

香港浸會大學教職員工會
Hong Kong Baptist University Faculty and Staff Union

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NEWSLETTER (134)

An Article on Academic Freedom appeared on SCMP

Dear Colleagues,

Some of our colleagues have argued via open letters that there is no connection between academic freedom and the decision to fire the six non-consenters. This is not, however, the view taken by an internationally renowned Law Professor, Professor Yash Ghai, in the University of Hong Kong. The following is his article of which we want to share with you.

Yours sincerely,

Executive Committee
Hong Kong Baptist University Faculty and Staff Union

South China Morning Post YASH GHAI

2006-02-08

Academic freedom on the line

The dispute between six senior academics and the Baptist University administration raises a number of issues relevant to the governance of universities. It concerns, in particular, the nature of academic freedom and the sanctity of contracts.

Academic freedom, which is recognised in the Basic Law, is fundamental to the mission and integrity of every university. It is important for free intellectual and scientific inquiry and exchange within the academic community. Academic freedom is also important for society, as research, controversies and debates lead to the scrutiny of received wisdom, open up new perspectives on old problems and increase the store of knowledge.

It is generally agreed that the security of tenure of teachers and researchers is crucial to academic freedom. They must be able to conduct their business without fear of censure or punishment, whether from external sources - like the government or other powerful interests - or the university itself. The university authorities must ensure there is an environment in which free inquiry is encouraged and where staff are protected from unjustified external influence or attack.

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Any proposals to change the terms of their employment is rightly scrutinised with great care. That now seems to be the situation at the Baptist University where the six academics were threatened with dismissal for refusing to sign new contracts of employment (the matter is now on hold). They were told that their refusal had caused genuine operational difficulties for the university and, consequently, they could be dismissed with good cause.

The phrase good cause has become hallowed in the lexicon of academic freedom. It covers a number of situations, such as the abuse of a teacher's status by indoctrinating students, sexual harassment, plagiarism or serious neglect of duties. I am not aware that operational inconvenience to the university administration has ever been admitted as good cause.

If operational difficulties is accepted as good cause, then it would seem that bureaucratic convenience is placed above academic freedom, and the principal objectives of the university are negated. This is certainly a strange claim to come from administrators who choose to serve a university. The six academics claim that the new system is not clearly defined and could be used to weaken academic freedom. And if staff can be sacked for the kind of reason given, then academic freedom can easily be violated.

The university disagrees and sees no connection between the new contract and a threat to academic freedom. In their submissions to a Legislative Council panel on January 26, the university spokespeople did not give the impression that they understood the nature and prerequisites of academic freedom. Nor does the administration seem to understand the principles of fair legal procedures.

If these are the facts, the university administration seems to have made another elementary error of principle. Every one, whether an academic or not, is entitled to the sanctity of contract (particularly in Hong Kong, with its reputation as the world's freest economy). To tell its staff that unless they sign the new contract (which they are not obliged to do under their original contract), they would be sacked amounts to duress or coercion.

Those of us who have worked in universities (or indeed any other organisation) know that, for perfectly understandable reasons, people are reluctant to give up their jobs, such as having to support their families or finish their research.

A contract is an agreement freely entered into by the parties; duress destroys a contract entered into by this kind of pressure. The university's response seems to indicate that it does not understand the nature of a contractual relationship. The fact is that the original contract entered into freely by both parties enjoys the status of property under the Basic Law, and the courts would protect this.

Yash Ghai is an honorary professor at the University of Hong Kong.