are also supposed to support academic freedom or empower academics to use academic freedom to promote democracy in the society. Thus, African academics are expected to combine

61 *ILO/UNESCO Recommendation* preamble para 6.

62 ‘Declaration on the African University in the Third Millennium’ (2001).

63 Institute for Security Studies ‘The AU Should Take Early Action on Third Term Bids’ (2015) <<http://www.issafrica.org/about-us/press-releases/the-au-should-take-early-action-on-third-term-bids>>.

64 For a breakdown analysis of the relationship that academic freedom has with all other rights and freedoms, see K Appiagyei-Atua ‘A Theoretical and Historical Review of Academic Freedom from the African Perspective’ (draft).

their right to academic freedom with other rights available generally to all citizens, to promote democracy in the society. These rights are also recognised in the *Kampala Declaration*, which states:

Every African intellectual shall be entitled to the respect of all his or her civil political, social, economic and cultural rights as stipulated in the International Bill of Rights and the African Charter on Human and People's Rights.<sup>65</sup>

They are also recognised in the *UNESCO Recommendation*:

Higher-education teaching personnel, like all other groups and individuals, should enjoy those internationally recognized civil, political, social and cultural rights applicable to all citizens.<sup>66</sup>

## VI CULTURAL RELATIVISM VERSUS ACADEMIC FREEDOM AS A RELATIVE CONCEPT

Academic freedom as a relative concept is a reality. This fact should not, however, draw us into the debate as to whether duty-bearers in the academic freedom equation can be excused from abusing the academic freedom of the rights-holders. Therefore, the recognition of relativity in the definition and exercise of academic freedom does not mean the application of different standards or lowering of the same when it comes to its application with different countries or regions.<sup>67</sup> Rather, the recognition of relative forms of academic freedom should be applied to strengthen the mechanisms for the enjoyment of this freedom at the national and regional level. It is akin to the recognition of regional arrangements for the promotion of human rights, which has resulted in the development of the European, American and African regional human rights systems.<sup>68</sup> One may also equate it to the doctrine of margin of appreciation applied by the European Court of Human Rights and which allows the court to take into account the fact that the convention will be interpreted differently in different member states, given their divergent legal and cultural traditions.<sup>69</sup> In essence, cultural and historical considerations should not and do not diminish a state's human rights obligations. Thus, rightly so, William Tierney warns:

65 *Kampala Declaration* art 2. Also, refer to the *ILO/UNESCO Recommendation*: 'Higher-education teaching personnel, like all other groups and individuals, should enjoy those internationally recognized civil, political, social and cultural rights applicable to all citizens.'

66 *ILO/UNESCO Recommendation* para 26.

67 D Ayton-Shenker 'The Challenge of Human Rights and Cultural Diversity' <[http://khoaan.hcmup.edu.vn/projects/tilt2011/3B08/Unit.2.Kim.Duyen\\_Tran.Thi.Hien/Resources/Materials/The%20challenge%20of%20Huma%20rights%20and%20cultural%20diversity.doc](http://khoaan.hcmup.edu.vn/projects/tilt2011/3B08/Unit.2.Kim.Duyen_Tran.Thi.Hien/Resources/Materials/The%20challenge%20of%20Huma%20rights%20and%20cultural%20diversity.doc)>.

68 D Shelton & PG Carozza *Regional Protection of Human Rights* 2 ed (2013). The Vienna Declaration and Programme of Action, for instance, also recognises 'the significance of national and regional particularities and various historical, cultural and religious backgrounds' in the promotion and protection of human rights. Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna (25 June 1993) para 5.

69 See *Schalk & Kopf v Austria* (2010) (application no 30141/04) judgment Strasbourg (24 June 2010), final (22 November 2010) where the court held 'the scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background'.

We wish to avoid a historical determinism that says current actions are inevitably the result of a country's particular traditions ... Academic freedom, as a transcendent value, needs to be protected regardless of location. We fully appreciate cultural differences and how a nation's identity may shape the manner in which academic life is organised. Nevertheless, when an institution threatens physical harm to an individual because of the nature of one's ideas and writings, it ought not to be viewed as a relativistic matter left to the sociocultural mores of an institution or country. Indeed, a threat to academic freedom in a faraway law, regardless of geography, is a threat to academic freedom everywhere.<sup>70</sup>

## VII CONCLUSION AND RECOMMENDATIONS

This article has sought to establish the Composite Theory as a means of defining the ambit for the exercise of academic freedom in Africa, informed by its political, historical and cultural circumstances. Factors which contributed to defining the parameters of the Composite Theory are based on the history of rights abuses experienced under various epochs: first, at the hands of the colonial authorities and their refusal to develop a higher education system within the colonies; second, years of further abuse by dictatorial African regimes; and third, other socio-economic pressures and strictures placed on higher education in particular by the Bretton Wood institutions. As a result, the Composite Theory is aimed at not only protecting the rights of academics on the university campuses but also equipping them to promote and defend the rights of the society as a fulfilment of an additional social responsibility.

This responsibility is very relevant considering the fact that in spite of the particular abuses academics face, they still occupy a privileged position generally, compared to the general public. However, most often, African academics have mainly focused on protecting their rights and freedoms against the government and the university and they usually make the headlines when agitating for pay rises or better conditions of service at which point they seek the solidarity and sympathy of the general public. They do this without realising they are not only rights-holders in the academic freedom equation but also duty-bearers in their relationship with students and the general public. This solicited sympathy will be forthcoming only if academics fulfil their duties to the students and the general public.

Academics have an important role to play in promoting human rights, democracy and the rule of law in society in the respective countries by the way they relate to students and respect their academic freedom and other civil and political rights on the campuses. The *Kampala Declaration* is woefully inadequate in tackling students' right to academic freedom. The social responsibility chapter, for example, does not specifically address any responsibility by academics towards students but more generally towards fellow academics. The exception, though, is in art 7 of the *Declaration* which recognises the right of '[t]eaching and researching members of staff and students of institutions of education, directly and through their elected representatives, to initiate, participate in and determine academic programmes

70 Tierney & Lanford (note 422 above) 19, 20.

of their institutions in accordance with the highest standards of education'. However, even this right is hardly enjoyed by students on African university campuses. The reforms made so far tend to be merely cosmetic and not effective ways of promoting and protecting student rights. In most situations, students are silenced and forced to accept whatever dogma or outmoded theories their lecturers teach. In the end, the survival instinct approach for students is to remain servile and find ways to absorb the abuses or work around them to obtain their degrees and walk away. This situation impacts negatively on the role of students in promoting democracy in the larger society. For African academics to apply the Composite Theory on the campus to have an impact in the larger society, therefore, they have to respect students' right to academic freedom and immerse knowledge-sharing in a democratic ethos on African university campuses. This approach will likely instil in the students respect for democracy, human rights and the rule of law which they will carry away with them from the university into life within the society.

It is also important for African academics as well as university teachers' associations to solidarise with other actors in civil society and support their cause in the fight to promote rights in the society. They could, for example, set up legal aid services for the marginalised through law students. Also, academics, acting collectively through their associations could and should see it as their responsibility to scrutinise relevant parliamentary Bills and provide expert opinions through submission of memoranda to Parliament. Doing these and many more will give meaning and essence to the Composite Theory.