

THE UNIVERSITY OF HONG KONG

Senate Task Force on Academic Freedom

Report

“You don't know what you've got 'til it's gone...”

Joni Mitchell

Introduction

1. The events that led to the establishment of the Senate Task Force on Academic Freedom have been well-chronicled. There was however no question of the Task Force being formed to remedy any problems of academic freedom in this University, perceived or otherwise, *i.e.* it was given no powers of intervention. Instead, the rationale was to strengthen and enhance existing mechanisms which have hitherto been relied on to safeguard such freedom (SM16 of 5.9.2000).

2. Agreeing to this approach, the Senate approved the remit and composition of the Task Force at a subsequent meeting (Annex I). Members were duly nominated and appointed as follows:

Professor K.M. Cheng
Professor Brian Darvell
Professor Chad Hansen
Professor Peter Hills
Professor Michael Wilkinson
Miss Biby Ngai (Undergraduate Representative)
Miss Vicky Lam (Postgraduate Representative)

3. At the first meeting of the Task Force, Professor Darvell was elected as Chairman by the group. Subsequently, Miss Lam's position as Postgraduate Representative expired, but no replacement to serve on the Task Force was nominated, despite requests.

4. Over the course of its deliberations, the Task Force identified a range of issues that confirmed the group's earlier instinctive view that it might not be possible to formulate a definitive, absolute or unalterable statement as emerging from any report. Nonetheless, such a report would include references to these issues to give the broadest possible coverage of the matter at stake. In the end, we believe we have been able to offer three distinct positive contributions: (A) a working definition as requested in item 1 of the Terms of Reference (ToR 1) (Annex I) along with an explanatory preamble; (B) a list of identifiable academic freedoms balanced by related responsibilities (ToR 2); and (C) an outline of a suggested procedural mechanism for handling infringement or grievance claims (ToR 3, 4). These are followed by a more discursive exploration of the issues and the paths that led to these offerings.

5. What is presented now then is consciously not a comprehensive treatment of the topic, nor does it pretend to be definitive in any respect. Indeed, despite much common ground, the diversity of views and approaches of the members of the Task Force (which we presume represents in microcosm the diversity which will be encountered in the University as a whole and academia in general) precludes a total agreement in the detail of some matters, and discussion could continue. It is hoped, nevertheless, that this document will provide a strong basis for, and a spur to, further discussion.

(A) Academic Freedom: Declarations and a Definition

6. Academics are entitled to all the rights of free members of a civil society, including the freedoms of conscience and expression. Without these freedoms, academic freedom is impossible. Academic freedom stems from norms (standards of reasoning) that promote humanity's cooperative pursuit of knowledge (*i.e.* its generation, accumulation and transmission). The essence of academic freedom is the absence of any final authority on those norms. For similar reasons, other rational norms, such as those of ethics and justice, also lack final authority but develop over time through dialogue, debate and reasoning. Because the evolution of these norms reflect human progress, no formulation can be authoritative. However, among such rational norms, conflicts may arise. Resolution of such conflicts is an open-ended process of rational debate that ultimately involves, or should involve, the entire academic community. Hence a statement such as this can neither be definitive nor universal.

7. Academic freedom entails responsibility to sincere, consistent, careful and thoughtful conformity to the norms of enquiry as well as to defending and promoting open enquiry. It then follows that there is a responsibility to resist mere appeals to authority as justification, but also to resist and to expose irresponsible or disingenuous academic activity.

8. It is inevitable that controversies and disagreements will arise, no matter how institutions go about safeguarding academic freedom. Also, institutions and individuals need to make decisions in situations where judgement is necessary. Institutional decision processes should be open to reform to reflect the norms of academic freedom. Universities should engender trust by consistent, good-faith efforts to make such decisions reflect those norms.

9. We are therefore obliged to recognize the continuously-evolving nature of the concept and scope of academic freedom, but there are risks in formulating any document. In addition, there are potential problems from contextual sensitivity and questions of interpretation. Despite all this, some statements are, on balance, considered worthwhile, if for no other reason than to encourage rational debate of what academic freedom is and what it entails as part of the development of the consensus. Thus, on the understanding that a university's purpose is to advance learning and knowledge by teaching and research, we offer the following statement:

“Academic freedom refers to the freedom of academic institutions, structures and individuals to study, teach, research and publish without being subject to undue interference, free of any authority or standard other than the rational methods by which truth is established. The notion of academic freedom reflects the belief that it enhances the pursuit, transmission and application of knowledge, and as such may be supported by society through the funding of academics and their institutions. Academic freedom embodies an acceptance of the need to encourage openness and flexibility in academic work, and of the accountability of academics to each other and to the norms of cooperative pursuit of knowledge.”¹

10. The list of freedoms² which follows is offered by way of examples to amplify, but not limit, this statement. In particular, the principles thereof can be applicable in various ways to teachers, researchers, students and others who are part of the academic community called the members of the University. Some issues of academic freedom might not be mentioned; no list can be exhaustive. Other kinds of freedom outside the academic context are taken as understood and other norms of civilized or rational behaviour are not addressed.

¹ The statement is modified from: M Tight, So what is academic freedom? in *“Academic Freedom and Responsibility”* (Milton Keynes, OUP, 1988), p.132, and from the definition adopted in the report at <http://www.hku.hk/reportip.html>

² This list was developed from that of the University of Bath (1996) (<http://www.bath.ac.uk/Staff/acfreed.html>)

(B) Academic Freedoms and Related Responsibilities

The Institution

Freedom : To govern its own affairs, in particular, in teaching and research.

Responsibility : To maintain academic standards and independence of judgement; to promote and defend these freedoms.

Members of the University

Freedom : To question and test received wisdom and to put forward new ideas and controversial or unpopular opinions.

Responsibility : To support the same freedoms for those of differing views.

Freedom : To question the governance and conduct of University affairs at all levels.

Responsibility : To engage in rational and constructive debate to resolve issues.

Freedom : To discuss the University's affairs in appropriate media.

Responsibility : To do so with integrity and fairness, not representing personal opinions as those of the University.

Freedom : To take an active part in the academic governance of the University.

Responsibility : To abide by decisions properly reached.

Freedom : To engage in study, teaching and research.

Responsibility : To adhere to the appropriate standards of reasoning, proof and integrity.

Freedom : To select methods and teaching course elements which have been properly agreed.

Responsibility : To take full cognizance of (i) the intellectual and professional needs of students, and
(ii) requirements for the integrity and coherence of an academic course.

Freedom : To select one's areas of research, to publish subject to academic judgement.

Responsibility : To maintain high standards of scholarship and to be responsive to reasoned discussion.

Freedom : To communicate and collaborate with colleagues and students anywhere in the world.

Responsibility : To respect the intellectual property of others.

Freedom : To abstain from research which is morally repugnant to the individual.

Responsibility : To be rational and consistent in such decisions.

Freedom : To propose, defend and pursue lines of enquiry.

Responsibility : To recognize constraints such as of time, resources and ethics.

Freedom : To question teaching, request explanation.

Responsibility : To apply due diligence in study to advance personal scholarship.

Freedom : To challenge assertions, dogma and assumptions.

Responsibility : To be rationally motivated in making those challenges, consider explanations charitably.

Freedom : To manage delegated academic affairs at any level according to professional judgement.

Responsibility : To use that stewardship with integrity in an open, rational and equitable manner.

Freedom : To offer expert advice in academic contexts to colleagues and students.

Responsibility : To avoid simply using rank or position as a means of imposing opinions or values.

Freedom : To offer expert advice in non-academic contexts.

Responsibility : To do so with integrity on the basis of evidence.

Freedom : To act as referee, advisor, editor or the like for appointments, promotions, reviews, discontinuations, grant applications, professional publications and so forth.

Responsibility : To use objective unbiased criteria in judging quality, suitability, content, merit, *etc.*, free of political or personal considerations.

(C) Grievance Structure and Procedure

11. A Pro-Vice-Chancellor (PVC) to be formally made responsible for issues relating to regulations, contracts, staff relations and the like, especially as they relate to academic freedom, contingent on the position being made sufficiently independent, and sufficiently empowered.
12. A Grievance Board to be instituted, comprised of elected Faculty representatives, say, two from each Faculty, with no limitation on who may stand except that they be TOS I staff, to provide a means peer-review.
13. Should the designated PVC not be able to resolve an issue, a Panel of (say) six members, drawn in rotation, no more than one from each Faculty pair, and excepting those members of the relevant Faculty, would then be convened to consider the case. Within reason, all protagonists may object to Panel members in that all those serving should be demonstrably disinterested; replacements would then be made from the Board with the same limitations.
14. The Panel would elect a Chairman *pro tem.* from amongst its members. All protagonists (and any other witnesses) may, if they wish, be legally represented. The Panel should be given flexibility in how it proceeds to obtain evidence or reach any conclusions.
15. The Panel would not itself have power to impose a remedy, but would make (if appropriate) only recommendations to the parties concerned in the first instance, but also to Senate as the authoritative body for the implementation of any necessary actions.
16. A final appeal process should be available through a University Council Appeals Committee which would have the right to decide whether or not to hear a case. The Appeals Committee might include members (1) from the legal profession, (2) from an appropriate academic context or background, preferably with specialist knowledge of the ethics of the research in question if this is relevant, and (3) lay.
17. The Grievance Board shall report to Senate on matters to which it has attended with a view to recommending reforms if necessary.

Consultation

18. We proceed now in this report by giving the background to our work and an outline of our discussions to expand upon the statements and recommendations above and to explain the thinking behind them, as well as to explore related or tangent issues.

19. The Task Force met at length on nine occasions (between May 2001 and September 2002), but also conducted business between meetings by e-mail to facilitate drafting and discussion. Requests for feedback from staff, students and alumni were disseminated via the Newsletter, Bulletin, Internal Notices web page, bulk email, the magazines Convocation Newsletter and Dialogue, and a newsgroup. These generated a number of submissions in various forms which either addressed the single question posed:

“Do you believe that you have suffered any infringement of your academic freedom at The University of Hong Kong?”

or exercised issues of or related to academic freedom.

20. We are indebted to those staff and students who were kind enough to communicate their concerns to us to inform our discussion. It is clear that there is a great deal of worry over such matters, and the reports confirm the existence of a perception of some problems in the system. We have preserved the anonymity of all contributors. In the view of the Chairman these were sincere and credible reports made without malice. In fact, nearly all avoided mention of the identity of the alleged infringer, whether directly or indirectly, and no attempt has been made to follow up any instances. We regarded all reports with equal seriousness.

21. We should also acknowledge the support and research assistance of Dr Herbert Huey, Secretary to the Task Force, whose document collection was so useful.

22. We did consider very carefully all the points made in trying to come to a conclusion and draft the “working definition” requested in ToR 1. We are aware, however, that we could not follow simultaneously all advice offered as it was mutually incompatible, or even represent the definition as a consensus of the opinions expressed. Our resolution of these matters may even offend some by seeming to ignore their often strongly-expressed views. We can only offer our apologies. What has emerged represents our best efforts to express the attitudes and values that inform and motivate the concept of academic freedom.

23. A number of teachers wrote to us saying that they had never experienced any infringement of their academic freedom, had never come across it, and that all staff in the University enjoyed it fully. On the other hand, we received a number of communications to the effect that problems exist. Logically, however, our concern has had to be with the problems as reported.

24. We may note that testimony of mere assertion of no problem does little to assuage the fears and complaints of others who may be subject to a wide range of pressures and demands. It should not be a surprise to those concerned about academic freedom at the University of Hong Kong that one is free to do research in mediæval madrigals, structural architecture or pancreatitis as such. The worry may come when the work concerns politics, rights or economics, or has such implications or overtones: consider educational theory. Again, individual testimony, no matter how often repeated, does not of itself prove that all is entirely well at the University of Hong Kong. Equally, the problems are not ubiquitous.

25. The topic of the brief was ‘academic freedom’, yet a number of issues can be taken to extend into the arenas of civil liberties, political rights, management practice, rational behaviour and even common courtesy. It is worth stating at the outset that academic freedom as such cannot be fenced off in any absolute sense from these and similar matters, that there are inevitably areas of overlap or transition wherein judgement must be exercised on the part of someone with power or authority - and that is what worries many. It is so often a matter of requiring actions to be taken in good faith or, put another way, the essential paradox of a democratic management where the responsibilities for decisions are delegated or entrusted to a chosen representative. Even so, each issue must be dealt with not in the abstract but in the proper context.

26. We are aware that in producing this report we are necessarily focusing on negative aspects and therefore run the risk of presenting the University of Hong Kong as being greatly and unusually affected by such problems, which in our view would be wrong. On the contrary, we recognize that the difficulties we experience are by no means unique. Indeed, we believe that the fact that we are able to produce this report is an indicator that academic freedom does indeed flourish here, and we are justifiably proud of the tradition that this is the freest and most liberal university in the region. Nevertheless, we are not complacent and recognize that there is room for improvement, the acceptance of which idea is a mark of the commitment to the concept. Hence, we hope that the discussion that we engender will itself contribute to the appropriate purposes of promotion and defence.

27. Before turning to the issues themselves, we should also note the conditions under which universities are now operating in terms of the external environment and the effects these have on internal systems. There are pressures to perform brought to bear on all staff for a variety of reasons largely centred on funding, such as through research assessments. The pressures of time for output vs. bureaucratic process and the problems of resource allocation need to be handled: some perceive management failings of various kinds at all levels. However, we should be careful: shortcomings in management do not necessarily signal an intent to infringe academic freedom, even if the effects might be similar. Transparency of process will assist in distinguishing the unintentional and curbing the deliberate acts.

The need for academic freedom

28. The concept of academic freedom is enshrined in the Basic Law of Hong Kong, Article 137:

“Educational institutions of all kinds may retain their autonomy and enjoy academic freedom.”

although this freedom is not defined. A feel for the complications may be gained by noting that with respect to the institution there are two kinds of threat to academic freedom: external and internal. The Task Force was charged with considering academic freedom issues within the University (ToR 2), and to what extent these issues are in principle under our (collective) control. Yet, with reference to ToR 5, ‘any other issues’, we note that there are external sources of concern, as indeed prompted the formation of the Task Force. The questions then are whether we can, as an institution, resist external control or influence, and what mechanisms might make such resistance more reliable and effective. The most obvious mechanism depends on the ability of institution, through its principal officers, to explain, promote and defend academic freedom to legislators, civil servants and the government itself, in pursuit of the principle enshrined - but not defined - in the Basic Law. For example, the UGC and RGC, being functionally arms of government, are able to exert pressure which can inhibit in various ways what the University does and how it goes about it. This presumably derives from Article 136:

“On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications.”

wherein it is immediately seen that there is a possible conflict of interest as this appears to remove from University control much of what we might otherwise take for granted. Scholars would like to think that decisions ought to be made rationally and apolitically. Clearly, there is a delicate interplay to be observed between the two parties, but it seems that there remains much scope for the University to be much more active in an educational sense on these issues towards those responsible for formulating and implementing policy in order to preserve and develop academic freedom both for its staff as individuals and the institution itself. We suggest that the University community must encourage, practice and demand transparency in all such matters. The issues are relevant globally, and the dealings of scholars in HK with those elsewhere may be affected by those other jurisdictions to a greater or lesser extent.

29. Why, then, is there a need for academic freedom? It seems it has much to do with objective knowledge, its generation, gathering and dissemination. And this without limitations except those

engendered by moral, ethical or other rationally defensible considerations. If we, as a university, subscribe to the idea that we exist to find and impart knowledge, we do not impose judgements or constraints on what may or may not be considered on anything other than rational grounds. But we conclude that we cannot, indeed no university can, act in isolation. We are perforce co-participants in a global organization of scholars that is, ultimately, self-regulating through its process of rational deliberation and discourse. We seem to be laying claim to our freedom to unhindered participation in that community's activity, subject only to the norms of reason.

30. The example of the External Examiner system might be adduced as showing similar patterns of interactions to develop norms as the present subject. Indeed, the University of Hong Kong has an historical commitment to the authority of those norms. An External Examiner is invited to comment (*inter alia*) on the scope and depth of a course, given his or her own knowledge and experience of the subject as a teacher, but also through knowledge of similar courses in some other Universities, which may in turn be influenced by other External Examiners. The independence of the External Examiner is understood. The role of moderator and setter of standards thus depends on multiple connections, the web of interactions ultimately extending over the entire world. The system depends on all concerned acting in good faith, on openness of discussion, and on mutual earned confidence and trust to be rational, fair and committed to the task in hand. Refusal to be part of this, or to allow it to play its proper part, is rightly seen as failure in the duties of scholarship, of a teacher, and of a university. It is implicit in all the variety of approaches taken to teaching that there are commonalities of purpose and of standards that are universal rather than local. We take this kind of interactive development to be the model for the growth and evolution of the ideas of academic freedom, *i.e.* ultimately by global consensus.

Some issues

31. The discussion has ranged over many topics, often in considerable detail. It is apparent that a full exploration would occupy many pages and yet leave room for disagreements or refinements. In what follows, therefore, we can only hope to give a flavour of some of the points of discussion, to fuel further debate, noting that this is precisely the means whereby academic freedom is established. However, mindful of the pressures of time and the importance of producing a sufficiently timely but functional statement, we have proceeded to a conclusion that may to some seem unsatisfactory for reasons of lack of completeness yet to others be too detailed.

32. Some have argued persuasively that any document must be kept as short as possible, because the more that is written the more it will be seen as prescriptive and exclusive, that is, as adjudicating particular complaints or used as authority to justify either freedoms or restrictions. The argument goes that with a good enough basis statement, all else should follow automatically. Yet the questions still arise as to whether this or that matter falls under the heading of academic freedom, even though the consensus may be that it does. That some guidance by example exists seems to be important, but we recognize the dangers of the document being seized upon to show that since an issue is not mentioned it is therefore not an aspect of academic freedom. We do not exclude other possibilities.

33. Another view is represented by the idea that definitions should be open and flexible. This is to ensure that one does not accidentally exclude certain issues by too precise a statement, or limit academic freedom by some detailed formula that closes the door to ongoing discussion within the global academic community. In other words, that some freedom of interpretation is essential to allow for cases that we cannot at present envisage and allow for judgement to be exercised. This suggests, again, that a view is to be arrived at by agreement, not by application of rigid rules.

34. It has also been argued that the very mention of a responsibility in the same context as a freedom is a limitation of that freedom and therefore contradictory. Yet we seem to be forced to recognize that we cannot leave the majority of academics to work through the problems of these issues on their own. We do not mean to say that they could not do so, but it appears to be counter to the notion of debate and the establishing of norms through consensus to argue that it is a personal matter only. Certainly, an interpretative free-for-all appears contradictory to the notion of an academic community. Again, the questions do arise as to whether freedom is licence without limitation.

35. It follows, then, that we must accept that academic freedom arises out of a commitment to knowledge and that our joint pursuit imposes duties and institutes virtues which some research activities may exemplify more than others. We cannot claim that academic freedom is an unconstrained right or licence to expression by individual academics on the assumption that they are a “higher form” and therefore simply “deserve” more liberty than ordinary citizens. We should acknowledge our being subject to the norms of openness to debate and the community process of rational discussion by virtue of the fact of subscribing to an academic life.

36. We believe that academic freedom should not be confused with freedom of speech. Utterances invoking academic freedom as a defence are also subject to the other implicit rules of academic enquiry, such as honesty and completeness of reporting. Academics can, of course, claim freedom of speech, but they do not then necessarily benefit from the protection afforded by their position in an academic context. On the other hand, a society that does not recognize or enjoy freedom of speech is highly unlikely to protect academic freedom.

37. We are obliged to recognize that conflicts have arisen, and will continue to do so, between academic freedom and fundamental ethical, moral and other principles. In general, these are hard issues, and their resolution subject to debate in other fora. It is beyond our remit to offer solutions beyond the usual professional standards and practices such as committees on research ethics.

38. The question of accountability is one that raises more hackles, whether on a mutual scholarly basis, to organizational structures, to the Institution, to a government or to “society”. This arises, it seems, from the view that political correctness is dominant, and that being accountable is doing what one is told, especially by people who do not understand a particular subject or academia in general. We suggest an alternative view for the academic context that may reduce these fears, and that is that being accountable means being subject to peer review and preparedness to defend a position, *i.e.* argue a case. This can be seen as part of the development of the norms of enquiry (which then makes it a contingent responsibility), but it also implies a willingness on both sides of any debate to be open to the possibility of persuasion. It is dogma that is to be feared, the antithesis of learning. This then touches on the relationship of a university with its supporting community, and the way it goes about explaining its purpose, role and activity to the public - with a view to promoting and defending academic freedom.

39. We have to be clear that we do not claim complete freedom from accountability, but that our accountability is to the norms of free and open pursuit of knowledge, not a kind of obedience to either political or academic authority. This pursuit of knowledge is inhibited if, even globally, we institute any final authority. This may be encapsulated by the phrase ‘academic integrity’.

40. Coincidentally, the recently published “Sutherland” report makes several pointed references to academic freedom, suggesting that it be “redefined”. Especially, it questions conceptions of academic freedom that rely on the notion of autonomy. We do affirm such a conception, based on the autonomy of the academic community. It needs to be stressed that this autonomy is in terms of the rationally-derived norms discussed above and is not absolute since it must be balanced with other rational issues such as ethics and political freedom, neither is it negotiable with a funding agency as a matter of political horse-trading. As the report argues, academic decisions are frequently driven by purposes other than the disinterested pursuit of knowledge, *e.g.*, by cigarette profits, war or foreign policy goals, intelligence activities, and so forth. This is often accomplished through funding. However, the absence of any final authority on what is knowledge, as is appropriate to a community of knowledge-gatherers, helps us to understand how and to what degree such actual practices undermine norm-based academic freedom. To give up the distinction between the normative and the actual is to abandon our intellectual and moral integrity. On the face of it, this is an elementary confusion such as might be made between moral and legal rights. Here, the moral principle is to guide the way in which individuals and institutions behave. Funding mechanisms of any sort may or may not honour and respect academic freedom. In general, the goal of wealth (particularly private or corporate wealth) or political power will not coincide with the goal of knowledge. Hence, insofar as funding decisions are controlled by those seeking wealth or power, we should not assume that they will normally be consistent with academic freedom. That does not stop us from saying they should, or noting (and objecting) when they fail. We are both alarmed and disappointed that such dangerous remarks, apparently politically motivated, should have been made, fostering and recommending such a confusion. We deplore this trend of attempting to rationalize the effect of economic power on academic standards. Further debate on the implications of this facet of the report seems to us to be essential. It cannot be allowed to pass unchallenged.

41. One of the difficulties encountered is that taking advantage of the rights of academic freedom might be seen as a threat to the power or authority of those in positions of responsibility over others. Certainly, if such managers were to be exercising their powers in an autocratic, self-serving or biased manner this might be so as to infringe academic freedom and to that extent the fear would be justified. However, if it is the pursuit of scholarly excellence that is the goal, the promotion and defence of the academic freedom of individuals, the academic community and the University can only be an advantage to those managers.

42. Whilst on the theme of administrative matters, instances of perceived infringement have been reported in which management decisions have been questioned. One should distinguish carefully between deliberate acts of mismanagement, inexperience and ineptitude, but in many instances the questions arise as to what constitutes good management practice and how to deal with issues arising from failures. These are matters which to a large extent fall outside our remit, yet are they are plainly of great importance in terms of engendering the atmosphere of trust and openness which is so central to much of this discussion. We draw attention to this problem, therefore, partly in order to commend it to the consideration of the Working Group on University Communication.

43. Reasonable differences of opinion on what decisions best promote the University's full and open participation in the quest for knowledge may, of course, arise. But clearly, a university must make decisions about which units, individuals and projects best conform to a rational, institutional research and teaching policy. In that spirit, the justification for funding and apportionment of funding should be that the decision so defended best serves humankind's pursuit of knowledge. The research justification of appointment, retention and substantiation decisions should be the candidate's status among his research peers attendant on the quality of his research. One advantage of democratic decision procedures within a disciplinary department is that it is more likely accurately to measure that status than are committees of academics from assorted fields or individuals. Quality and standing can still be difficult to determine and sincere, well-informed advocates may well disagree, but these are the appropriate public ideals to maintain for an institution dedicated to the norms underlying academic freedom. The procedures should reflect the norms.

44. A related aspect concerns administrative staff proper, *i.e.* not teachers or researchers. Although such support staff are important to the proper operation of a university, it has been felt by some that on occasions, while advice on the implementation of policy or regulations is very welcome, undue influence or interference on academic matters has been brought to bear. In other words, academic freedoms may be infringed internally, but not by academics. We believe that administrative staff should continue, as they generally do, carefully to observe neutrality and avoid imposing personal values or opinions on academic matters. In addition, what has been called the "civil service mentality" has been blamed for an over-zealous adherence, in some quarters, to the strictest interpretation of procedures, rules and regulations rather than more constructive approaches to enabling the business of the University to be conducted efficiently. Again, the details of these issues fall outside the remit of the Task Force, and we draw attention to them insofar as they are legitimate concerns of members of the University in their academic pursuits.

45. An illustrative example of a management issue may be helpful, one that has been raised several times in one form or another in the course of our work. Consider a budget holder for a department of several active researchers. If that manager's task is to utilize those funds to best general effect on behalf of the institution, then refusal of a request for, say, more than 50% of the budget is unlikely to be construed as an infringement of academic freedom by preventing research going ahead. Does this still apply for a 20% request? Or 10%? Certainly, if research without resource implications were banned, a cry of 'infringement' is likely and probably justified. But where precisely does the line get drawn? Plainly, it cannot be drawn at all as an absolute boundary (even if cut-offs are used as a guideline device or management crutch). The proposition is that judgement must be exercised, and the question arises as to whether the person making the decision is using the appropriate standards and applying them in an unbiased, knowledgeable and sympathetic manner. Refusal of a request engenders feelings of suspicion about motives in the one denied, acquiescence does precisely the same in the others of the group who may feel that 'their' slice of the resources is being diminished on dubious grounds. We are well aware, and have been reminded, that failing to get what one asks for does not, in itself, represent an infringement. This problem is relevant at all levels in the University, and indeed on a territorial scale where policy and funding are concerned. One version of the worry has too much power vested in the manager, over whom the managed have no control and no avenue for complaint.

46. The concept of trust in the context of a management structure also creates unease. A mere exhortation to trust one's superiors is insufficient, as it is simply an appeal to authority. Trust is not an obligation on the part of the managed, nor can management expect that *ex cathedra* pronouncements be treated as infallible. It is, rather, a matter of an earned confidence that judgements are arrived at rationally and professionally, in an atmosphere of openness and transparency that engenders confidence. Equally, it is a matter of actions being taken in good faith, and also that the information used for decisions is complete enough and accurate.

47. The concept of trust being central to academic freedom is also relevant in the sense that the University should promote and develop a culture conducive to open discussion. There should be a clearly recognized ability for any member of the University to speak in any forum without fear. Views that are unpopular, challenging, controversial or simply outside or against existing policy must be seen as having a part to play in any debate. They should neither be actively suppressed nor inhibited by any actual or perceived threat. This leads to consideration of self-censorship, an area where there are also various shades of meaning: ranging from mere common sense to diplomacy, and from self-preservation to manipulation by omission, the topic exceeds our ability to do it justice in a small space. However, where this arises from fear, the fact of the intimidation is construed as falling in the present scope.

Areas of Concern

48. The response to the consultation enquiry highlighted a number of areas or contexts in which a small minority of colleagues indicated that they felt their academic freedom had been infringed. We emphasise that only a minority of colleagues expressed such concerns and that the episodes reported to us reflect the perceptions and interpretations of the colleagues concerned. It was not our task to investigate individual cases and we cannot go into any detail about the specific circumstances surrounding each case because to do so would breach confidentiality. Furthermore, it follows that we cannot present any evidence to substantiate the claims made to us, nor can we prioritize the issues raised. We feel, nonetheless, that these concerns and episodes must be taken seriously because of their impact on colleagues, and because they should be seen as sending a signal to those in authority about the way in which certain actions and behaviour may be, and are, construed by their colleagues.

49. The concerns expressed to us fall into two major groups: those with an external dimension and those that are essentially internal to the University. The former include, for example, the issue of loyalty conflicts arising from outside practice, pressures involving the subject of postgraduate study and the methods used, editorial pressures involving papers and reviews submitted to journals, and the external reviewing of research proposals. To this list might be added the increasing tendency of outside bodies to attempt to micro-manage the internal affairs of the University.

50. Internal contexts within which academic freedom is felt to have been infringed are more diverse but may be classified into three principal areas of concern: processes linked to contract renewal and promotion procedures (*e.g.*, the legitimacy of the rationale for non-renewal of contract, or the manner in which the criteria for promotion are employed and judgements exercised); the control of, or possible undue influence over, the nature, conduct and organization of both teaching and research (including provision of resources, the appropriateness and content of research outputs, and how and where these are published); and more personal 'disputes' or differences of opinion involving areas such as participation in seminars, the title and content of theses, criticisms directed at the credentials and thus the credibility of colleagues, and the exercise of editorial control over materials intended for internal publication. Broadly, these may all be construed as exercise of power in inappropriate ways, that is, not toward the advancement of knowledge. Whether any or all of these contexts can be linked to cases in which academic freedom has actually been infringed is not for us to judge. What is important is that members of the university community have drawn our attention to situations in which they themselves feel that important principles of academic freedom have arisen. Some of these situations may have arisen as a result of deliberate acts by those in authority. Others may reflect inept or insensitive management practices or an inability to handle inter-personal relations rather than intent.

51. It is appropriate to put these reported concerns in perspective. They summarize representations made to us from a population of about 800 teaching staff and a very large number of undergraduate, graduate and research students covering a period of ‘exposure’ averaging somewhere between five and ten years. Given this volume of business the number of reports was remarkably short. Even so, it has to be said that none of these perceived problems is as blatant as the event which precipitated the formation of the Task Force and therefore this report.

The statement

52. Because it proved difficult to be concise, we have chosen to expand on the request for a “working definition” and provide a three-part statement. It was felt that the concept of academic freedom perhaps could be written in an acceptable fashion, but that the reader would not have the benefit of our deliberations to guide the reading. Accordingly, we have embellished this with a brief preamble as an explanation of the context that leads to the definition so that its import and limitations are the clearer.

53. To this is appended a list of some of the matters of principle that we believe follow from the definition. This is by way of illustration, education and exhortation, hoping to pre-empt a number of the more common questions and to take into account the examples of issues set out above.

54. We have, on balance, decided to include with the principles some related responsibilities. None of these is intended in any way to govern the interpretation of those principles, but to provide some guidance to those whom it might benefit as well as stimulate debate. In a sense, they may be taken as topics for reflection and discussion, in the spirit of the essential ongoing discourse.

55. We draw attention here to, but do not elaborate upon, the existence of a moral dimension to considerations of academic pursuits as well as matters of decorum, courtesy, rules of order and so on that also govern behaviour in various such contexts. Such things are beyond our scope.

56. We are acutely aware that a text of this kind could be subject to endless adjustment, and indeed it is envisaged that there may be a need from time to time to revise or extend it to accommodate unforeseen situations or new ideas. It has also been suggested that this be a ‘live’ document, supplemented from time to time by ‘case law’, as it were, as experience is gained in interpretation and application. This approach has its merits, but we leave this consideration to the future.

57. A number of other areas in which academic freedom issues might arise have also been identified, but for want of time have not been explored in any detail. Thus, it is important to ensure that such mechanisms as the appointments and promotion system, the good-cause removal process, external review methods, and the use of committees all observe, and are seen to observe, the highest standards. Such issues we see as potentially capable of giving rise to concern in the broad context of academic freedom.

58. In the foregoing we have largely addressed internal infringements, yet it would seem that there will always remain the risk of external pressure, such as to promote or suppress particular points of view or results. This may come, for example, through sponsors or funding agencies; other possibilities exist. But because the sources and methods are external there appears little that can be done in a formal institutional sense to handle such situations, no general mechanism is feasible. In this context, it would appear that the best that can be said is that all academics need to resist firmly such attempts, while the only recourse, but nevertheless an effective weapon, is exposure. The expectation of adverse publicity may be sufficient to deter.

59. Even so, since one of the factors ultimately precipitating the creation of this Task Force was an externally-originating source of pressure, we feel it important to stress that the University itself has an overarching right and responsibility to academic freedom simply as a university, but relying on Article 137 of the Basic Law for constitutional protection. It is therefore a sufficient defence against external pressures to invoke that freedom. It follows that the Vice-Chancellor and all other members of the University have the obligation and duty to observe, promote and defend that freedom.

Grievance Procedure

60. Whether or not we can identify concisely what academic freedom is, means of adjudication and redress need to be considered, that is, regarding the mechanisms aspect of the brief. What appears to be keenly felt in some quarters is the lack of an independent “judiciary” for considering complaints or enquiries about perceived infringements. The fear is present that raising a concern will only precipitate the very actions that prompted the worry in the first place, if not worse. All senior management is viewed as interconnected and therefore with vested interests which preclude independence and therefore belie trust. There is no “safe” means of even making an enquiry as to whether a situation is proper or allowable when there is no known constraint to confidentiality. Even then, were an informal check to be made in the offending area, it is assumed to be not difficult for the target to deduce the source, impute complaint, and make matters worse for the complainant. A number of people have expressed frustration over not knowing how to proceed and whom to approach when their immediate administrative superiors are said to be the cause of the problem. Certainly, the existing general grievance procedures are seen as inadequate or inappropriate and have not been used because of the perceived consequential risks.

61. The matter of academic freedom so often impinges on, overlaps with, or is entangled with other issues that on occasions it is very difficult to see how these things could be compartmentalized. It is probably not sensible to attempt to do so, but rather to include academic freedom as part of the gamut of a general grievances system and thus be dealt with by one and the same process. What follows is therefore couched in general terms, with the intent to address academic freedom infringement resolution, but seeing the opportunity for a wider scope in handling sources of discontent except perhaps where other mechanisms are in place as, for example, is believed to be the case with undergraduate and postgraduate students.

62. Thus, in the example of research postgraduates, the primary resolution of problems should be through the agency of the Supervisor(s). If this is not possible, or indeed they are alleged to be the cause, the Chairman of the Faculty Higher Degrees Committee, the Committee itself, and the Dean provide a path. Should discontinuation be a possibility, the Faculty Review Committee and the University Committee on Discontinuation provide successive appeal fora. It might nevertheless be appropriate to consider whether cases involving alleged infringement of academic freedom should be handled differently.

63. The essential issue is to address the question of the trust and confidence in the arrangements to deal with any issues in a fair and disinterested fashion, avoiding the risk of the appearance of being part of and managed by the very establishment that is often considered to be the source of concern. This is connected with concerns about the openness, democratic processes and fairness of the management structures and processes of the University, but these matters are beyond the remit of the Task Force. Nevertheless, it would be reasonable to suggest that these concerns be taken into account by the relevant bodies at least insofar as they may affect Academic Freedom.

64. The concept of an ‘Ombudsman’ is attractive, but difficulty is envisaged in finding someone who would command sufficient authority and respect, as well meeting the concerns stated above, to be able to do this job without creating a special new appointment. We therefore do not pursue this approach.

Mechanism and Structure of a Grievance Procedure

65. The primacy and ultimate authority of the Vice-Chancellor in dealing with all academic and administrative matters in the University requires that properly any complaint concerning alleged infringement of academic freedom at the University of Hong Kong is made to the holder of that office. We are, however, aware that many such matters are in practice delegated by the Vice-Chancellor to a person he deems appropriate. For example, while there are at present no formal definitions of the duties of the Pro-Vice-Chancellors, the Pro-Vice-Chancellor (Planning & Resources) [PVC(P&R)] has been on some occasions the person to whom various personnel disputes, by default of his title, have in fact been addressed or referred. It is not difficult to surmise the reason. At this University, the pathway for enquiries about regulations, contracts and related issues pertaining to personnel matters is the Human Resources Section of the Registry, which is naturally therefore the first port of call for staff. In cases where those enquiries do not settle the matter, they have ordinarily been referred to the Vice-Chancellor, who then may or may not delegate the matter to the PVC(P&R) for resolution, the nominal portfolio holder for staffing issues. Similarly, such matters that have been addressed directly to the Vice-Chancellor have, not infrequently, been adjudged personnel matters and delegated on occasion to the PVC(P&R).

66. The foremost concern to signify the University's constant vigilance regarding the safeguarding of academic freedom is for the Vice-Chancellor to create a mechanism and set of procedures which are publicized and available to all staff. He may, of course, personally take charge of this grievance mechanism, but we propose that there be a formal appointment on delegated authority for someone, such as the PVC(P&R), to do so. (This in no way is meant to diminish the Vice-Chancellor's statutory powers and responsibilities.) Naturally, were the holder of that position connected with a case, the Vice-Chancellor should be approached directly, but it must be stressed that this formal arrangement is meant to be a facilitating mechanism to advise on and if possible resolve matters pertaining to academic freedom. All efforts must be made to give it transparency and prominence so that staff members, of whatever position or for whatever reason, would not feel intimidated to raise their concerns through it.

67. The delegation of responsibility itself must be contingent on the position of the designated PVC being seen to be sufficiently independent, and sufficiently empowered, to allow use of the channel with confidence. Whether any changes can be made to improve the perceptions in this respect remains to be seen but they would appear to be essential. Nevertheless, the designated PVC should not be considered to have the last word, if for no other reason than that the appointment falls within the discretion of the Vice-Chancellor. A further stage therefore needs to be created.

68. It is therefore suggested that a Grievance Board be instituted, being comprised of elected Faculty representatives, say, two from each Faculty, with no limitation on who may stand except that they be TOS I staff. This is on the grounds that the staff themselves potentially affected by such problems are collectively likely to be the best arbiters of Academic Freedom, deciding for themselves on behalf of all members of the University, that is to say, peer review.

69. Then, should the designated PVC not be able to resolve an issue, a Panel of (say) six members, drawn in rotation, no more than one from each Faculty pair, and excepting those members of the relevant Faculty, would then be convened to consider the case. Within reason, all protagonists may object to Panel members in that all those serving should be demonstrably disinterested; replacements would then be made from the Board with the same limitations.

70. The operating procedures for the Panel will need consideration later, but some points may be made. It is envisaged that the Panel would elect a Chairman *pro tem.* from amongst its members. All protagonists (and any other witnesses) may, if they wish, be legally represented. The Panel would generally need to have flexibility in how it proceeds to obtain evidence or reach any conclusions in view of the difficulty of predicting all possible circumstances in which such grievances might arise.

71. The Panel would, however, not itself have power to impose a remedy, but would make (if appropriate) recommendations to the parties concerned in the first instance, but also to Senate as the authoritative body for the implementation of any necessary actions.

72. The goal would be, at all levels, to attempt mediation as much as possible, that is, attain mutually agreed resolution of the issues, recognizing that the academic community of the University ought to continue to operate as harmoniously as possible for the benefit of the institution, its staff and its students. However, should mediation, whether through the designated PVC's efforts or those of the Panel, fail, a final appeal process should be available.

73. It is therefore suggested that Council create an Appeals Committee which would be the final internal authority on any grievance, and having the right to decide whether or not to hear a case. While the constitution and rules of such an Appeals Committee are matters for Council itself, it is suggested that the Appeals Committee might include members (1) from the legal profession, (2) from an appropriate academic context or background, preferably with specialist knowledge of the ethics of the research in question if this is relevant, and (3) lay, in order to encompass all aspects of such matters, in particular (2) because the concept of academic freedom is alien to many not in higher education or research.

74. In view of the likely seniority of the members of the Appeals Committee, it may be necessary to offer a fee or honorarium for such services. However, this also appears to be a matter for Council rather than the Task Force to consider.

75. Assuming that a list of Academic Freedoms is accepted and promulgated, and given that such a list cannot be definitive, the designated PVC, Panel and Appeals Committee should be invited to suggest any addition or amplification that they might consider necessary arising from a case. In addition, it might be instructive for the designated PVC, Panel or Appeals Committee to issue a statement, if necessary and appropriate, of the matters of principle on which a decision was made, with a view to avoiding the same kind of problem in the future.

76. It is also envisaged that, as a matter of course, the Grievance Board report to Senate on matters to which it has attended with a view to recommending reforms if necessary.

Other possibilities

77. Given that the principles of academic freedom cannot be enshrined for all time to cover all circumstances, we are aware of the possible need for maintenance of the contents of paragraphs 6 - 10, above. Consideration needs to be given to how this might be done, one possibility being a standing committee on definitions.

78. Secondly, we are conscious that members of the University may require advice from time to time, and including external issues in the scope would allow all - from the Vice-Chancellor to undergraduates - to seek a view. Thus a standing committee might be required in this adjudicatory or advisory sense (but with a role quite distinct from that of the Grievance Board).

79. We hesitate over these because of the extra committees and organizational layers that are implied, and also because to do justice to these topics (and others alluded to elsewhere) would require considerably more time. We are keen not to delay reporting any longer, mindful of the date of initiation of this work.

Conclusion

80. Academic freedom is a matter of the highest importance, not in terms of personal benefit but in respect of the norms of enquiry and the activities of a university and its members in the context of the global academic community.

81. Regretfully, there is evidence to suggest that a number of members of this university have felt that their academic freedoms have been infringed in a variety of ways. It is hoped that the statement and the listed principles will provide an educational tool, a spur to self-examination in case of inadvertent transgressions, a check to those who might be tempted to cross the boundaries, and an encouragement to the offended to seek means of rectification. We therefore offer the statement and principles for adoption as a public commitment to academic freedom on the part of this university.

82. However, very much depends on the promotion of a culture of openness, transparency of process, trust and integrity within the University. This in turn depends on the personal commitment of members to respect rights and freedoms, as well as to promote and defend them against both internal and external threats. Any intimidatory atmosphere must be dispelled at all costs. Nevertheless, a mere declaration will be insufficient: trust will need to be earned over time.

83. The creation of a mechanism for handling complaints in this regard is also of great importance as it will serve and reinforce all of the above purposes, so long as it is created in a form that can be trusted by all concerned. We offer our recommendations as to how this might be achieved, noting that a failure to establish a satisfactory system, whatever form it may take, will be viewed by many as endorsement of the *status quo*.


84. Thus, Academic Freedom will be, and will be seen to be, promoted and defended within the University of Hong Kong by and for (*inter alia*) its staff, fairly, equitably and openly.

Action

85. In submitting this report, we ask Senate to endorse and adopt the Declarations and Definition at paragraphs 6 - 9 above to promote academic freedom at the University of Hong Kong, likewise the identified Academic Freedoms and Responsibilities at paragraph 10.

86. Secondly, we ask consideration of the grievance mechanism and procedure outlined above at paragraphs 11 - 17 with a view to adopting such a process and recommending to Council the contingent provisions.

87. Thirdly, we seek the advice of Senate as to whether our work is done or whether we need to continue consideration of any or all of the issues insufficiently addressed above, treating this as an interim report.



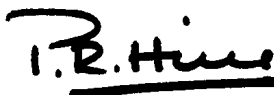
Professor B W Darvell (*Chairman*)



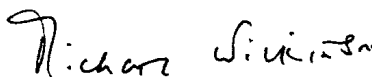
Professor K M Cheng



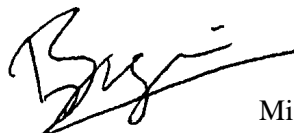
Professor C Hansen



Professor P R Hills



Professor R M Wilkinson



Miss B W Y Ngai

2002-10-03

THE UNIVERSITY OF HONG KONG

Task Force on Academic Freedom
(SM 16 of 5.9.2000)

Terms of Reference

To consult widely and advise the Senate and, as appropriate, also the Council on:

1. A working definition of academic freedom that is generally acceptable in the wider academic community as well as applicable to the activities and operations of this University.
2. The interpretation, implementation, safeguarding and reinforcement of academic freedom in the University.
3. The mechanisms, both explicit and implicit, already in place in the University, and whether any strengthening of these mechanisms is needed.
4. The means available for members of the University to express views and air grievances on matters relating to academic freedom.
5. Any other issues relating to sustaining academic freedom.

Membership

1. The Acting Vice-Chancellor or his representative.
2. A teacher elected from amongst the professors (as defined by Statute XXII.1c) on the Senate.
3. A teacher elected from amongst the Deans of Faculties, Directors/Deans of Schools, and heads of teaching departments/units on the Senate, except those in category 2 above.
4. A teacher elected from amongst the teachers on the Senate other than those in categories 2 and 3 above.
5. A student elected from amongst the undergraduate students on the Senate.
6. A student elected from amongst the postgraduate students on the Senate.

(The Chairperson of the Task Force should be a teacher and be elected by members of the Task Force.)

September 25, 2000
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