

Academic Freedom and Institutional Autonomy

A Submission to the Education Panel, Legislative Council, HKSAR

1. I write in response to the call for submissions by the Education Panel from members of the public on academic freedom and institutional autonomy, in anticipation of further discussions on these issues in the Panel meeting scheduled for February 2008. Since the current attention of the Panel was first drawn to these important issues by matters which also gave rise to a Commission of Inquiry appointed last February by the Chief Executive, allow me to frame my submission in relation to a specific discussion during the course of that Inquiry.
2. At the end of her testimony last May in front of the Commission of Inquiry headed by Mr Justice YEUNG, Mrs Fanny LAW gave her definition of “academic freedom”. Citing the *Report to the Council of the University of Hong Kong by the Independent Investigation Panel on the “Robert Chung Affair”* (26 August 2000), she told the Commission of Inquiry that she believed academic freedom should be:

“the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence, without any control of authority except the control of the authority of the rational methods by which truth is established.”

Mrs Law obviously hoped that such a narrowly focused definition of academic freedom would be adopted by the Commission when it considered whether her actions with regard to Mr Ip Kin-yuen and other HKIEd academic staff would constitute infringements of academic freedom.
3. Unfortunately, Mrs Fanny Law quoted the above named HKU report out of context: both the nearer context of the HKU report itself, and the original context from which the definition she quoted had been taken.
4. The relevant section of the HKU Panel Report needs to be cited in full to be properly understood and appreciated. To quote:

(11) The [HKU] Panel adopted a definition of academic freedom which [it] set out as follows (note 1):

Traditionally academic freedom refers to the liberty of a person to carry on intellectual investigation in a scholarly manner within the structure of the academic community. In current secular terms, it is typically defined

narrowly as “the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence, without any control of authority except the control of the authority of the rational methods by which truth is established.” (note 2) It is the secular definition that serves as the model for much of the discussion today.

When considered in this way, as a process, it includes:

[1] the unhindered freedom to explore a given subject to the extent that our rational powers of investigation are capable; and

[2] the freedom to do so without influence or pressures external to the process.

This definition was put to all the principal witnesses and none took any exception thereto.

{Note 1. From an essay on “Academic Freedom and the University” by Donald W. Wuerl published in *Issues in Academic Freedom* edited by George S. Worgul, Jr. (Duquesne University Press, 1992), p. 58.

{Note 2. Sidney Hook, *Heresy, Yes, Conspiracy, No* (New York: John Day, 1953), p. 154.}

5. It is clear that the definition (i.e., the extended one) that was adopted by the HKU Panel was much broader in focus than the partial citation by Mrs Law would indicate. Academic freedom is not limited to research, publication and teaching by a professional scholar within her/his field of specialization, as Mrs Law would have it. Rather, it covers the unhindered right to explore a given subject in a rational manner. As such, academic freedom is to a great extent a subset, within the special context of an academic institution, of the freedom of speech which is a basic right of all citizens.
6. As for the more narrowly focused definition that makes up the partial citation by Mrs Law, it is necessary to recognize that the famous American philosopher Sidney Hook was writing (in 1953) within the context of the McCarthy Era in American politics, when anti-Communist demagoguery in the U.S. Congress wrought havoc on American universities by attacking any social or scientific investigation, writing or teaching that was condemned by Senator Joseph McCarthy and his cohorts as heresy and branded as “Communist conspiracy”. Prof. Hook’s definition was coined for a specific situation, and was never

intended to be used on a wider canvas without the extensions rightly stated above in the fuller citation by the HKU Panel.

7. For the purposes of the deliberations of the Legco Education Panel, I submit that the definitions and analyses of “academic freedom” and “institutional autonomy” in the authoritative *Encyclopedia of Higher Education*, edited by Burton R. Clark and Guy R. Neave (Oxford, Pergamon Press, 1999) would be a helpful link between the various international and local legal documents on human rights, civil rights and constitutional protection well known to the Panel on the one hand, and on the other hand the concrete situations found in other jurisdictions and in Hong Kong. The pertinent articles in the *Encyclopedia* would also substantiate our understanding and appreciation of the definition adopted by the HKU Panel.

8. According to *The Encyclopedia of Higher Education*, “academic freedom” refers to “the freedom of the individual academic to teach, to do research, and to publish without any external interference”; and “institutional autonomy” is “the freedom of the university, functioning collectively, to make its own decisions on all these matters”. (p. 1295)

9. While the *Encyclopedia* recognizes that academic freedom and institutional autonomy are never absolute, it notes that:

“The number of [occasions of complaints about denial of academic freedom] is minimized, generally, by conformity to procedures agreed both within the university and externally. These procedures are themselves constantly under review and negotiation in order to ensure that they work in a manner acceptable to all the parties concerned.” (p. 1295)

Hence, unilateral imposition by government officials of narrow definitions of academic freedom and institutional autonomy would be detrimental and counter productive. It is important for the academic community, government authorities (including UGC and Legco) and the general public to deliberate and agree upon commonly accepted and understood norms as well as transparent procedures, for the proper protection of academic freedom and institutional autonomy.

10. The *Encyclopedia* also recognizes that there has to be a balance between academic freedom and institutional autonomy on the one hand, and the public interest on the other. “The first consideration is that universities and their staff have to act, and be seen to be acting, in the public interest.” However, “the public

interest” does not necessarily equate the government policies of the day, and even less the whim of powerful officials. The *Encyclopedia* explains:

this does not necessarily mean that they must accept a particular definition of the public interest which may be dictated by external authorities. Indeed, a major part of their public utility may, paradoxically, be to provide alternative views of the public interest.... A.A. Mazrui writes of ‘controlled skepticism’ in contributing to the society’s ‘intellectual sobriety’, and demands of the university ‘social commitment, not social conformity’”. (p. 1302)

In other words, academic freedom and institutional autonomy are needed to protect the right of the academic community to dissent rationally from government policy or from the opinion of the social mainstream. That is because the academic community needs such protection in order to make their proper contribution to society as providers of alternative views of the public interest.

11. Surveying the situation in different countries on the globe, particularly in the Third World, the *Encyclopedia* observes:

“The most serious of all forms of attack upon freedom in the area of staffing comes when a government attempts a purge of unsympathetic faculty members, or exercises a veto upon their appointment.... Such crises are likely to arise because of activities, actual or imputed, by the staff concerned in the wider national political sphere, rather than in relation to their university-related activities....

In other words, academic freedom should help to protect the conscientious, rationally articulated, peaceful and orderly dissent of members of the academic community in exercising their basic freedom of citizens, whether such exercise is considered to be within the academic specialization for which one is employed by a tertiary institution. To reiterate, this is as much a matter of right as of utility: it is valuable for the long term wellbeing of society that such dissent be heard.

12. The *Encyclopedia* continues:

“Broadly speaking, it is true to say that universities function better, that is, serve their societies better, in free societies than elsewhere, and therefore, that they have an institutional interest in promoting greater freedom at large, an interest that will clearly set them in potential conflict with an authoritarian government. Specifically, such conflicts can arise when students or staff invite outside speakers onto the campus who oppose the government,... In a free society, all such activities can be justified under the

general rubric of academic freedom, meaning that no special sanctions against such conduct should be applied by the university, provided it does not interfere with the teaching and research business of the university. Indeed, the argument could be put even more strongly, in terms of the university's obligation to insist that the presentation of the whole range of political viewpoints by outside speakers is a part of the educational function of the university, and that for the university to deny a campus for airing any significant viewpoint constitutes a form of self-censorship which is a major threat to academic freedom." (pp. 1303-1304)

In other words, university education, as distinct from higher vocational education, ought to allow for, indeed to embrace, the rational presentation, comparison and critique of a broad range of thoughts, values, opinions and policy options, in order that students may be exposed to alternative views—a basic necessity for cultivating creativity for the future benefit of society. Such broad ranging education would be smothered by self-censorship, and need to be protected by academic freedom and institutional autonomy.

13. "In an authoritarian society", on the other hand, the *Encyclopedia* warns that attempts by university staff and students to invite speakers or organize conferences considered *non grata* by government leaders,
"will probably... be taken by the authorities to be more or less provocative, and they will always run the risk of provoking a reaction which will damage, or even destroy, the primary function of the university. This may take the form of selective punitive action against the individual staff members concerned, or even against the entire institution, which is always under the threat of a reduction in funds." (p. 1304)

It is to safeguard against such punitive funding cuts by narrow minded and vindictive officials that buffer organizations like the University Grants Committee were created. However, the buffer role of UGC will need to be strengthened and defined by legislation; otherwise it could easily descend from protector to messenger, or worse still, to executioner.

14. The international experiences summarized by *The Encyclopedia of Higher Education* clearly indicate that infringement on academic freedom and institutional autonomy by political authority could take many concrete forms, and that the temptation to do so is by no means unique to any one kind of society. The question which must be answered by Hong Kong is: do we want to be a free society where academic freedom and institutional autonomy are respected and

properly protected, or do we want to be an authoritarian society where such basic rights of our tertiary education institutions may be abridged with impunity by powerful officials? If the former, what kind of protection must we afford to our academic community and our institutions of higher education?

15. Upon the answers to such questions may hinge Hong Kong's future as an intellectual hub capable of playing a leading role in the Chinese-speaking world and the Asia-Pacific region in the 21st century.

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