

# IN THE TWILIGHT ZONE: ACADEMIA AND HUMAN RIGHTS

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## INTRODUCTION

In a general sense rights are claims which are enforceable in legal or other legitimate processes. Stated in this way, we can see that rights necessarily involve discussions about the nature of claims. Claims then become ultimately matters for justification and legitimation in terms of moral and political principles. For example, if we lay claim to a right to our private property, we believe that we can exclude others from our property and, when necessary, we could get this enforced in a court of law. The justification for this right lies deeply embedded in the history and ideology of the liberal democracies. This private property right is justified by arguments from social and economic theory which run along the lines that such a right improves the economic wellbeing and the functioning of society. Opponents will want to argue that claims to private property should be limited, by virtue of inequalities or some other social principle. In effect, they argue that property law should be rewritten, thus offering alternative justifications for claims, enforceability, and rights. Similarly in human rights, people will argue alternative justifications, depending upon the extent to which they want fundamental freedoms and other things recognised and ensured.

Human rights revolve around claims for basic freedoms in *expression* (as well as freedom in association and freedom from arbitrary arrest and imprisonment). They also have a historical connection to the development of liberal societies, and in some cases they are stated specifically in constitutions and charters. For example, the United States has a Bill of Rights attached to its constitution, and the United Nations has a human rights charter. In other places, such as Britain, freedoms and rights have evolved within a general political and legal development. But, as we know, countries which are less democratic fail to guarantee freedoms and fail to provide the “rule of law” in arrest, detention, and access to fair and open trials.

Academic institutions in liberal democracies are expected to observe basic freedoms and to provide fair procedures in determining tenure, promotion, dismissal, and so on. However, as will be evident in the other chapters in this book, academic institutions in the modern democracies do not unequivocally hold basic human rights as secure and protected in their statutes, which are supposed to establish rule of law principles and fair procedures. An academic’s claims for human rights are not always enforceable in her or his institution, and sometimes they are not clear-cut in the wider society, with its legal systems, and other provisions. One of these other provisions which is worth special reference is the role of ombudspersons or “parliamentary commissioners”. As public bureaucracies (including state-financed academic institutions) have become increasingly powerful, citizen concern about the

misuse of power, the infringement of human rights, and crass administration has become more and more resented. One means of accountability and review is the use of ombudspersons generally and in academic institutions, with some further development of examples in the United States where some universities come within the scope of ombudspersons.

As a matter of basic enforceability of claims and rights, we need to discern what distinguishes enforceability in such things as property law from human rights law. The figure below shows a continuum in the means of dealing with claims.

#### CLAIMS AND OUTCOMES

Gratuitous benefit at	Twilight	Legally secured
the discretion of the grantor	Zone	interest

At the left side of the continuum we have the operation of an *administrative* principle, where the criteria are vague, they are unwritten, and they are not open to public view. Decisions on claims for such things as academic tenure, promotions, dismissals, and so on, are made by administrators. We have no prospect of appeal, and the conduct of administrators is scarcely subject to general rules. At the right side of the continuum we have the operation of an *adjudicatory* principle. Administrators have to make their decisions through definite rules and standards. Criteria for making decisions are specific, they are written, and they are open to public view. The decisions are accountable within law, where they have to be elaborated, consequently checking the use of arbitrariness and improper criteria in decision making. Between these two polar positions we get twilight zones with more or less observance of the adjudicatory principle in operation on such things as fair procedural standards, proper systems of appeal, and accountability on criteria and decisions.

This framework can be used to interpret the variability in practising the acceptance of human rights among academic institutions, enabling us to evaluate the performance of institutions in respect to basic freedoms and adequate justice. We expect the elite universities to abide by academic principles and to be concerned with human rights. Although there have been some examples of where elite universities have deviated from those principles, they have nevertheless tended to conform more closely to the ideals than most ordinary universities and tertiary institutions. The reasons for this are partly historical and partly because their students and academic staff are more proximate to the external establishment, consequently giving them more equality in the distribution of power. Sometimes academic institutions will have elaborated statutes with fair procedural standards, principles of natural justice, and proper rights of appeal. The key characteristics of natural justice are the rights to be heard and the clear association to decisional impartiality. By comparison, other academic institutions follow policies of administrative discretion, with scope for administrators to fudge the interpretation of criteria, to preclude appeals, and to arrange their formal adjudicatory apparatus with only the appearance of fair standards, but not its substantive reality in operation.

The extent to which academic institutions are accountable in the external legal system, in state ombudspersons provisions and so on, will influence the way they, in fact, operate and design their procedures in academic claims on matters of dismissal, termination, promotion, tenure, and others. Parliaments which insist on institutions writing proper statutes in these spheres, and connecting them to administrative law can drag reluctant institutions closer to full adjudicatory principles. However, the present reality in countries like Australia is that whereas things like property rights are within full adjudicatory principles with legally

secured rights, human rights in academia are only variably secured, and for the most part they lie in the twilight zone of the continuum.

Once we recognise that human rights in academia are mostly in the twilight zone, then it becomes important to give socially based explanations of why there are so many threats to those human rights. When we have such explanations, we can more clearly discern remedies. Of course, we are mainly concerned with those many academic institutions which operate in the twilight zone, and thereby become somewhat vulnerable to demoralising human rights cases in the course of their history. This book indicates the nature and the prevalence of such cases. As an advocate, a critic, and a social scientist writing on this topic, I should set out my approach to my methodology underlying this study.

My method of study has been one that is based upon a wide reading of human rights literature, a continuous interest in administrative and policy changes in higher education, and having some insights from participant observation. This approach leads towards setting up a *pattern* model of administrative and policy matters in some academic institutions. A pattern model can be built up from the following sorts of experiences. First, the participant observer stands close to the system of administration in higher education. Second, he or she can observe the main themes and internal characteristics to derive a picture of the system as a whole. Third, the experience can be widened by discussions with academics in other institutions in Australia, Europe, North America, South East Asia, and so on. Fourth, we then obtain a number of linked ideas and tentative hypotheses about what makes modern academia tick; that is, we understand its "clockwork". Our purpose is to develop understanding rather than to make logically predictable statements. Finally, we remind ourselves that we are developing what is only a *partial* pattern model; some academic institutions are reasonably clean on human rights problems.

In our partial pattern model, we begin from the interpretative position that academic suppression occurs with a combination of external and internal circumstances. Elsewhere in this book, other authors have pointed to the relevance of key modern *external* forces — the narrow interests of large business and public bureaucracies, the ambivalence of the government to intellectual free expression, and the cutbacks in funds by cost-conscious governments. Internally, academic institutions have grown rapidly and have become more tied-in with the general political, social and economic developments of the wider society. Their administration has become more bureaucratic, with the enunciation of regulations, procedures and formalities. Power has enlarged and become more centralised, and consequently some of the genuinely "academic" qualities have been superseded by bureaucratic administration. Those who hold central bureaucratic power are necessarily selective in what they want to represent as their institutional image. They select and publicise things which add to public institutional image, including some items of academic research importance. The selection process is biased by the external circumstances, referred to above. It is seldom detached, egalitarian, or much concerned with real academic freedom. Rather, on occasion, the selection goes towards suppression and using administrative power to contend against good scholars within a context where human rights are not always legally secured.

Our course for developing our understanding in human rights issues goes in the following directions. First, we look at the state of international human rights law and evidence for problems in academic institutions. Second, where decisions are closer to administrators giving gratuitous benefits rather than operating within rule of law principles, we might expect some disputation on personal, ethical and ideological issues. We discuss those issues as part of human rights cases, with their consequent dimensions of personality conflicts. Third, we recognise that group dynamics and the high stakes of prestige involved in some human rights cases interact to influence the course of their history. We shed some light on those processes. Fourth, we extend our introductory theme that some prevailing characteristics of political-economic power have strong impacts upon academic institutions

and their attitudes to human rights issues. Finally, we examine some wider changes in society, with particular relevance to human rights cases.

## *HUMAN RIGHTS AND INTELLECTUALS*

In full development, human rights would be written into charters, given official recognition by governments, have enforcement provisions attached to them, and for academic institutions they would be elaborated in statutes with fair procedures to hear and determine cases. As we have noted, full development is rare, with most academic situations in a twilight zone. However, as we shall presently see, since the 1960s there has been both a growth of international human rights law and some movement towards enforcement provisions. In this section I describe and comment upon these developments, and I underline relevance by reviewing the human rights records of academic institutions in Australia and overseas. We should be concerned about the infringement of human rights. In a democratic country, human rights could be codified and have status as a standard of reference or a "touchstone". However, it seems that in the twilight zone an individual can only be free to make some sorts of public criticism if she or he can defend her position by the force of power, by guile, or by purchasing certain economic and legal services. It is a sober reflection on academia that suppression is more likely to be stopped by countervailing power, by guile in opening up administratively controlled information conduits to circulate evidence of suppression, or by involving legal and extramural leverage, than by arguing reasonably on grounds of human rights. Nevertheless, human rights considerations have some relevance and use, especially where they can be linked to power.

Human rights law revolves around the basic freedoms — expression, association, and freedom from arbitrary detention and arrest. Such rights have been connected to the United Nations in its charter and in subsequent international agreements. We might have circumspect reservations about the extent to which international human rights law is observed in a world which has totalitarian and authoritarian regimes. Also, as academics we know that even in the liberal democracies, academic institutions sometimes infringe principles of academic freedom. However, we should also recognise that there have been improvements in international human rights law, and this will have significance in the liberal democracies and in their institutions, including universities and colleges.

Since the late 1960s, international agreements on human rights have proliferated, with some key agreements specifically relating to intellectual and research activities. For example, in 1974, UNESCO's *Recommendations on the Status of Scientific Researchers* was agreed, with rights set out on the basic freedoms, and with recommended standards for contracts with employers, general conditions of employment, and career development. Alongside the growth and specialisation of human rights law, occasionally steps have been taken to set up courts and tribunals to strengthen enforcement provisions. Most progress has been made among western European countries, but in a range of United Nations activities, member countries have agreed, in ratifying the international laws, to go further and pledge the introduction of such things as human rights commissions. Much still depends, of course, on the commitment and the legislation of governments in their own countries, and away from the more pious atmosphere of UNESCO headquarters.

In overseas countries, academics have sometimes responded to the growth and development of international human rights law in positive and encouraging ways. For example, the very prestigious British Council for Science and Society collaborated with the British Institute of Human Rights to produce a booklet, *Scholarly Freedom and Human Rights*.<sup>1</sup> The booklet records the progress in human rights law, explains the social and academic reasons for new developments, and it gives practical recommendations on how academic freedom can be secured in universities and colleges. One recommendation is that

directors of academic institutions sign public pledges to uphold academic freedom and fair procedures.

The Council for Science and Society and the British Institute of Human Rights outlined the reasons for the existence of suppression of academics. They pointed to the ambivalence of governments towards research and free expression. On the one hand, the political success of governments depends upon the impacts of research on technological change and economic development. On the other hand, intellectual expression on key issues, for example nuclear technology and environmental detriment, can challenge public policies. Scientific and academic institutions then become sensitive to this ambivalence, and external pressures along with internal bureaucratic power may combine to suppress free expression. The suppression takes a variety of forms — censorship, harassment, restrictions on research funds, blocking promotion, and expediently deciding to discontinue employment for those on short-term contracts.

The eminent authors of *Scholarly Freedom and Human Rights* perceive that intellectuals are especially endangered by administrators who opt for expedient suppression.<sup>2</sup> Although it is an intellectual's duty to express critical views, the modern academic is in a somewhat dependent situation, bound up with expectations in the professions and in some academic institutions. In asserting a full right to freedom and integrity, he or she can be vulnerable in tenure, promotion, access to research funds, and so on. Effective operation as an independent critic often depends upon association to a profession and to a university or college. This vulnerability is reduced when academic institutions practise academic freedom and guarantee fair procedures. The authors of *Scholarly Freedom and Human Rights* advocate the principles along the following lines:

In defence of scholarly freedom, moreover, it must be recognised that a scientist's personal reputation is often his most precious asset. This right thus applies with some force in the circumstances envisaged in RSSR, (*UNESCO'S Recommendations on the Status of Scientific Researchers*, 1974), Article 28: "...decisions as to access by scientific researchers... to positions of greater responsibilities and correspondingly higher rewards should be formulated essentially on the basis of fair and realistic appraisal of the capacities of the persons concerned, as evidenced by their current or recent performances, as well as on the basis of formal or academic evidence of knowledge acquired or skills demonstrated by them."<sup>3</sup>

The principles and the rationales are clear enough. From our discussion in the introduction we can also see how human rights can be better protected in countries like Australia. Generally, we need to bring human rights closer to legal enforcement. We may not always be able to achieve easy legal enforcement because administrative law tends to restrict remedies, largely because if access were made wide open, there could be a large influx of litigation, putting pressure on the capacity of the legal system. However, tougher laws could be useful as a deterrent against unfair administrators. Meanwhile we do not have to accept that matters can be left entirely to the discretion of administrators in academic institutions. In Australia, each state has Discrimination in Employment committees which have power to conciliate, and, if necessary, to publicise academic wrongdoings under parliamentary privilege. The powers of ombudspersons can be tightened up and extended. Australia now has a human rights commission. Its jurisdiction in academic affairs is not clear, but perhaps it can be persuaded to play a role. Finally, the Council for Academic Freedom and Democracy in Australia can have roles in review, publicity and lobbying. As will be shown below, the Council has had some effectiveness in bringing some academic institutions into closer conformity with proper principle in tenure, promotions and other things.

Why is it necessary to press for more enforcement and persuasion in human rights issues? We begin to see cause and reason by examining the precise problems that have been reviewed and publicised by academics who examined human rights cases in Britain and Australia. First, let us look at the findings of the reputable British Council for Academic

Freedom and Democracy (CAFD). CAFD's findings from its public and careful case studies were:

### ***Improper use of executive authority***

The manipulation of appointments and promotions committees to block candidates who hold critical views on educational policy and administration. Using the appointments and promotions systems as means for suppressing dissent, or as a "gift" system of senior academics. Effecting dismissals with no apparent academic reason, and in the context of interpersonal difficulties among academics and executives.

### ***Confused and improper roles of governing bodies***

These range through a variety of problems:

1. Inertia on human-scholarship rights, leading to a failure to discharge duties, and raising doubts about the fitness of members to occupy positions assigned under statutory powers.
2. Failure to hear grievances properly where a governing body ought to be an honest and unprejudiced court of appeal.
3. Mistakenly regarding institutional autonomy as private property, and ignoring wider accountability to the general community of scholars, to the professions, and to the wider society.
4. Ignoring constitutional powers to set down statutes for: (a) appeal against arbitrary executive actions, and (b) establishing codes of fair practice in appointments, promotions, and the rights of staff in relation to senior executives and heads of departments.

### ***Looseness in criteria, procedures, and justifications in promotions***

1. Academia failing to set up conditions so that not only is justice done, but seen to be done.
2. Using nonacademic considerations — political views, personal styles, and misconceived notions of "obstructiveness", political behaviour, and so on.
3. Committees without relevant competence making decisions to reject candidatures where their composition is inadequate in the specific professional spheres under assessment, and not taking steps to get relevant advice.
4. Committees failing to take in external referees' reports and full curricula vitae, and neglecting to invite candidates for interview.
5. Committees failing to explain and justify their decisions publicly on the basis of accepted criteria.

CAFD's suggested ways of dealing with these problems, and achieving fair resolution of the cases if reviewed were:

1. By a governing body setting up a judicial enquiry.
2. By getting a senior executive who may have misused authority to explain his/her actions before a special independent committee of enquiry.
3. Offering restitution to an academic whose rights had been violated.
4. Reforming the procedures to bring them into line with the precepts of British justice.

In Australia, its Council for Academic Freedom and Democracy (P.O. Box 217, Broadway NSW 2007) has begun to find similar problems, since its founding in 1980. The Council has publicised cases showing human rights violations in dismissals, nonrenewal of contracts, promotions, sexual discrimination, blocked access to research materials, and an

institution expressly forbidding freedom of speech on matters of public interest. Some seven Australian universities and colleges have been blacklisted for their record in human rights issues. In some instances, the effect of the Council's correspondence and publicity has led to institutions reversing decisions on blocked promotions and other issues.

It is clear that arbitrary criteria and unfair procedures have operated in some academic institutions. This, of course, reflects that human rights tend to lie in the twilight zone between outright gratuitous administrative discretion and full legal enforcement. Academic freedom and intellectual human rights are more substantial than being merely rhetorical, and academic institutions will seldom overtly and explicitly disclaim proper principles. It is just that they act in more or less sophisticated ways in their bureaucratic interests rather than for human rights. In effect they use their inherent power in their roles as employers to follow expedient executive wants, sometimes without reference to justice and relative merits. Ultimately, intellectual human rights are about the distribution of power, as well as being declarations of principle with implications for institutional means of enforcement and public persuasion.

Whilst human rights issues get disputed in the twilight zones, the inherent contentions of power and principle will tend to spill over into personality conflicts involving moral, psychological, political and ideological issues. We now turn our attention to these aspects of human rights cases.

### *CONTENTION, DISSIDENCE, AND THE MORAL DIMENSION*

As we have seen, human rights involve statements of claims which ultimately depend upon social and ethical-political arguments. It is therefore not surprising that human rights conflicts in academic institutions will get entangled in questions of personality, politics, ideology, and moral differences among administrators and the subjects of academic suppression. We are generally familiar with bureaucrats, officials, and those with power who assume or posture upon their moral superiority and use the information under their control in their institutions to suppress and isolate anybody who cares to contend a human rights case. When there are no proper rule of law procedures, no impartial institutions, and no proper enforcement of human rights, we would then expect extended grounds of conflict. We need to get a circumspect view of these things, and beyond that to indicate the bases upon which we take a reasonable position on the moral-ideological aspects of extended personality conflicts.

We should not expect to settle much simply by taking sides where a victim of a human rights case alleges bias among decision-makers, or where an administrator takes steps to display his or her moral superiority. Such steps can include propaganda objectives within the confined sources of information in an institution, more or less vague smear campaigns, the propagation of an academic "blacklist" (see the subsequent discussion on Veblen's ideas), and extractions of "confessions", and so on. Although we could not get very far in pursuing any detail here in what is a general thematic discussion, it is possible to take up some matters which lay a foundation for circumspect viewing in human rights cases. In the first place we recognise that general principles can apply to a situation where bias is alleged by one side or the other in a human rights dispute. Second, we can discuss moral principles and their relevance to academic institutions. We now address these two issues.

Our general and detailed knowledge of human rights cases in academic institutions shows that personal, political and ideological matters do get disputed in some blocking of promotions, dismissals, and other key conditions in employment. For example, in social science departments and faculties we can find cases where radicals (or conservatives) cannot make progress in their careers because those holding the decisional power have opposing ideological views towards conservatism (or radical reform). In other situations where there are interlocking committees in determining outcomes on dismissals, promotions, and so on,

people associated with arbitrary decisions may also be represented on higher level committees with further decisional power in the same cases. Or, more generally, the oligarchs in academic power structures can make appointments to committees with a view to getting the outcomes they want. Biased decision-making can be played out in a variety of ways, especially when there is slender external accountability and where legal-style enforcement procedures are not readily available.

In the liberal democracies, administrative law generally recognises the *nemo judex in causa sua* principle. This is a part of natural justice where procedures and the composition of adjudicatory bodies should be free of the likelihood of bias. Sometimes in academic decision-making, which may be several degrees removed from the enforcement of administrative law, the victim in a human rights case quite properly objects to decisions and committees which have a strong likelihood of association with arbitrary criteria and bias. However, such objection can raise further problems. The decision-makers and the oligarchs in the academic bureaucracy, or in its governing body, may feel that merely by raising the *question* of bias, their motives, integrities and competences have been impugned. The important point then becomes not just whether bias has occurred or is likely to occur. Rather, what has to be shown is that bias has led to, or might lead to, decisions which on grounds of fact, logic, and reasonable interpretations could have been, or may become, invalid and arbitrary. The radical (or conservative) academics who in a human rights case have better records in publication, research, teaching and community service compared with conservative (or radical) academics, who are protected from termination or who are promoted, have every right to object on grounds of *nemo judex in causa sua*. Biases of more or less intensity and significance are an everyday routine reality of academic administration. They are often significant and consequential in intellectual human rights cases.

Bias gets connected to the internal politics and power in academic institutions. As we have suggested, sometimes disputes will become entangled in questions of which disputant has moral superiority. This takes us into the territory where issues are essentially connected to evaluative and subjective aspects of arguments and claims. How should we respond to a suppression and a contention where an institution claims that its moral view of the world is sufficient to justify termination, dismissal, blocking of promotion, and so on?

This takes us to the subject of philosophical justification of moral principles. It is a subject that is well handled by Professor P. A. Griffiths who proposes that justification can be pursued by relating it to discussion and to three principles<sup>4</sup>:

1. impartiality,
2. rational benevolence,
3. liberty.

The principle of impartiality is that any decision/action by authority is one which could be reached by anybody. It is associated with consistency: similar cases should receive similar treatment to avoid discrimination. The principle of rational benevolence is connected to the public interest. What is right or wrong should be determinable by other rational beings. This ensures that the outcome depends on reason, not upon who has the will or the power or the initiative in a course of action. Then the outcome is determined by what is true, rather than upon who has won. Liberty is necessary so that all rational and interested participants can enter the discourse.

These principles outline ways of resolving moral principles in contention. They would still need some procedural method and a mechanism to make reason hold in the decisional process. Where there is no procedural method within an institution's autonomy, that provides a good reason for wider public involvement. Some academic institutions may have internal ombudsperson powers, which should be sufficient to bring reason and to disengage the contentions of ethics, ideology and personality. Institutions need some procedural recognition of these matters, because it is well established in the theory of bureaucracy that



the bureaucracy will believe it has superior information, purpose, and propriety. But, on the contrary, for reasons which we shall clarify below, a bureaucracy can be wrong in many ways, including the moral dimension.

It is probably inappropriate for an educational institution in the university-level context to have a published moral code. What is really needed is an understanding that bureaucratic and popular moralising will not resolve problems originating in dissidence, and in other academic controversies. Bertrand Russell<sup>5</sup> presents some useful reflections. He dismisses the notion that useful moralising can come from popular sources or from the generality of Protestant/Catholic prescriptions on ways to behave. Instead he proposes a secular and social perspective, identifying a good person as one who cares for the happiness of friends and for all humanity; cares for art and science; pursues personal excellence privately as well as does duties for fellow beings, and can show performance in creative personal excellence and respond positively when creativity is achieved. Russell adds that “society ought to allow me freedom to follow my convictions except where there are very powerful reasons for restraining me”. These values are more consistent with academic objectives, and they can scarcely be used by suppressors to “legitimise” their use of authority in academic disputation. However, academic administrators can become enmeshed in a dispute situation which has its own logic of group dynamics and institutional prestige beyond a rational view of academic freedom. Our discussion now turns to these considerations.

### **DISCRIMINATION AND “GROUPTHINK”**

We can think of discrimination cases broadly falling into two categories, though some cases interdependently cross into both categories. First, we can perceive the results of suppression following from the ordinary course of academic activity and from the hierarchically organised internal politics of the academic business. Others have shown in this book how academic oligarchs use their power to ensure the dominance of their theories, their research, and their social values. Like businesses, many powerful academics do not want too much competition or a fair ordering of the academic universe. They prefer power and personalised prestige. We shall not deal with this sort of thing further, because other contributors have shown precisely what is involved. Instead, we shall focus upon the second category, where an autonomous and insular academic bureaucracy organises itself (unconsciously) to provide bad decisions in human rights cases.

Often a case history will begin with a relatively minor indiscretion in administration, and when challenged, it is defended. As time passes further problems and errors occur, and the case collects more participants in a context where prestige, authority and reputation are at stake. Nobody wills the growing complications, but in the absence of independent review procedures it is difficult to obtain useful resolution. Resolution can come with a dying away of energies on the one side or the other, by changes in personnel in administration, or by the force of external power to take away things which are precious to the institution — reputation, autonomy and resources.

Janis<sup>6</sup> shows what happens when an in-group closes ranks. His example was the 1961 fiasco of the US-backed invasion of Cuba at the Bay of Pigs. *Groupthink* is the psychological drive for apparent consensus at any cost; it suppresses dissent and appraisal of alternatives within cohesive decision-making. It is about forced consensus seeking behaviour to get solidarity and the “we feeling”. Beyond consensus seeking, groupthink results in deterioration of mental efficiency and disastrous decision-making.

How does it occur?

- By genuinely considering only a few alternatives;
- by failing to evaluate risks and drawbacks;
- by excluding courses of action, originally rejected as unsatisfactory, but becoming appropriate in changing circumstances;

- when excluding expert evidence;
- by bringing in outside information to the group only under selective bias;
- by having no contingency plans for when things go wrong;
- by making amiability and *esprit de corps* the end, rather than attending to general functions and basic principles.

Who succumbs and why?

- Vulnerability is greater when a chief executive depends upon just an inner circle of chosen advisers, and where the group norms favour unanimity or compliance.
- Group efforts heavily discount warnings, and there is a failure to properly reassess decisions.
- The group holds an unquestioned belief in its own morality and purpose, ignoring the moral consequences of its own decisions.
- The “enemy” is stereotyped as too evil to warrant negotiation, or too stupid or weak to take counter action.
- Pressures are put on deviates in the group to remain loyal.
- Doubts are minimised by a continuous process of self-censorship.
- Illusion arises because the in-group consensus is aimed at legitimising the action, and members of the group assume that external silence means consent.
- The group uses self-appointed mindguards to protect it from adverse information which would shatter its complacency in the effectiveness and morality of its decisions.

Academic institutions are as prone to these sorts of problems as other organisations. Awareness of *groupthink* could lead to more circumspection, but external criticism and power will be the main way to break down *groupthink*. The self-realisation of bureaucratic error will occur only when the organisation is constrained to the uncomfortable position of altering its decision. At that point we can expect it to seek scapegoats for earlier errors and to attempt to rewrite and to re-interpret history.

### *THE CARDINAL AND THE ICONOCLAST*

Cardinal John Henry Newman took up his pen in the 1870s and wrote eloquently about the idea of a university.<sup>7</sup> Universities should have liberty; they must become a concourse of ideas with varied intellectual discourse, and they should pursue excellence. These were to be places of vibrancy, curiosity and respect for creativity in developing scholarship and teaching. The Cardinal’s piece has been significant. For example, in the institution where I work, the enacting legislation from the South Australian Parliament refers to such objectives as nondiscrimination and pursuing a liberally conceived education. Writing some fifty years after the Cardinal (in the 1920s), Thorstein Veblen<sup>8</sup> the iconoclast took up his pen to write witty and clever stuff about realities in American academia. His historical context was the invasion from the style and thinking of businessmen into colleges. Course offerings were becoming more vocational; boards of governors included more captains of industry, and colleges competed to attract students. In the eyes of the iconoclast this led to inferior standards in scholarship and teaching, and the basic ethos in those colleges constricted initiative and liberty.

The iconoclast’s explanation goes something like this:

**The Problems** Funding has to be won from fickle sponsors. Governing bodies have a habitual parochialism and delegate power to their academic executive. The academic executive has a duty to use publicity for enhancing college prestige.

**Power** What is virtually an autocratic power lies with the academic executive. The formal power of departmental heads and academic boards is of little significance. It is more

significant that the executive will attract "a conveniently small number of advisers who are in sympathy with his own ambitions". Power will lie with this "cabinet" or "junta" which is likely to include administrators, "campus politicians" and a few putative scholars.

**Measures of Effectiveness** These are for publicity and to satisfy sponsors, not for learning, scholarship and social purposes. The key measures are: number of students enrolled, number of courses offered and number of graduations/awards. It is undergraduate courses/student numbers which make up the edifice of power.

**Courses** As stated above, the undergraduate fare will build up power. Courses will be standardised into unit equivalents to which measures of (political/publicity) effectiveness can be attached. Teaching will be mainly perfunctory, with recourse to a prescribed textbook occupying a standardised unit of time.

**Frills** These are there to attract students and to promote public image. They will include recreational facilities, architectural monuments, and glossy pamphlets which overstate the college facilities and its measure of success. Some of the accessories to college life are there for decorative rather than for substantial purposes. Professional titling becomes part of the decoration: in American colleges sports coaches became professors.

**The Academic Staff** In Veblen's words: "under this rule the academic staff becomes a body of graded subalterns, who share the confidence of the chief in varying degrees, but who have no decisive voice in the policy or the conduct of affairs of the concern in whose pay they are held. The faculty is conceived as a body of employees, hired to render certain services and turn out certain scheduled vendible results".

**Scholarship** Managerialism, not scholarship, is the primary quality sought for central and departmental executive control. Quasi-scholarship is useful for publicity. It will be necessary to get some well-ranked scholars, and these will be tolerated as long as their scholastic inclinations do not go against executive purposes. The whole show can be kept going by buying cheap and selling dear.

**Liberty and Initiative** These are constrained by the system of power. This power is led towards conventionality in the social "establishment" and the duties of publicity. Opposition can be "corrected" by appointment, perferment and the "academic blacklist". The academic blacklist ensures that "no one will openly say a good word for colleagues who have fallen under the displeasure of an aspiring or incumbent executive". Initiative and innovation yield to statistical magnitudes (for the sponsors) and conciliatory publicity. In social sciences "the executive is actuated by a sharper solicitude to keep the academic establishment blameless of anything like innovation or iconoclasm". The duties of publicity lead to the propagation of appearances and the surveillance of academic staff.

Veblen sums it all up in these words: "with the progressive substitution of men imbued with the tastes and habits of practical affairs, in place of scholarly ideals, the movement toward a perfunctory routine of mediocrity should logically be expected to go forward at a progressively accelerated rate".

How can we relate Veblen's evaluations with the current situation in Australian academia? We would need more research information on particular histories to see to what extent the "animus of businessmen" was prevalent, and a threat to scholarship. However, some modern conditions run parallel to Veblen's context of American colleges in the years 1900-20. Australian academic institutions are dependent upon fickle sponsors for finance, many governing bodies delegate power to the executive, and institutions compete for student numbers, courses, research funds and general finance. Perhaps the main modern difference compared with Veblen's time is the necessary growth and use of research in modern social and economic processes.

## *ACADEMIC INSTITUTIONS AND THE EXTERNAL WORLD*

The Veblen analysis of cause and reason for problems in academia can be taken some steps further. First, it is appropriate to state qualifications and exceptions in respect to the roles and policies of central administrators. For example, the *National Times* (13–19 September 1981, p. 50) reported the appointment of Professor J. M. Ward as the new Vice-Chancellor of Sydney University, and showed how he would combine administration with the continuity of his eminent scholarship. Veblen's argument is that in many cases the scholarship is separate from the main activities and roles of central administrators. We view the academic institution as a large resource system, allocating finance, personnel and support to courses, administration, libraries, research, and so on. A substantial amount of power is centralised, information is controlled, and bureaucratic norms are often in conflict with academic objectives. This can be detrimental to education. Central administration will be concerned with student numbers, the amount of courses, and access to external finance. These priorities and roles for central administration can push to the periphery, at some distance from the administrator's roles, the substantial things in creative innovation and the relationships (the good intangible things in the processes) between teaching, research and student learning. The central administration's relationship with the external world revolves around finance, institutional reputation (often a conservative expectation in the community), political grantsmanship, and the confined social and professional networks connected with these things. In this context any discrimination or suppression case which breaks into publicity can be quite embarrassing. The choices are to prevent it before it happens, or to repress and quieten it down as soon as it is publicised.

For academic scholars and students, the external world has a different significance. The outside world has specialist libraries, a widening scope of non-university research, a knowledge from professional and administrative experience (not the sort of knowledge in most books), and an opportunity to pursue relevance in intellectual and social problems. A good scholar will have an "invisible college" of contacts in the outside world. It is powerful, useful, and can be used in teaching programs. But this is a different outside world from that known to central administrators.

When a suppression case does become public, central administration can be taken by surprise by the amount of support the dissident will have in the wider community. Apart from the "justice" and "scholarship" aspects of a case, the external support has another dimension. In the modern world most professionals, academics, and people generally, have experienced the touch of bureaucratic obstruction. They will side with the dissident, against evasive and ambiguous bureaucracy. Many of them will know exactly how to counter bureaucratic power. That is an outside world beyond the control of central administrators in democratic societies. It is an indictment of modern institutions that this "outside world" has to be used, because these institutions do not have the procedural mechanisms and the attitudes to resolve some crucial problems within their own jurisdiction.

### *CONCLUSION*

My theme has been that most academic institutions operate in a twilight zone in respect to human rights. Academic institutions in democracies owe their historical inheritance to the Age of the Enlightenment, and it is something of an irony that they are largely in the twilight on principles of central significance. Clearly they can remain where they are in twilight, or with the right circumstances they can be moved towards light, or they can drift into real darkness. What the future holds depends entirely upon relevant circumstances. I discuss those circumstances, drawing upon contrasting moods of circumspection, and optimism, and pessimism. Beyond this I give some statements on personal experience and general testimony, having been at the centre of a human rights controversy and having acted as

adviser to human rights organisations in academic-bureaucrat contentions.

It is always easier to stay put than to move deliberately away into a different environment. In the twilight zone we expect that in human rights large gaps will continue to exist between the prescribed values of dissident free expression and the realities of suppression. Without full legal enforceability of human rights, cases will be contended by using countervailing power (usually external to the academic institution concerned), guile in opening up bureaucratically controlled information systems in academia, and occasionally by purchasing legal and other services. Justice will be contingent upon the particular circumstances and the dynamics of individual cases. Many academic institutions would find comfort in the twilight zone. Administrators retain their power, unless a countervailing bloc is ranged in opposition. Many mediocre academics and ordinary people who like a quiet life will find the twilight zone to be a safe haven. Injustices will remain unattended, with some being profound and significant and others being passing and less important. Some of the best academics will face dismissal, termination, and restricted opportunities in research, promotion, and the development of society. The familiar consequences are well discussed in other chapters in this book.

If we were optimistic, we would draw attention to some of the following circumstances. Being cautious, our optimism would be qualified in various ways, keeping us within the bounds of reality. First, since 1980 in Australia the media have been more interested in problems in academia. In the recent past it was extremely difficult to run a counter information system to the bureaucratically controlled system of the suppressors. However, the media are not always responsive, and they are often connected to conservative owners and editors. Second, the Council of Academic Freedom and Democracy in Australia, itself reflective of the scope and extent of modern academic problems, has been a useful new activist. Interestingly, central administrators sometimes view these sorts of advocates for civil liberty as "the lunatic fringe" and "not having status in Australian academic life". In fact, these advocates and activists have had success in some cases, and occasionally suppression has been checked.

Third, in the wider community Australian professionals will join cause, and write critical correspondence to administrators. But the critical correspondents will be from outside the institution where suppression occurs and the case will have to be very convincing. Few academics within an institution will be prepared to oppose their central administrators. Fourth, all political parties have some civil libertarians. It is the Australian Democrats, as a minority party, and being less connected to entrenched power blocs, that have a greater proportion of parliamentarians who will work for individuals. But the scope of parliamentarians goes wider. Some younger men and women in the Labor Party were involved in anti-Vietnam War campaigning and/or in feminist movements. They know what it is like to be at odds with authority and social opposition, and some know how to break through bureaucratic inertia in academia and elsewhere. However, the power of parliamentarians is limited. Those in the party in government will be cautious in making public statements on an issue which could be interpreted as running counter to present educational policy. The ordinary backbencher can write letters to administrators and sometimes raise questions or make comments in Parliament, but that is often as far as he or she can go. Some politicians are strong and persistent, and others are weak; they are usually very busy and are themselves dependent upon colleagues for support and advice.

Finally, for optimism, if the external trends in publicity and general political life are towards favour to human rights in academia, then academic institutions will become ready to create better mechanisms and fairer procedural standards for dealing with academic controversies, dissidence, and other problems. This may be linked to external legal enforceability. Once that is done, the suppressors will be at risk, rather than the dissidents.

By contrast, it is now the turn of pessimism. If academic institutions move from the twilight to darkness, it will be because they will drift there on the tide of external circumstances. Suppression will be rewarded with administrators simply following their

expedient wants. That is easy when they are not opposed in publicity, in the public opinion and politics in the wider community, and in being brought to account in terms of basic human rights. Modern society has some general processes which run to the advantage of powerful executives in academia.

First, consider the general student dissent and activism of the late 1960s and the early 1970s in Australian academic institutions. Although it left a legacy of some student representation on some committees and a vague acceptance that in some sense students count in decision-making, in substance, not much has changed. The teaching-learning process has scarcely been changed, and in many courses academic success is interpreted as reproducing ideas from a set textbook and a set of narrowly confined lectures. This hardly leads to critical thought or to broad understanding of what is possible in educational and social relationships. Without these values and understandings, academic institutions are more readily run by systems men. (There are few women in key positions in academia.) Also, many good scholars are not closely in touch with suppression. A good scholar will prefer to spend time and energy in teaching and in research and writing than in administration. Consequently, academic administration ends up in the hands of those more attracted to power than to scholarship. Or, the good scholars who have administrative responsibilities are in a dilemma as to whether to pursue loyalty to their subjects and their professions or to write some mundane memoranda to central administrators and administrative peers. Australian academia is not always well organised to get both good scholarship and good administration. Bad administration, in itself, can lead to human rights contentions.

Since 1974 many modern democracies, including Australia, have experienced stagflation. Under monetarist economic policies, higher education has experienced slow growth or, sometimes, financial cutbacks. Although the consequences in academia have not been fully documented and written up in good evaluative studies, perceptive observers can see what has happened in many instances. In some academic institutions, there has been internal faction fighting, with coalitions forming to curtail courses or groups which are vulnerable. It has been opportunistic, with little real recourse to fair procedures, independent and impartial reviewing, and with scarcely any reference to broader social, economic, or educational needs in the wider community.

In large measure, national policy-making in education has contributed to the arbitrary and clumsy processes within academic institutions. On the one hand, politicians do not really understand the nature of academic administration and the way financial cuts are actually operated. On the other, they want better science and technology, and a smoother fitting of graduates to the changing occupational structure. But academic institutions speak rhetorically about "academic autonomy", seeking to keep politicians away from any proximity to academic administration. At the same time, the academic institutions have scarcely been effective at publicising the real problems brought about by cutbacks in finance. The end result is that there is a large gap between the requirements for reform in academic administration on the one hand, and bringing power authority in relation to those requirements on the other. In short, there is more noise than reason. Dissidents and potentially good reformers are extremely vulnerable in these circumstances. Terms like "academic autonomy" and "academic freedom" become the slogans for expediency. It is sometimes quite a nasty business.

My closing lines are very much dependent upon my participant observation and action in varied human rights cases. That participation and action includes access to primary documentation and numerous discussions over a period of some ten years or so. I have seen three cases of attempted dismissals, several of discrimination in blocking promotion, a situation where administrators arbitrarily usurped power from a departmental head who was one of the leading scholars in his institution, and instances of summary and arbitrary withdrawals of benefits in the ordinary terms and conditions of service. At first hand, and in these contexts, I have had discussions and meetings with international authors on human rights, with heads of departments, with council members elected by academic staff, with

politicians from the major political parties, and with directors and retired directors of academic institutions. Some cases I have seen were unresolved for years, others quickly settled, and yet others accommodated by negotiation after the balance of power was shifted in favour of the object (they are usually treated as objects, not subjects) of the suppression or discrimination. From all of this, the obvious question to ask is what essential conclusions and interpretations follow. Seen from another angle, we might ask what a subject of discrimination can expect to experience in his or her situation. What happens when a competent Asian academic has his promotion blocked whilst less qualified white Australians in his department advance their careers? Or, where a young woman with a good record in teaching, research and publications sees less experienced men awarded higher positions, what can she expect as events unfold in her challenge to the university's vice-chancellor?

The people who become involved and informed in the cases will, with some notable exceptions, take their positions according to their situational context. The situational context is broadly divided into those who are in the same institution as the subject of discrimination — the insiders — and outsiders. The insiders who have full information and have duties in relation to the case will be few in number. They will tend to acquiesce in the decisions of the chief executive. Even elected representatives of academic staff will acquiesce, largely because they are caught up in a conflict of interest situation and do not see their role as truly “representative” of subordinate staff. Their responses will range from silence to the occasional justification of their position in terms of the generally irrelevant arguments favoured by the chief executive. They prefer silence and secrecy. Chief executives will resist concession, sometimes going further by placing the onus of responsibility on the subject of discrimination of suppression. Within the institution, things will be organised to act in cohesive “groupthink” against the dissident or claimant. Exceptions can occur. Occasionally staff or students may petition and change things. Also, sometimes an individual may support a dissident against central administration, but without any real power to change things.

It is outsiders who see things differently and can act to change an unsatisfactory state of affairs. Given access to facts and logic, some academics from other institutions, some politicians, and some people in public affairs, may act positively in human rights cases. If such opposition can be concentrated and publicised, there is a chance that suppression will be checked. The insiders will continue to claim that they have superior information, much as the conventional theory of bureaucracy predicts. But exposure and wider discussion bring more varied and more relevant perspectives. I can recall an example where a politician reacted so strongly to correspondence which an academic institution sent to a dissident that he was ready to establish it in the parliamentary record and to make fulsome criticism of the institution under parliamentary privilege. Reasonable and activist outsiders will recognise dissidence and suppression when they see the evidence.

All of this can be interpreted in terms of power — an important aspect of human rights. Tawney<sup>9</sup> presents a useful perspective on power. Power is at once both awesome and tenuous. It is often limited, and the powerful, like the spider, can be dominant only in the scope of their webs and hopeful that more powerful forces do not destroy their webs. To be a dissident is sometimes to perceive that power is tenuous, because the dissident is not dependent upon or attracted to the rewards and things within the disposition of the powerful. Others who are within the employee status of an academic institution will often be more conscious of their dependence and their conflict of interest dilemmas. That will include members of governing bodies elected by academic staff and some leaders of staff associations. By contrast, outside academics, politicians and commentators are simply not totally within the power of the chief executives in institutions which are prone to suppress. Clearly, as things stand, the existing contours of power, without enforceable human rights, are a comfort to some and a threat to dissidents. This is bad for society, because as Clyde Manwell and Ann Baker show in the chapter, “Evaluation of Performance in Academic and Scientific Institutions”, the dissidents will frequently include some of the more capable teachers and researchers.

This is not all. Tawney has some more significant views of power. It should serve public, not sectional interest. It should rest upon consent and the rule of law. Public institutions, of which academic institutions are a part, should have statements of specific duties and definitions of rights to ensure reasonable freedoms. It is then clear that the general solution is to legislate so that reasonable claims on human rights are enforceable. The real point about power is not who has it, but rather how it is used and how it is limited. For democratic societies, suppression of the kind I have seen amounts to a misuse of power. Power needs to be limited and conditioned so that academics do have rights to free expression.

I have shown here what is involved in human–scholarship rights, in moralising against dissidents, Veblen’s analysis of modern academia, and in the social/political context of modern Australian society. These are all, at base, political questions, with relevance to values in society and to relationships between the rulers and the ruled. The remedies lie in creating various administrative and legislative reforms so that external review is available, and by strengthening fair procedural standards in academic institutions. In short, human rights matters move from twilight areas of gratuitous administrative discretion towards procedural enforcement and wider publicity.

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