ACADEMIC FREEDOM AND UNIVERSITY ACCOUNTABILITY

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From the idea of academic freedom we can, I believe, construct an image of the ideal university. Academic freedom flows from an absolute commitment to truth and knowledge, a commitment that is the essence of the university. To fulfil this commitment, all members of the university community implicitly accept an obligation to respect freedom of thought, inquiry and speech and to defend it from attempts to interfere with it, from within or without, subject only to the general laws prohibiting libel, slander, incitement and breach of copyright, as well as the rules of good manners. The ethos of the university should be one of uninhibited intellectual curiosity and engagement.

We can to some extent formalise the idea of academic freedom for the purposes of the different members of a university. I take it that the topics, on which academic staff teach courses, are determined by the established processes of governance, but the staff have complete freedom over the content of their lectures, subject to whatever accountability procedures apply. In other words, having been engaged to teach a course, an academic is not subject to censorship. Staff are hired not because they hold views that are approved of (or not hired because their views are disapproved of), but are judged only in the light of proven professional ability as teachers or researchers. In the same spirit, students are graded not according to the views they hold, but according to the quality of the arguments that they bring to their defence. Guest speakers invited on to the university campus are entitled to be accorded the same academic freedom as the members of the university. Any university that does not uphold academic freedom against any threats to it should automatically suffer a loss of prestige and reputation.

What I have said so far seems to me to be elementary and uncontroversial. And yet it is not in these terms that academic freedom is usually discussed in New Zealand. Rather, academic freedom in New Zealand is associated with the universities' role as 'critic and conscience of society', a role enshrined the Education Act 1989. For example, in its Tertiary Education Review, published in September 1997, the Ministry of Education states that the government should use the Crown's ownership interest in tertiary education institutions (TEIs) to ensure, among other things, 'protection of the tradition of academic freedom'. It goes on to define academic freedom as:

> ... the role of academic staff to act as critic and conscience of society under which they question and test received wisdom, put forward new ideas and challenge orthodox, or state unpopular, opinions.

It later suggests that governing bodies of TEIs should be responsible for 'promoting the national and international reputation of the TEI in terms of the quality of its education and related services, its research, and its performance as critic and conscience of society (academic freedom)'.

Similarly in its response to the Tertiary Education Review, the New Zealand Vice-Chancellors' Committee said that:

> University academics themselves are under an obligation to bring to public attention, through public debate, issues on which they have a contribution to make informed by their research. Not all criticism need be adverse. But the tension between universities being, on the one hand, funded by the state, and, on the other, free to challenge the state is an accepted and important tradition to be maintained.

The Committee went on to claim that:

> Through this tradition universities play a fundamental role in maintaining freedom of expression and thought in a democratic society.

Let me make it absolutely clear that I totally endorse and value the involvement of university academics in public debate. Indeed I often wish some of our best academics would speak out with more vigour and courage on public issues. For example, I think it has been disappointing that although many legal academics privately deplored the judicial adventurism of the Court of Appeal under Sir Robin Cooke, few were prepared to make their views known publicly (Professor John Smillie of the University of Otago being perhaps the most notable exception). The excuses offered were that they were afraid of upsetting the judiciary, their university chancellors (sometimes judges) or those responsible for research grants or consultancy contracts. I can understand legal practitioners being reticent about criticising judicial performance – they have to appear before judges and think about their clients' interests. But things have surely come to a pretty pass if academics to whom we explicitly grant academic freedom in the interests of protecting free inquiry and expression are not prepared to exercise it.

I also think it is unfortunate that many of our best academics are not the ones the public typically hears from. Often they are concentrating on research and publication in quality journals, not in newspaper columns. It tends to take an egregious piece of writing by one of their more outspoken colleagues to spur them into going public with an account of the more accepted insights of their disciplines.

So the argument is neither about the values of academic freedom nor the legitimacy of academic involvement in public debate, but about conflating the two separate issues. I take a sceptical view of the association between academic freedom and the universities' role as 'critic and conscience of society'. My scepticism arises initially from three questions. First, in a society in which basic freedoms, including those of speech and conscience, are secure and even protected by a Bill of Rights Act, why should 'academic freedom' be singled out for special statutory protection? Would academic freedom seriously be threatened if it were not explicitly protected by the Education Act 1989? Surely, of all people, academics are well placed to speak their mind without fear of the consequences. Why then does academic freedom receive this special protection?

Second, if universities are to play the role of critic and conscience of society, whose job is it to criticise the universities? It's a central principle of procedural fairness that no one can be a judge in his or her own case. Presumably the universities do not wish to claim that they are infallible or that they should be exempt from outside assessment. But if they wish to retain a special role as social critic and conscience, they should surely welcome moves to subject them to external assessment of their own performance. And if academics participate in

public debate, which I repeat I welcome, there can be no basis for complaint about others responding to and criticising their arguments.

Third – and this goes some way to answering my second question – if there is to be a legally prescribed role of 'critic and conscience of society' (and I must admit to being at one with the political philosopher Kenneth Minogue in finding the idea 'faintly totalitarian' – I wonder what George Orwell would have made of it), why should this be exercised only by universities? The law does not forbid other institutions or persons from playing that role, though no other institution enjoys similar statutory protection. But in a free society, social criticism can and does come from a variety of sources: from the media, from the churches, from the professions, from think tanks, from business, from voluntary associations, from private citizens. So if there is to be a special protected role for universities, and above all if state subsidies are involved, let that role be contestable. After all, many other functions that are closely associated with universities are contestable. Much university research funding, for example, comes from contestable sources like the Public Good Science Fund, which also supports the research activities of other bodies like the Crown Research Institutes. Society is entitled to say whom (if anyone) it wants to subsidise to be its 'critic and conscience'.

I believe the view I am putting forward is in accord with the traditional view of the nature of the university, as best expressed in modern times by Cardinal J. H. Newman, an Oxford University don who helped found the University of Dublin in the mid-nineteenth century. In 1852 Newman published a famous series of lectures under the title *The Idea of a University*. For Newman, the university existed to protect the life of the mind, and to preserve the accumulated wisdom of the past. The value of the university was that it inculcated in its members what he called 'A habit of mind … which lasts through life, of which the attributes are freedom, equitableness, calmness, moderation and wisdom' – or what 'I have ventured to call a philosophical habit'. Although Newman rejected the utilitarian view that knowledge was valuable only if it was useful in some instrumental sense, he did not oppose universities becoming involved in research and training in the professions. But as these activities could be and were undertaken also by other institutions, Newman identified 'the philosophical habit' as the 'the special fruit of the education furnished at a University, as contrasted with other places of teaching or modes of teaching'.

Universities like to cite Newman's work as setting out their *raison d'être* as places where knowledge can be acquired, and mankind's intellectual heritage preserved, for their own sake. But you will notice that this conception of a university recognises or prescribes no role of critic and conscience of society. On the contrary, Newman was trying to preserve the original medieval nature of universities as extensions of the monasteries, places where people went to get away from society and to find the calm and tranquillity that are necessary for cultivating the intellect. To a very great and remarkable degree, the structures and even the architecture of modern universities reflect their medieval origins. Even if the extreme social detachment of the universities that Newman valued is inappropriate in these less deferential times, academics are likely to be of more value to society by pursuing knowledge than by taking on 'socially relevant' functions.

Where then does the view of universities as society's critic and conscience come from? It is a relatively recent idea, and has its origins in the German university tradition rather than the British one. A major expression of this tradition is the 1923 book *The Idea of the University* by the German philosopher Karl Jaspers. For Jaspers, the essential role of the university in generating new knowledge included articulating and formulating a nation's culture, and from

this the role of critic and conscience of society flowed quite naturally. But it is deeply ironic that Jaspers' book should have appeared when it did, for soon afterwards the German universities started to become major centres of a vigorous and well-known source of criticism of German society, namely, the Nazi party. In the 1920s, the Nazis seemed to be little more than a fringe rabble of revolutionary ex-soldiers who wouldn't accept that the Great War had ended. By the early 1930s, they were sufficiently mainstream and respectable to enable Hitler to come to power by constitutional means, and the universities had certainly done their bit to make that possible. One of the chilling features of the history of the university in the twentieth century is the support among German academics for the suppression of liberty which the Nazi programme entailed, although of course many academics, including Jaspers himself, opposed the Nazis.

This example may seem rather extreme, but it helps illustrate my deepest objection to the 'critic and conscience' role for universities. Recall the Tertiary Education Review's claim that this role involves academic staff questioning and testing 'received wisdom', challenging 'orthodox' opinions and stating 'unpopular' ones. This claim conjures up an image of the universities as fragile beacons of enlightenment, defending truth and reason from the menacing forces of mass ignorance and bigotry. This image may be flattering to academics, but it is, I submit, nonsense. In any society, public debate is dominated, not by popular opinion, but by elite opinion. Elite opinion may or may not coincide with popular opinion. But my point is that *it is always harder to argue against elite opinion than against popular opinion.* Take capital punishment. In many countries, convicted murderers are not executed, because elite opinion is against capital punishment, even though the general public is for it. But is it easier for an academic to oppose capital punishment than to defend it? Obviously it is. Or take the proposition that the rise in the number of people on welfare benefits over the last decade is a predictable effect of unconditional, or at least easy, eligibility for state welfare. I don't know whether that's a popular view or not. But it would require more courage to argue publicly for the proposition than against it, because to do so would be to challenge the opinion of the educated elite or a substantial part of it.

The extreme case of the dominance of elite opinion is, of course, the phenomenon of 'political correctness'. A major problem with political correctness is not the content of the opinions involved, but the fact that they are held so self-righteously that criticism of them is denounced and silenced rather than answered. In other words, political correctness is the exact antithesis of academic freedom. An associated problem is that 'incorrect' views are attributed to people who may not in fact hold them. Thus, opponents of biculturalism or of liberal immigration policies risk being denounced as 'racist'; opponents of employment quotas for women risk being denounced as 'sexist'; and advocates of rigorous and objective standards in education risk being denounced as 'elitist'. Where free speech is policed in this way, its cost is raised and there will be less of it. But if this is true of universities, then the blame must lie primarily with those academics who allow themselves to be intimidated into silence. Academics are unique in having the costs of their free speech *lowered*, not only by the protection of academic freedom but in many cases also by security of tenure. If they still don't speak out when they would otherwise be inclined to, they are guilty of a lack of moral and civic courage.

Political correctness is a far more insidious threat to academic freedom when it is enshrined, as it sometimes is, in university 'speech codes', since staff and students alike can be threatened with disciplinary action for breaching them. Such codes apply in some universities in the United States. Their ostensible aim is to prevent university members from

making 'insensitive' remarks (typically, it is the sensibilities of groups espousing the 'politics of difference' that are protected – less concern is shown for the sensibilities of white, Anglo-Saxon, heterosexual, middle-class, Christian males, especially dead ones. It's hard to think of a more blatant way of attacking the academic freedom of both students and staff than by imposing a 'speech code' designed to control the use of language. This amounts to a throwback to the totalitarian regimes that tried to impose officially approved vocabularies as a means of making politically incorrect thoughts literally unthinkable. In civilised societies, people's legitimate sensibilities are adequately protected by general laws and the conventions of etiquette; anyone who finds that amount of protection insufficient is not suitable for university life.

As far as I am aware, we have not seen attempts to introduce speech codes in New Zealand universities, but we must be aware of the danger of the campus becoming, as US educationist Chester Finn has put it, 'an island of repression in a sea of freedom'. There are too many reports of alleged politicisation of scholarship, of attempts to impose Asian and Maori studies as compulsory courses, of academic staff privately disagreeing with politically correct initiatives but staying silent about them, and of students opting to express views acceptable to lecturers rather than their own in order to get good grades, for us to be complacent. My strong impression is that the most perceptible current threats to academic freedom are from within the university not without.

To be sure, the commitment to academic freedom can be demanding. It means protecting the freedom to argue for unfashionable propositions, such as that the greenhouse effect is either non-existent or a good thing; that marital separation is harmful to children; or that intelligence may be unevenly distributed across races. And yes, it also means protecting the freedom to argue propositions that I would strenuously contest, such as that import tariffs protect employment, or that more welfare spending would automatically promote social justice. But freedom to say uncomfortable or irritating things is precisely what academic freedom is all about, and precisely what universities exist to protect.

How, if at all, should the law relating to universities explicitly protect academic freedom? As far as the 'critic and conscience' provision in the Education Act 1989 is concerned, I think it would be best if it were repealed and individual universities decided for themselves whether they wanted their staff to accept such a role. What should concern the universities about this role, whether or not it is enshrined in law or regulation, is accountability. Lewis Evans, a professor of economics at Victoria University of Wellington, has observed that:

> At the very most, the role of critic and conscience of society must be secondary to the primary goal of quality research. It may actually inhibit research quality and undermine the values and goals of the university system by legitimising the involvement of university staff in wide-ranging public debate as part of their university employment, whether or not such debate is in the area of their research and even if they have no credible research record.[1]

It seems to me that a university that values its reputation would jealously control the use of its name by its members. For example, academics wishing to criticise publicly the government's economic policies would do so in their professional capacity (citing their university positions) only if they had the recognised qualifications and reputation in the discipline of economics, otherwise they would be expected to do so as private citizens. In this way, their criticism would not only carry the weight due to a member of their university,

but it would be properly constrained by the exposure it brought them and the risks it posed to their professional reputations. As it is, as Professor Evans suggests, academic anthropologists or archaeologists may criticise official economic policies in their professional capacity, and even claim it is their duty to do so under the 'critic and conscience' clause, yet suffer no penalties or loss of reputation if their criticism is completely fatuous.

Beyond that, universities could consider bolstering academic freedom, if they thought it necessary, by drawing up codes of academic conduct. It would seem to me to be perfectly acceptable to require staff and students, on becoming members of a university, to sign an agreement to respect and uphold academic freedom, on the understanding that they risk expulsion or other sanctions if they break that agreement. I had the experience of having an honorary lecture which I gave at Massey University last year, attended by the vice-chancellor and senior academic staff, disrupted by a student association group protesting against the government's fees policy. The most common reactions I received from students and staff after the lecture were 'so much for academic freedom at this university', and 'that's the best argument you've ever heard for voluntary student unionism'.

I have been arguing that any threats to academic freedom in the current environment are more likely to come from within universities rather than from outside. In fact, what is striking in New Zealand is how much the government respects the autonomy and independence of universities and how little it attempts to influence the content of teaching and research, even where many questions could be asked about its quality. No one has been able to give me any example of government intrusion into this area in living memory. Nor do I believe the government's proposals for enhancing accountability as set out in the Tertiary Education Review threaten academic freedom. I agree with Professor Michael Irving, Vice-Chancellor of Victoria University of Wellington, that even if most or all members of universities' governing councils were appointed by the government, 'Most appointments would be university graduates who would value academic freedoms and the rights of academics and students'.[2]

Nevertheless, a future generation of politicians could take an entirely different attitude. There is very extensive government involvement in the universities, especially in financing them. Yet most university staff and students seem to support this state of affairs, largely because they believe it protects their academic freedom by ensuring their independence from the potentially corrupting influence that private ownership or finance would bring. What this viewpoint overlooks is the homogeneity in structure and governance of state universities and the constraints on diversity, the controls always associated with government funding, and the potential threat that government monopoly poses to the very survival of academic freedom. Compare the uniform New Zealand university system with the American one, which includes state-owned, privately-owned, non-profit and for-profit institutions. The system combines many of world's top universities as well as mediocre ones, but overall is rated by most observers as the best in the world. Surely no one could seriously argue that academic freedom is threatened by such competition and diversity.

This observation is hardly original. In mid-nineteenth century Britain it seemed self-evident to many observers that the expansion of education should be left predominantly to civil society rather than government. In his 1859 classic *On Liberty*, John Stuart Mill argued that 'Government operations tend to be everywhere alike. With individuals and voluntary

associations, on the contrary, there are varied experiments, and endless diversity of experience'. He went on:

> Every function superadded to those already exercised by the government causes its influence over hopes and fears to be more widely diffused, and converts, more and more, the active and ambitious part of the public into hangers-on of the government, or of some party which aims at becoming the government. If the roads, the railways, the banks, the insurance offices, the great joint-stock companies, the universities, and the public charities, were all of them branches of the government ... if the employees of all these different enterprises were appointed and paid by the government, and looked to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this or any other country free otherwise than in name.

This view was almost universally accepted at the time. Even Karl Marx believed that government should have no role in the direct provision of education.

The Vice-Chancellors' Committee, in the passage I quoted earlier, remarks on the 'tension between universities being, on the one hand, funded by the state, and, on the other, free to challenge the state'. Over time, that tension could be resolved in the interests of the state unless the universities take steps to free themselves from their excessive dependency on state funding. Precedents already exist close to home. In Australia and Britain, reforming governments in the 1980s abandoned any pretence of deferring to the views of Cardinal Newman. They centralised their university systems and greatly extended bureaucratic control over them, for example by requiring research grants in appropriate disciplines to be dispensed in the light of politically determined 'national priorities'. In such circumstances, as Mill noted, legal freedoms can coexist alongside actual loss of freedom. Morale among academics is low in Australia and Britain, not just because much of their time is wasted in filling in bureaucratic forms that are supposed to substantiate various meaningless 'performance indicators', but also because they are trapped in a cage of their own making. So long as they remain wedded to exclusive state ownership and funding of universities, they will face increasing demands from governments, which are rightly accountable to electorates through the democratic process. With the so-called 'massification' of higher education, governments will not be prepared to throw more and more taxpayers' dollars over the ivory wall without introducing stricter control mechanisms to satisfy themselves that they are getting value for money. Perhaps it will fall to a future generation of academics to realise the liberating effects of multiple and competing types of institution and sources of finance.

The trend to 'massification', in so far as it affects universities, also has implications for academic freedom. To a much greater extent than ever before universities are catering for vocational training, and there are at least two consequences of this trend. First, universities find it increasingly difficult to turn away students for whom their traditional academic training, emphasising the life of the mind for its own sake, is unsuitable and, secondly, they become increasingly beholden to employers. It may be argued that universities have always served the vocational purpose of training students for the clergy, some other professions and the administration. This is true, but it was a contingent feature of universities which had been created out of a passion for scholarship – a passion which in fact distanced them significantly from the practical concerns of society at large. But this emphasis on a contingent aspect of university life, in substitution for its essence, has led to an increasing

trend towards the vocational in the belief that this would enhance national prosperity. And some of our universities, with their territorial ambitions, do not seem at all adverse to this trend. But a consequence has, I suggest, been to weaken the autonomy of universities with very uncertain benefit in terms of national prosperity. Vocational training is vital and deserves parity of esteem with academic education, but there must be ongoing debate about the extent to which it is the business of universities, not least from the perspective of academic freedom.

I believe a good case can be made that full independence from government control offers universities the best long-run guarantee of academic freedom. The Nobel laureate in economics George Stigler, an intellectual's intellectual if ever there was one, had this to say about his own academic experience:

> If one asks where, in the Western university world, the freedom of inquiry of professors has been most staunchly defended and energetically promoted, my answer is this: not in the politically controlled universities, whether in the United States or Germany – legislatures are not overpopulated with tolerant men indifferent to popularity; and not in the self-perpetuating faculties, such as Oxford and Cambridge from 1700 to 1850 – even intellectuals can become convinced that they have acquired ultimate truth, and that it can be preserved indefinitely by airing it before students once a year. No, inquiry has been most free in the college whose trustees are a group of top-quality leaders of the marketplace, men who, experience shows, are remarkably tolerant of almost everything except a mediocre and complacent faculty. Economics provides many examples: if a professor wishes to denounce aspects of big business, as I have, he will be wise to locate in a school whose trustees are big businessmen, and I have.

While I am not an academic, I have to say that my experience in an organisation of major business firms has been of a similar freedom to undertake research and pursue the logic of analysis in a remarkably unconstrained way.

As New Zealand society ages and pressures on public spending grow, future governments may face increasing temptations to bend the universities to their will, and to make them instruments of their policy goals, in ways that inevitably threaten academic freedom. Their best defence against this possibility is not to stand aloof as the barely noticed 'critics and conscience' of society but to seek increasing independence from government financing, ownership and regulation. I would like to think that in the next decade or so we will see moves in the direction of a more diversified, independent, vibrant and self-confident university system in New Zealand, in which the best of our academics enjoy and exercise their academic freedom.

NOTES

1. 'The Quest for Quality in Universities', *Agenda*, Vol. 4, No. 4, 1997, p 401.
2. *NZ Education Review*, 22 April 1998.