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Academic Freedom, Political Interference, and Public Accountability: The Hong Kong Experience

Johannes M. M. Chan and Douglas Kerr

Abstract

In 2015, interference with academic freedom dominated public discourse in Hong Kong. This article provides an analysis of academic freedom in Hong Kong, addresses some systemic problems, and engages the debates between academic freedom and accountability of publicly funded institutions. It argues that the interference is not a one-off incident but forms part of a general trend toward a more restrictive regime of control over tertiary institutions in Hong Kong. Protection of academic freedom is of particular importance in such a restrictive political context.

From Giordano Bruno, who was burned for preaching the heresy that the Earth was not the center of the universe, to the many unknown scholars tortured for speaking the truth during China's Cultural Revolution, history is filled with sad pages documenting the suppression of academic freedom. Academic freedom is vulnerable in that academics and academic institutions have little but their own conscience and integrity to rely on in defending it, and that defense is usually at great personal cost. The threat to academic freedom is powerful and disturbing, since when academic freedom is not tolerated, let alone respected, other fundamental freedoms are also likely in peril.

The Hong Kong Context

This essay documents three cases in which academic freedom was jeopardized, and in one case seriously damaged, in Hong Kong. It is necessary to preface these accounts with a survey of what is at stake in the particular Hong Kong context. Recent vigorous debate on the matter shows that, while almost everyone who engages in discussion of academic freedom is in favor of it, how academic freedom is understood and experienced (or not experienced) can differ widely from institution to institution and from place to

place. Inevitably, too, there are quite different perceptions of where and in what form the major challenges to such freedom arise.

Take, for example, David Bromwich's "Academic Freedom and Its Opponents," an account of the opponents of academic freedom that is mostly concerned with what he sees as wrongheaded appeals for "balance" in research and teaching. A misguided and overly circumscribed understanding of scholarly authority, as Bromwich describes it, holds that professors can make whatever assertions they please within the boundaries of their expertise, but that "if a scholar's expertise is shown to be contaminated by moral or political interests external to the discipline, academic freedom no longer applies to that scholar's utterances and publications."¹ Highly relevant in the United States at the moment, this is not the primary ground for concerns about academic freedom among Hong Kong scholars. In an essay in the same collection, Akeel Bilgrami claims that "we all recognize who the opponents of academic freedom are," but he declines to discuss controversial cases of overt political influence on the academy since they "raise no interesting intellectual issues at a fundamental level over which anyone here is likely to be in disagreement."² This may be true in some countries, but not everyone everywhere else has the good fortune to find such cases uninteresting. A different provenance and a different problem, the decline in tenure-track jobs in the humanities, was the impetus driving Michael Bérubé and Jennifer Ruth's intervention in the discussion.³ Again, this is not or not yet a pressing issue in Hong Kong universities. Simon During seems not at all sure that academic freedom ever really existed outside certain rarefied and privileged intellectual spaces, or if, as most people argue, it really is essential to full academic life. But if it does exist, During maintains, its most baleful opponent is the neoliberal ideology of the corporate university, with its performance management regimes, which declares that the purpose of universities is to prepare individual students to succeed in the labor market, and, in the name of accountability, that its function is to contribute not to knowledge, or society, or humanity, but to national economies.⁴ This indeed is a looming threat in publicly funded universities everywhere. But the frame in which the following Hong Kong cases are to be viewed is different, unique, and in some ways more straightforward than any of these. It is that of the postcolonial history of Hong Kong.

Hong Kong was colonized by Britain in 1842, its overwhelmingly Chinese population replenished periodically by fortune seekers and refugees from China, later the People's Republic of China (PRC). As a British colony, Hong Kong was a common-law jurisdiction, under a government answering to London.

¹ David Bromwich, "Academic Freedom and Its Opponents," in *Who's Afraid of Academic Freedom?*, ed. Akeel Bilgrami and Jonathan R. Cole (New York: Columbia University Press, 2015), 31.

² Akeel Bilgrami, "Truth, Balance, and Freedom," in Bilgrami and Cole, *Who's Afraid of Academic Freedom*, 10. "Here" in this case was the New School in New York, where Bilgrami's essay was first delivered as a lecture.

³ Michael Bérubé and Jennifer Ruth, *The Humanities, Higher Education, and Academic Freedom: Three Necessary Arguments* (Basingstoke, UK: Palgrave Macmillan, 2015).

⁴ Simon During, "Stop Hying Academic Freedom," *Public Books*, September 1, 2015, <http://www.publicbooks.org/nonfiction/stop-hying-academic-freedom>.

For a long time it was essentially a migrants' town, and only in the 1960s and 1970s did there develop a distinct Hong Kong identity among its indigenous people. During this time, Hong Kong prospered and flourished, becoming one of the world's leading financial centers and a producer of a distinctive culture (best known to the rest of the world in its cinema) largely insulated from the turmoil on the mainland that precipitated the Cultural Revolution, launched in 1966. Most Hong Kong people had parents or grandparents who had come to the colony to escape the poverty, politics, and lawlessness of the mainland, and they regarded the PRC warily.

The tide of empire had receded across the world, leaving the colony an anachronism. Negotiations between the British and Chinese governments led to the Joint Declaration agreeing to the resumption of Chinese sovereignty over Hong Kong in 1997, and the Basic Law or mini-constitution was drawn up, outlining a system of governance for the Hong Kong Special Administrative Region (HKSAR) that guaranteed a high degree of autonomy in all areas except defense and foreign affairs.⁵ The former colony would retain its own legal, social, and economic systems; mainland laws and the socialist system would not apply to Hong Kong, and fundamental rights and freedoms were guaranteed. The principle underlying these arrangements, known as "One Country, Two Systems," was said to have been devised by Deng Xiaoping himself. Hong Kong people, nervous and largely unconsulted in the process of negotiation, were reassured that they would continue to enjoy their own way of life, at least for fifty years—"Fifty Years No Change!"—and China, having reasserted its legitimate sovereignty, would nonetheless not meddle. Government under universal suffrage would not be available for a while, but then Hong Kong had never enjoyed this amenity under its colonial masters. The Basic Law was promulgated by the National People's Congress in 1990 and took effect on July 1, 1997.

Everybody knows what "One Country" means, but the meaning of the second half of Deng's slogan has been the focus of political debate, and tension, ever since it was uttered, and it provides the context for the stories that follow here. What is a system? Deng seems to have had in mind chiefly Hong Kong's capitalist ways, which, in the 1990s at least, were dramatically different from the centralized command economy over which the Communist Party presided on the mainland. "Two Systems" may have been aimed primarily at reassuring the landowners, property developers, and tycoons who had always called the shots in Hong Kong. Business and professional elites, whose cooperation would be necessary to the new regime, also had to be reassured. Many people in Hong Kong, however, had an understanding of their "system" as not only economic but also legal, social, and cultural. The city's economy depended on and must include the practices, rights, and values that informed its way of life. These were not to be found in mainland China but were prized as elements of an identity that made Hong Kong what it was. Among these elements, though perhaps not very high on the list for most people, were academic freedom and the

⁵ Hong Kong was unusual, though not quite unique, in that its decolonization was followed not by independence but by a transfer of sovereignty to another nation.

autonomy of academic institutions, which indeed were guaranteed in the Joint Declaration and the Basic Law.

There is a metaphysical aura to “One Country, Two Systems” not unlike the one surrounding the Christian doctrine of the Trinity. Theologians used to argue whether God the Father came before God the Son. Does One Country exercise some kind of primacy over Two Systems, as mainland officials increasingly assert? Can you actually have two systems in one country when the systems are so dissimilar, verging on incompatible? In some lights, the slogan has the look of magical thinking. China is a one-party state: the Chinese Communist Party (CCP) is not just the governing party, it claims the state itself, the People’s Republic.⁶ How does that factor into One Country, Two Systems? Are Two Systems even possible in such a political environment? To take one issue that relates to the question of academic freedom, consider the question of authority. Academic freedom means intellectual inquiry where nothing is ruled out, and everything is subject to scrutiny, debate, and test. It is no respecter of external authority: it cannot be and remain free. The principle underlying such inquiry was enunciated by John Stuart Mill: “The beliefs which we have most warrant for, have no safeguard to rest on, but a standing invitation to the whole world to prove them unfounded.”⁷ On such beliefs, the jury is always still out. How can such a claim to perpetual debate be compatible with a system of absolute political authority, resting on a monological ideology accorded the status of unquestionable scientific fact, served by a political institution with its own army? In one sense, One Country, Two Systems was no less than a utopian desire to square this circle.

China in the past quarter century has embraced capitalism (“socialism with Chinese characteristics”) with enthusiasm and spectacular results, with the support of the CCP. China’s material progress in these years is the most remarkable and important story of modern history. The CCP, however, has not matched these economic reforms with significant political ones. The PRC remains essentially a totalitarian system seeking to control all aspects of its citizens’ lives, and it is hard to see how the party can ever change this state of affairs without changing its nature and jeopardizing, ultimately, its own existence. This problem—a problem inherent perhaps to one-party states—may yet prove tragic for China. Meanwhile, under its present leadership, as economic and strategic power increases, internal disciplinary regimes are, if anything, increasing too. The more the activities of the courts, the universities, the press and the Internet, for example, are controlled on the mainland, the more anomalous, and perhaps the more precarious, does Hong Kong seem.⁸

⁶ The People’s Liberation Army, for example, is the army of the PRC *and* the CCP.

⁷ John Stuart Mill, *On Liberty*, ed. David Bromwich and George Kateb (New Haven, CT: Yale University Press, 2003), 91.

⁸ For example, the conviction rate in criminal courts in the PRC in 2015 was 99.92 percent. “The Communist Party has pledged to ensure the ‘rule of law with Chinese characteristics’ and said it will lessen the influence of local officials over courts.” *Hong Kong Free Press*, March 13, 2016, <https://www.hongkongfp.com/2016/03/13/chinas-criminal-conviction-near-100-percent-in-2015/>.

There had to be a Hong Kong government, of course, and it was not surprising that it should reflect the contradictions of Hong Kong's situation. It was set up under a chief executive chosen by a very small, picked electorate, with a team of ministers whose chief qualification is their loyalty to the PRC.⁹ The legislative council can do little to restrain the government. Half of the council's members are chosen by functional constituencies representing special interests, such as professions and chambers of commerce. They can effectively veto any legislation proposed by elected legislators, and in any case motions raised by elected legislators are not binding on the government.

The Hong Kong government is unpopular, and promised democratic reforms are stalled in acrimony on both sides. Frustration at this state of affairs was the trigger for the civil disobedience movement called Occupy Central. Between September and December 2014, thousands of protesters blocked roads and set up a tent city in Hong Kong's financial district, and two other very busy parts of town, demanding that the Chinese and Hong Kong governments implement universal suffrage for the chief executive election in 2017 and the legislative council elections in 2020 according to "international standards." The movement had been initiated by three people, one of whom was Benny Tai Yiu-ting, an associate professor of law at the University of Hong Kong, in January 2013, but the occupations had no single leader and were pushed forward by a loose alliance of student and political groups and activists. As the movement went on, positions on both sides hardened. When the last barriers came down, no concessions or meaningful dialogue were offered to the protestors. Occupy, and the related Umbrella movement, were strongly associated with the universities in the mind of the public and of the Hong Kong government.¹⁰ There were frequent calls on students and their professors to get back to their classrooms and concentrate on their studies instead of fomenting discontent and disorder. This is an important part of the story that follows.

Hong Kong has a well-educated and outward-looking population with democratic aspirations but almost no effective political instruments for getting what it wants. The judiciary maintains its independence at present, but final interpretation of the Basic Law is vested in the National People's Congress Standing Committee. The press and Internet are not censored, but self-censorship is widespread. These are the conditions in which the Hong Kong universities, all but one of them publicly funded, operate, with their legal guarantee of an academic freedom and institutional autonomy undreamed of by universities on the mainland but subject to the pressures of an increasingly difficult environment.

⁹ The current chief executive, Leung Chun-ying, is known by the nickname "689," a reference to the number of votes he obtained from the city's twelve-hundred-strong election committee. Hong Kong has a population of over 7 million.

¹⁰ The Umbrella movement was named for the yellow umbrellas used by protestors to protect themselves from police tear gas.

Constitutional Guarantees of Academic Freedom in Hong Kong

Academic freedom and autonomy of academic institutions are, as we have seen, among the rights and freedoms guaranteed by the Sino-British Joint Declaration and the Basic Law of the HKSAR. Article 34 of the Basic Law provides that “Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities.” Article 137 further provides that “educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the HKSAR.” These articles highlight two different aspects of academic freedom: an individual right of academics to pursue academic scholarship, and an institutional freedom to recruit academic staff and to decide on its curriculum and teaching materials. These provisions were drafted in the 1980s in light of the painful experience of the Cultural Revolution and the then-prevailing situation in China, where educational institutions and academic, literary, and artistic activities were tightly restricted by socialist ideology and controlled by the CCP machinery. Hence, academic freedom and institutional autonomy were singled out for special protection and not merely subsumed under freedom of expression, which is also protected by Article 27 of the Basic Law.

What is academic freedom? While there is no single definition, it could be taken to mean “the freedom to conduct research, teach, speak and publish, subject to the norms and standards of scholarly inquiry, without interference or penalty, wherever the search for truth and understanding may lead.”¹¹ In *Secretary for Justice v. Commission of Inquiry re Hong Kong Institute of Education*,¹² Justice Michael Hartmann pointed out that academic freedom is not merely the freedom of individual academics to pursue knowledge without fear of repercussions or sanction but also an institutional right of an academic institution to enjoy independence in matters that may be regarded as “university business.” In this regard, the core business of the university is its freedom to “determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”¹³ To this could be added the pursuit of research and scholarship, which complements the educational function and forms a core mission of modern universities. Universities are places for free inquiry where knowledge is

¹¹ This definition was adopted by the First Global Colloquium of University Presidents (Columbia University, January 18–19, 2005), which was in turn derived from the judgment of J. Kaye in *Clark v. University of Melbourne* [1978] VR 457. This definition was also adopted by Justice Michael Hartmann in *Secretary for Justice v. Commission of Inquiry re Hong Kong Institute of Education* [2009] 4 HKLRD 11, para. 47. There are similar definitions in UNESCO’s Recommendation Concerning the Status of Higher-Education Teaching Personnel, Twentieth Plenary Meeting, November 11, 1997, and the UN Economic, Social, and Cultural Rights Committee’s General Comment no. 13 (1999). For an earlier statement, see American Association of University Professors, “Statement of Principles on Academic Freedom and Tenure” (1940), *Policy Documents and Reports* (Baltimore: Johns Hopkins University Press, 2015). For a helpful discussion, see also Gareth Jones, Kerry Galvin, and David Woodhouse, “Universities as Critics and Conscience of Society: The Role of Academic Freedom,” March 2000, <http://www.aqa.ac.nz/sites/all/files/ASQ6%20Critic%20and%20Conscience.pdf>. For a helpful analysis of the concept of academic freedom in the US context, see J. Peter Byrne, “Academic Freedom: A ‘Special Concern of the First Amendment,’” *Yale Law Journal* 99, no. 2 (1989): 251.

¹² *Secretary for Justice v. Commission of Inquiry*.

¹³ *Ibid.*, at para. 51, citing Justice Felix Frankfurter in *Sweezy v. New Hampshire*, 354 US 234 (1957).

discovered, created, advanced, and disseminated. Free inquiry also entails the responsibility “to resist mere appeals to authority as justifications, as well as to resist and expose irresponsible or disingenuous academic activity.”¹⁴ Debates and arguments are the characteristics of any academic institution, and constant queries of conventional values, authority, or tradition are the norms of any university. As Harvard University president Drew Faust put it, “Knowledge emerges from debate, from disagreement, from questions, from doubt, from recognizing that every path must be open because any path might yield an answer. Universities must be places where any and every topic can be broached, where any and every question can be asked. . . . Universities must nurture such debate because discoveries come from the intellectual freedom to explore that rests at the heart of how we define our fundamental identity and values.”¹⁵ As Justice Hartmann acknowledged, “A university ceases to be true to its own nature if it becomes the tool of Church or State or any sectional interest. A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates—‘to follow the argument where it leads.’ This implies the right to examine, question, modify or reject traditional ideas and beliefs. Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant to the spirit of a university.”¹⁶

At the same time, the insistence on a free and independent inquiry following “the argument where it leads,” with its concomitant challenges to tradition and authority, may not always sit well with the ruling regime or established institutions, especially when government policies or conventional truth are challenged. This is of particular importance in modern-day society, where academics are no longer cloistered in ivory towers, and it is of particular significance in a small jurisdiction like Hong Kong, where academics play a relatively more prominent role in social policies and public debates than do their counterparts in the West. With their intellectual vigor and independent inquiries, academics work with both public and private institutions in all areas for the purpose of social advancement. They play a major role, not only in scientific and technological innovation, but also in providing intelligent and impartial perspectives on matters of public interest by analyzing and critiquing the nature and effectiveness of public policies and administration, engaging in public debates, and proposing reforms in laws, social policies, and welfare systems. This role, unfortunately, can also bring them into conflict with the governing regime.

In order to protect academic freedom, an academic institution has to provide an environment that is most conducive to the nurturing, enhancement, and advancement of research and teaching free from

¹⁴ Senate Task Force on Academic Freedom, University of Hong Kong, September 5, 2000, para. 7.

¹⁵ Speech at Tsinghua University, February 26, 2015. See “Universities ‘Should Be Open to Any Discussion,’ Harvard President Tells China’s Tsinghua University,” *South China Morning Post*, March 17, 2015, <http://www.scmp.com/news/china/article/1740605/harvard-president-expounds-intellectual-freedom-chinas-tsinghua>.

¹⁶ *Ibid.*, para. 52, citing a statement of principles made by academics of certain South African universities. See also *Sweezy v. New Hampshire*, at 250, where the US Supreme Court noted that academic freedom played a vital role in democracy and that without a free spirit of inquiry, civilization would stagnate and die.

political interference, whether this comes from government or powerful institutions in the community. This can only be achieved when the university enjoys autonomy in its decision-making concerning academic works, standards, management, staff appointment and promotion, curriculum setting, internal allocation of funding, and related activities.¹⁷ Personnel decisions should only be made on academic grounds by academic peers who are capable of making such judgments in accordance with the usual assessment procedures.¹⁸ Peter Byrne put forward a number of compelling reasons in his powerful argument for the institutional aspect of academic freedom.¹⁹ First, the university is the preeminent institution in society where knowledge and understanding are pursued with detachment or disinterestedness, which are both goods in themselves and benefits to society as a whole. Second, disinterested scholarly discourse creates the optimal critical and social environment for well-informed debates on matters of public interest. Third, the university has an important education mission of nurturing mature and independent critical minds, which the students will need later to provide competent leadership in a complex, technocratic, and democratic society. To a large extent these values coincide with those of protecting the individual rights of academics to academic freedom. Academics work within an academic institution. No institution would be able to pursue academic freedom if such freedom were not asserted by its academic staff. Yet academic staff would not be able to enjoy academic freedom if it were not rigorously defended by the institution. In other words, academic freedom and institutional autonomy go hand in hand. Without institutional autonomy, academic freedom will be particularly vulnerable.²⁰

The Story Unfolded: Interference with Academic Freedom

Interference with academic freedom can take many different forms. It could take the direct form of interference with the research of a scholar, preventing a scholar from publishing his or her academic research, or demanding that the scholar alter the conclusion(s) of his or her findings. It could also take an indirect form of putting pressure on the academic institution by cutting or reducing the institution's funding for research (or threatening to do so) or imposing sanctions on the academic scholar by not renewing his or her contract or hindering his or her promotion. There is a close relationship between academic freedom and personnel decisions in academic institutions, as sanctions affecting career development may provide the most effective means of silencing an academic.²¹ At the same time, it has to

¹⁷ See also Report of the University Grants Committee 1996, which identified the following aspects of institutional autonomy: selection of staff, selection of students, setting curriculum and academic standards, acceptance of external research programs, and internal allocation of funding within the institution.

¹⁸ Byrne, "Academic Freedom," 251 at 266–67.

¹⁹ *Ibid.*, n. 1 at 333–39.

²⁰ See also *Secretary for Justice v. Commission of Inquiry*, para. 50, where Justice Michael Hartmann held that institutional autonomy is a prerequisite for academic freedom.

²¹ This could pose the difficult question of a tension between the academic freedom of a teacher in determining what and how he or she wants to teach and the academic freedom of a university to determine its curriculum and teaching. At the end of the day it is a question of fact whether a personnel decision is a

be acknowledged that personnel decisions based on the well-established peer review system of an academic institution are not an interference with academic freedom, as peer review is “the canonical procedure” for determining tenure, contract renewal, and promotion, a procedure that “consigns evaluation of a faculty candidate in the ordinary course to fellow faculty whom we must presume to be both competent to evaluate scholarly accomplishment and promise and dedicated to the tradition of academic freedom which seeks to separate the question of competence from exogenous factors.”²² When a personnel decision is made pursuant to peer review, it should not be interfered with unless there is clear evidence of arbitrariness in the decision-making process.

Academic freedom in Hong Kong is under real threat. Since the changeover in 1997, there have been at least three incidents where academic freedom was at risk.

The Robert Chung Affair

The first is the “Robert Chung affair,” which took place in the year 2000.²³ Dr. Robert Chung is a well-known pollster at the center for Social Research of the University of Hong Kong. The then chief executive of Hong Kong was unhappy with Dr. Chung’s research polling the chief executive’s popularity. He related his displeasure through his emissary to the vice-chancellor of the University of Hong Kong, who then passed this concern on to Dr. Chung through his PhD supervisor and the then pro vice-chancellor. The request that Dr. Chung to discontinue such popularity opinion polls was made on the pretext of the low academic value of such research. Dr. Chung refused and the matter was exposed. The council of the university decided to conduct a public inquiry into the incident, which eventually led to the resignation of both the vice-chancellor (who left the university) and the pro vice-chancellor (who remained with the university until his retirement as professor). This is a classic case of direct interference with an academic activity that did not find favor with no less than the chief executive of the HKSAR, who by statute is also the chancellor of the university. A senate task force on academic freedom was later set up, and in its report it reiterated the importance of academic freedom.²⁴

The Institute of Education Inquiry

The second incident involved allegations that improper pressure was put on the Hong Kong Institute of Education to silence academics who had been critical of education reforms proposed by the government. The allegations had caused widespread community concern, and a commission of inquiry was appointed

genuine decision on the merits or one motivated by political considerations: *Cooper v. Ross*, supra, 472 F. Supp. 802 at 810–13 (1979).

²² Byrne, “Academic Freedom,” n. 1, at 319.

²³ For a full account, see Carole Petersen, “Preserving Academic Freedom in Hong Kong: Lessons from the ‘Robert Chung Affair,’” *Hong Kong Law Journal* 30 (2000): 165.

²⁴ Report of the Senate Task Force on Academic Freedom, University of Hong Kong, October 13, 2002, 408/902.

by the chief executive in council to look into them. The commission found that the permanent secretary for education,

being the second most senior official in charge of education, should have realized that her views on education could never have been simply personal, but were necessarily, to an obvious extent, representative of the Government. It was unacceptable that she did not express her opinions openly and through proper channels, but instead in a manner with the semblance, if not also the substance, of intimidation and reprisal. The Commission disapproves such behavior unequivocally. . . . Complaining or protesting to the critics directly or through their superiors could have inhibited their will and ability to speak their minds and communicate their ideas, and therefore [been] an improper interference with their academic freedom.²⁵

The commission reached its conclusion on the basis of four incidents. Two of them involved the permanent secretary's putting pressure on the vice-chancellor of the Institute of Education to dismiss two academics who were critical of government's education reform. In another two incidents, the permanent secretary was found to have exerted improper pressure directly on the two academics concerned not to further criticize the government's education policy. The government was concerned about the extent to which senior civil servants could communicate directly with academics who were critical of the government, and hence the secretary for education applied for judicial review against the decision of the commission *only* in relation to the latter two incidents of directly approaching the academics. The court affirmed that a threat of sanction, directly or by implication, against the institution of which the academic is a faculty member or the academic himself, from a senior government official who is in a position of authority with the power, actual or ostensible, to bring about the imposition of that sanction, constitutes an unlawful attack on academic freedom.²⁶ The threat of sanction could of course be direct or indirect, explicit or implicit. It need not be immediate, as a sanction to cut funding could take effect only after some time. The power to bring about the sanction could also be actual or apparent. The commission's decision was set aside on a narrow evidential ground that a threat of sanction was not substantiated in that particular case. It was held that mere discussions, even heated discussions, with an academic in private without any threat of sanction were just "part of the ebb and flow of free debate." The line between heated discussion in private and exerting improper pressure is of course very fine, and the court cautioned senior government officials who are in a position to influence the funding of academic institutions to be sensitive in approaching academics in private to express their disapproval of academic work, as the more senior the government member is, the greater the chilling effect of the criticism would be.

²⁵ Report of the Commission of Enquiry, paras. 14.24–14.27:
http://www.gov.hk/en/residents/government/policy/government_reports/reports/docs/HKIEd.pdf.

²⁶ *Secretary for Justice v. Commission of Enquiry*.

The Appointment of the Vice President of HKU

The third incident, which dominated public discussions in 2015, differs from the first two incidents in that (1) there was no direct evidence of government interference and (2) the failure to uphold institutional autonomy came from within the university. Unlike the first two incidents, neither the chief executive nor the university council was able and willing to defend the system. On the contrary, they themselves became part of the controversies.

The incident directly involved one of the two authors of this article, Professor Johannes Chan, the former dean of the Faculty of Law at the University of Hong Kong.²⁷ A constitutional law expert, he was known for his liberal views on human rights and democracy. He was recommended for the position of vice president (for academic staffing and resources) after a global search by a search committee set up by the university council. As a coincidence, the recommendation was made shortly after the end of the Occupy Central movement, in which for seventy-nine days protesters occupied the financial district (and two other busy spots) in Hong Kong. The movement was responding to a decision by the Central People's Government (CPG) of the PRC enabling the CPG to manipulate the nomination process for the election of Hong Kong's chief executive.²⁸ As mentioned earlier, one of the initiators of the Occupy Central movement was an associate professor in the Faculty of Law of the University of Hong Kong.

The confidential recommendation was soon leaked and disclosed by a pro-China newspaper, which attacked the proposed appointment apparently on the ground that the candidate had, during his deanship, failed to prevent his colleague from promoting and eventually launching the Occupy Central movement. After that, the candidate was subject to extensive personal attacks by pro-China media. Over 350 articles attacking him were published over a period of nine months, and he received many anonymous threatening letters and e-mails. The gravamen of the attack was his liberal political stance on constitutional and human rights matters and his sympathetic attitude toward the Occupy Central movement.

The recommendation for appointment, which had been made unanimously by the search committee in November 2014, was not put forward to the university council for consideration in December 2014. Media reported that the government had lobbied members of the council not to accept the appointment (which the government denied).

²⁷ This incident was also covered in the *38th 6-Monthly Report of the Foreign and Commonwealth Office to the UK Parliament* (February 11, 2016), paras. 21–24, <https://www.gov.uk/government/news/six-monthly-report-to-parliament-on-hong-kong-july-december-2015>; US Department of State, *Country Reports on Human Rights Practices for 2015: China: Hong Kong*, April 13, 2016, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=252759&year=2015; and European Union, *Annual Report on Hong Kong 2015, Joint Report to the European Parliament and the Council*, April 25, 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN:2016:10:FIN>.

²⁸ For an account of the movement, see J. Chan, "The Hong Kong Umbrella Movement," *The Round Table: The Commonwealth Journal of International Affairs* 103, no. 6 (2014): 571–80.

In January 2015, the council decided to further delay the consideration of the appointment by requesting the University Audit Committee to look into a donation made to the Faculty of Law in May 2013, allegedly to support the Occupy Central movement. In March 2015, the Audit Committee submitted its report in which it exonerated the candidate, who had been dean of the faculty at the material time, and found that the donation was properly used for legitimate academic purposes. The council did not accept the report, initially treating it as an interim report and later, under public pressure, agreeing to accept the report but calling for an elaboration on the responsibility of those involved. At the same time, a council member was asked to “assist” the deliberation of the Audit Committee at this late stage. In April 2015, the Audit Committee, in an elaboration, found the candidate guilty of failing to meet a hitherto unknown “expected standard” in handling the donation, despite a clear finding that there was no violation of any university rules or regulations on donation. The accusation of a departure from the so-called expected standard was based on trivial matters, and the university management eventually found it unnecessary and inappropriate to impose any sanction.²⁹ The candidate was not provided with proper disclosure for his response to the conclusion of the Audit Committee. He challenged the finding on both legal and procedural grounds. His challenge was rejected by the council, which gave no reason for its decision.³⁰

Contrived as it was, the audit report was unable to provide the council with sufficient grounds to veto the appointment. Thus, in June 2015, the council decided to further postpone the consideration of the appointment in order to consult the new provost, who was yet to be chosen. This decision was made notwithstanding the strong support for appointment by the president and the then provost of the university, who were respectively the chair and a member of the search committee. The decision to wait for a nonexistent provost shocked the community and received strong and sustained public criticism. By then it was clear that the council was heavily influenced by political considerations. Despite strong public reaction, the council decided to further delay the consideration of the appointment in its July meeting.

In early September 2015, the Convocation, the official alumni body, resolved by an unprecedented majority of about eight thousand votes to call on the council either to approve the appointment, or if it considered it appropriate to depart from the usual practice of endorsing the recommendation of the search committee, to disapprove the recommendation with clear reasons. There was also strong support from the staff and students of the university and the community to urge the council to follow the usual practice to endorse the recommendation of the search committee. On September 29, 2015, the council,

²⁹The accusation was that the candidate had failed to inform the university in time of the donor’s identity, despite the fact that the candidate did inform the university of the identity of the academic colleague who procured the donation and asked the university to approach that academic colleague directly for the information. The delay was of two weeks.

³⁰ In a reply letter to the candidate, the secretary of the council admitted that no reason could be given for the adoption of the report, despite detailed submissions from the candidate.

by a majority of twelve to eight, rejected the recommendation.³¹ No reason was given. The president of the student union, who was a member of council, subsequently disclosed the discussions that showed that the reasons for rejection were scandalous, irresponsible, blatantly defamatory, or simply irrelevant.³² The content of part of the discussions was subsequently confirmed by unauthorized disclosure in the media of certain verbatim recordings of the discussions, the disclosure of which led the university to apply for an injunction order. The issue was then turned from interference with academic freedom to interference with freedom of expression. The *ex parte* injunction was opposed by seven media organizations, including the Hong Kong Journalists Association. The interim injunction was upheld, but its scope was restricted to exclude materials that were already in the public domain.³³

Has there been political interference with academic freedom? On the one hand, of course no one has the right to be appointed to a senior position at the university, which must be free to decide whom to appoint. On the other hand, the vice president is a senior manager responsible for the recruitment, tenure, and promotion of all academics in the university. If an otherwise suitable candidate for the post can be rejected on political grounds, this represents a threat to academic freedom much greater than, for example, pressure exerted on decisions about what subjects to research or what texts to teach. Sadly, the evidence of interference is abundant on this occasion.

First, the government denied any interference with the appointment, though the head of its Central Policy Unit admitted to having casual discussions about the appointment with some members of the university.³⁴

Second, the candidate was vilified by the pro-China media for a sustained period. Such an attack, on an unprecedented scale, on a candidate for a senior administrative position at a university by the pro-China media, including even the *People's Daily* (overseas edition), is, to say the least, highly unusual, if not

³¹ "Johannes Chan's Appointment Vote at HKU," *South China Morning Post*, September 29, 2015, <http://www.scmp.com/news/hong-kong/education-community/article/1862412/five-points-note-johannes-chans-appointment-vote>. The decision was regretted by a subsequent resolution of the Convocation in November 2015.

³² Some of the reasons included the candidate's failure to send his regards to one of the council members allegedly injured in a confrontation with students when students stormed into an earlier council meeting; the fact some council members felt threatened by the public support for the candidate; the candidate's lack of a doctoral degree, despite his being a full professor and no such requirement being set out in the original job specification or in the readvertisement for the job after his appointment was rejected. Some members attacked his academic credentials, but such attacks were made without peer review and without considering his publications.

³³ *University of Hong Kong v. Hong Kong Commercial Broadcasting Co. Ltd.*, HCMP 2801/2015 (the hearing of the permanent injunction took place on May 23, 2016; result pending).

³⁴ "Leung Advisor: I Might Have Discussed Chan with Certain People," *South China Morning Post*, February 13, 2015, <http://www.ejinsight.com/20150213-top-leung-adviser-i-might-have-discussed-chan-with-certain-people/>; "Controversies at Johannes Chan's Appointment as Pro-Vice-Chancellor of HKU," *RTHK*, February 13, 2015, <http://programme.rthk.org.hk/rthk/tv/programme.php?name=tv/thepulse&d=2015-02-13&p=2862&e=294775&m=episode>.

political. They focused on his “indulgence” toward his colleague’s instigating the Occupy Central movement and his stances in favor of democracy and human rights.

Third, the process of appointment was conducted in an unusual manner, even without the pretext of delaying it to wait for the new provost. Wild accusations were made without affording the candidate a chance to respond. No reason was given for departing from the previous practice of the council. The reasons that were subsequently leaked were irrelevant, contradictory, and unsustainable.³⁵

Taking into account all the circumstances, it is difficult to resist the conclusion that there has been political interference with the appointment. As observed by the UN Committee on Economic, Social, and Cultural Rights, “academic freedom includes the liberty of individuals to express freely opinion about the institution or system in which they work, to fulfill their functions without discrimination or fear of repression by the state or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction.”³⁶ If an academic is sanctioned in his career progression because of his political views, this is a naked attack on academic freedom,³⁷ if not also his freedom of expression.³⁸ Normally, the internal mechanisms of human resources management should be sufficient to resist such external interference. On this occasion, the internal mechanism failed to work, as the problem is inherent and systemic in nature.

Systemic Issues of Governance of Tertiary Institutions in Hong Kong

Governmental interference constitutes a major source of threat to academic freedom. Ironically, in Hong Kong, the chief executive is by statute the chancellor of all tertiary institutions. In the past, the post was ceremonial. However, the relevant statutes do confer powers on the chancellor, who may, if he decides to depart from a purely ceremonial role, substantially interfere with the governance of the tertiary institutions. For instance, in the case of the Academy of Performing Arts, the chief executive can appoint up to 80 percent of the members of its governing council. The concern is real, as illustrated by the chief executive’s insistence on appointing a member to be the council chair of the University of Hong Kong despite overwhelming opposition to his appointment from all parties involved. In the above case of interference with a senior appointment at the University of Hong Kong, the appointment was opposed and eventually vetoed by members of the council who were appointed by the chief executive. The term of appointment of a council member is usually for a period of three years, whereas the term of the chief executive is for five years. This means there will be plenty of vacancies during the tenure of the chief executive to allow him to manipulate the appointment for political reasons, especially when the chief

³⁵ Byrne, “Academic Freedom,” n. 1, at 319.

³⁶ General Comment no. 13, para. 39.

³⁷ *Cooper v. Ross; Ollman v. Toll*, 516 F. Supp. 1196, at 1202 (1981).

³⁸ *Healy v. James*, 408 US 169, at 180–81 (1972).

executive can serve two terms up to a total of ten years.³⁹ To make the situation worse, unlike other jurisdictions where there is a diversity of universities with different management, the chief executive is the chancellor of every single university in Hong Kong. This leaves academics under attack little choice if they want to stay in academia in Hong Kong.

The potential for interference with academic freedom apart, there are also obvious conflicts of interest in the current arrangement. In the first place, the tertiary institutions in Hong Kong compete with one another for resources and funds. It is difficult for the chief executive to be the chancellor of all tertiary institutions in such circumstances. On one occasion, the chief executive revealed that if he were approached by potential donors, he would recommend which universities to donate to. Such a recommendation, even if made bona fide, would put him squarely in a position of conflict of interests among different universities that he serves as chancellor. Second, there is a conflict between the role of a serving chief executive and the position of the chancellor of a university. The chief executive will have to take into account public interest in formulating his education policies or allocation of public funding, whereas the chancellor, as a statutory officer, has the duty to serve only the best interest of the relevant university. On another occasion, when the chief executive asked the business sector to donate not to universities but to secondary and primary education, even if the deployment of resources had good grounds as a matter of public policy, the conflict of roles between the chief executive and the chancellor was obvious. Third, once a chancellor who is also a serving chief executive is actively involved in university business, especially in relation to procurement of donations, the propriety of such action would be cast in doubt, especially if donors were later rewarded with honorary titles or awards, or worse still, pecuniary advantages from the government, such as the award of government contracts.

Academic Freedom, Institutional Autonomy, and Public Accountability

In response, it has been argued that autonomy comes with responsibility and therefore the power of control by the government reflects nothing more than the harsh reality that all universities in Hong Kong are supported by public funding. Accordingly, academic freedom has to be “consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights.”⁴⁰ In its General Comment no 13, the UN Committee on Economic, Social,

³⁹ This stands in stark contrast to the governance system of the University of California, which was often cited as an example of a government-controlled governance system. While the governor of California can appoint a majority of members on the university’s Board of Regents, the members serve for twelve years whereas the governor serves only for four years. Indeed, the current governor, Jerry Brown, is only able to appoint one member to the board. Further, the appointment is subject to various restrictions, including the consent of the academic senate. See Joseph Lian, “Academic Freedom and Institutional Autonomy in Three Regions on Two Sides of the Straits: Governance of World-Class Universities and Government Interference,” paper presented at Project Citizen Conference on Academic Freedom, January 23, 2016.

⁴⁰ UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel, adopted on the Report of Commissioner II at the 26th Plenary Meeting, November 11, 1997, para. 17.

and Cultural Rights observed: “Self-governance, however, must be consistent with systems of public accountability especially in respect of funding provided by the State. Given the substantial public investments made in higher education an appropriate balance has to be struck between institutional autonomy and accountability. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.”⁴¹

While it is accepted that autonomy comes hand in hand with responsibility, there is a limit as to how far public accountability should go. On the one hand, public accountability will require the university to operate in a transparent manner and to justify its spending of public funding. It may even justify a direction that the university meet certain social demands, such as expanding a particular curriculum to meet manpower requirements. On the other hand, it would be a slippery slope if public accountability were used to justify political control over the core business of research and teaching of the university and to dictate what the university should do and how it should discharge its functions. A university would lose its value and character if it existed simply to serve government or even societal demands. The humanistic values of free inquiry, scholarship, and liberal education, which lie at the heart of the university, are of equal importance to any society. There has therefore to be a delicate balance between academic freedom and public accountability. The issue is ultimately one of rationality and proportionality. That is, the measure that restricts institutional autonomy has to be rationally linked to public accountability and be a proportionate restriction on academic freedom, and the justification has to be convincingly and objectively formulated. The current governance arrangement in Hong Kong passes neither of these tests.

In the first place, there is no rational link between the appointment of the chief executive as chancellor and the public accountability of a publicly funded university. Indeed, it is rare for a serving head of government to be the chancellor of a university. If the chief executive remains a ceremonial head, it does not serve any purpose of public accountability. If the chief executive exercises real power over an academic institution, this is itself a counterthesis of academic freedom. Second, the mere fact that a university is publicly funded does not per se justify government control over its governance. Many universities are publicly funded but still jealously guard their autonomy and independence. Public accountability and independence are not mutually exclusive. Many public institutions, such as the ombudsman or the Equal Opportunities Commission, are publicly funded, but no one would seriously argue that the government has a legitimate right to interfere with their governance, management, or operation. At the same time, the danger of the head of the government’s being the head of an academic

⁴¹ UN Committee on Economic, Social, and Cultural Rights, General Comment no. 13 (1999), para. 40.

institution with substantive powers is obvious. Accountability can be achieved in a much less intrusive manner.⁴²

In Hong Kong, public accountability is achieved by the establishment of the University Grants Committee (UGC), which serves as a buffer between the government and the universities. Its role is “to promote responsible understanding between the institutions, the Government and the community at large. It mediates interests between institutions and the Government. On the one hand, the UGC safeguards the academic freedom and institutional autonomy of the institutions, while on the other it ensures value for money for the taxpayers. The Committee has open channels to both the institutions and Government, since it offers advice to, and receives advice from, both.”⁴³

The UGC comprises both local and international education experts. Its main function is to allocate funding to its funded institutions, and to offer impartial expert advice to the Government on the strategic development and resource requirements of higher education in Hong Kong. Specifically, the Committee has to determine precise grant recommendations in the light of indications of the level of funding that can be made available, overall student number targets by level of study and year to meet community needs as agreed with the Government, [and] the breakdown of these numbers between institutions, as agreed in principle by the institutions. The Committee also provides the institutions with developmental and academic advice, having regard to international standards and practice.⁴⁴

The UGC also conducts regular exercises to monitor the research and teaching quality of the funded institutions. In short, through its funding mechanism and its assessment of teaching and research performance, the UGC has ensured public accountability of all publicly funded institutions. This mechanism, which rests on the impartiality and independence of the UGC, provides a better and proportionate balance between public accountability and academic freedom.⁴⁵

In 2002, the Sutherland Report on Higher Education in Hong Kong, commissioned by the UGC,

⁴² Cambridge University provides a good example. Sixty percent of its funding comes from public revenue, but it manages to resist any form of government interference in its independence. Closer to home, the National University of Taiwan is another example. See Lian, “Academic Freedom and Institutional Autonomy.”

⁴³ University Grants Committee, Notes of Procedures, July 2010, para. 1.6:
<http://www.ugc.edu.hk/eng/doc/ugc/publication/note/Full.pdf>.

⁴⁴ *Ibid.*, para. 1.7.

⁴⁵ The Sutherland Report, however, recommended that the UGC change its role from being an “honest broker” to balance accountability with academic freedom to that of a manager to exercise stronger strategic planning and policy development, and to ensure that the funded institutions provide value for money: see Sutherland Report on Higher Education 2002, chap. 2, <http://www.ugc.edu.hk/eng/ugc/publication/report/her/her.htm>. This recommendation has generally been perceived to be a retrograde step that emphasizes economic/business considerations at the expense of academic autonomy. It has also led to a doubt among academics about the proper role of the UGC and its impartiality in recent years.

remarked that academic freedom should not be defined in terms of autonomy.⁴⁶ Instead, it argued that academic decisions were often driven by concerns other than the disinterested pursuit of academic knowledge and were often enabled by funding. Thus, academic freedom should be a negotiated freedom guided by accountability and not autonomy, and university governance should be sensitive to what the public expects. This conclusion was deplored by the HKU Senate Task Force on Academic Freedom set up following the Robert Chung affair. The task force argued that this has confused the issue of financial accountability with that of academic freedom.⁴⁷ It defined accountability as the norms of free and open pursuit of knowledge, not as a kind of obedience to either political or academic authority. While the task force accepted that academic freedom was not absolute and has to be balanced with other issues such as ethics and political freedom, academic freedom was not negotiable with a funding agency in a kind of political horse-trading. Funding agencies may or may not honor or respect academic freedom. They may also bring with them their own prejudice and agendas. It is for the university to stand on high moral ground in accepting funding. In an institution for the advancement of knowledge, the justification for funding and its apportionment should be guided only by what best serves mankind's pursuit of knowledge. At the end of the day, the issue is one of academic integrity. Likewise, the Niland Report, which led to structural changes in the governance of the University of Hong Kong in 2003, emphasized the "unqualified significance of academic freedom," which is "intrinsic to the very conception of a university, and the defense of this principle is consequently the shared responsibility of all who are directly engaged in carrying forward the institution's central purposes."⁴⁸ While the Sutherland Report is right to point out that modern universities with limited budgets have to make difficult decisions on priorities, it would set a dangerous precedent to rationalize the effect of economic power on academic standards or pursuits. In this sense, it is not the business of accountability to dictate what and how an academic should research, as occurred in the Robert Chung affair and the Institute of Education affair. Nor has accountability anything to do with interference with senior appointments at the university.

The Wider Political Context

The Occupy Central movement, the largest and most sustained form of civil disobedience ever to have taken place in Hong Kong, was perceived by the Central People's Government as a challenge to its authority. Two of the three initiators of the movement were academics. The movement was joined by a large number of young people and was led at a later stage by student leaders from various universities. Universities have been either neutral or supportive of the movement. The support came in various forms, including leniency toward students missing classes, recording lectures for students participating in the

⁴⁶ See *ibid.*, paras. 3.24, 3.29.

⁴⁷ See Senate Task Force on Academic Freedom, University of Hong Kong, September 5, 2000, paras. 40–43.

⁴⁸ Hong Kong University, *Fit for Purpose Report*, February 2003, para. 23, https://www.hku.hk/f/page/7537/final_report.pdf.

protest, and some academic staff holding seminars and classes at the venues of the protest. The government was apparently troubled by the involvement of academics in political movements, and one of its responses was to tighten its control of the universities. Hence, the veto of the appointment of a liberal academic to a leadership position at the University of Hong Kong, and the appointment of a hawkish council chair (who as a council member had led the attack against the candidate) despite universal opposition from the parties involved, could be seen as part of an overall attempt to put universities under greater state control. The chief executive has since made full use of his power as chancellor to appoint pro-China personnel as chair and members of the governance bodies of various universities. This echoes the mainland system where the president and the vice presidents of higher academic institutions are appointed by the state, and staffing and resources are always under the control of the CCP secretary to each university.⁴⁹

Under the One Country, Two Systems model, such mainland practices do not and should not apply to Hong Kong. However, in the white paper published by the central government shortly before the outbreak of the Occupy Central movement, the emphasis on Hong Kong has shifted from a high degree of autonomy to a high degree of authorization.⁵⁰ The high degree of autonomy of Hong Kong is to be tolerated only so long as the interests of the Central People's Government are not threatened. Academic freedom will not be tolerated if it appears to challenge the authority of the central government. Indeed, junior academics were criticized by the pro-China media for their use of pro-civil disobedience teaching materials in class in discussing the rule of law, even though there was a balance of reading materials with different approaches. The mere fact that academics are being watched is sufficiently alarming. In early 2016, students were openly criticized by the chief executive for publishing articles in a student magazine on independence and self-determination in Hong Kong. The disappearance of five booksellers who sell books critical of China in late 2015 sent another chilling message to the people of Hong Kong. In such a restrictive political atmosphere, academic freedom assumes far greater significance and importance, and is also far more fragile than it is in many other places.

Conclusion

To most people in Hong Kong, the litmus test of the success of One Country, Two Systems is the extent of their enjoyment of rights and freedoms. At the time of the Sino-British Joint Declaration, Hong Kong was responsible for generating about 90 percent of all China's foreign income. Thirty years later, Hong Kong is responsible for only about 3 percent of the GDP of the country. The only difference between the two systems now is the legal system, the independence of the judiciary, and the high degree of

⁴⁹ See Lian, "Academic Freedom and Institutional Autonomy."

⁵⁰ PRC State Council, "White Paper on the Practice and Policy of One Country, Two Systems in the Hong Kong Special Administrative Region," June 2014: http://news.xinhuanet.com/english/china/2014-06/10/c_133396891.htm.

freedom and liberty in Hong Kong, the preservation of all of which rests on the precarious basis of self-restraint by the central government. With its growing economic power, the increasingly confident central government has become less tolerant of any dissenting voice or any challenge of its authority. Academic freedom, which embraces an independent and critical inquiry that resists an appeal to authority as justification, does not sit well with the monological ideology of China. This and other freedoms in Hong Kong were tolerated so long as the authority of the central government was not challenged. The line was crossed, or was at least perceived to have been crossed, when Occupy Central broke out. The suggestion in the 2014 white paper that the judiciary, being part of the administration, should be patriotic, meaning compliant; the disappearance of the booksellers in 2015; and the strong reaction against any suggestion of self-determination in 2016, are all indications of the onset of a more restrictive public sphere. Interference with academic freedom is just part of this ferocious storm and assumes a unique and far more turbulent dimension than similar debates elsewhere.

Academic freedom does not exist in isolation. When it is at risk, it is a warning that other fundamental rights and freedoms are also under threat. This is particularly so in Hong Kong, where academic freedom is inextricably linked with the general enjoyment of freedom and liberty. So far, the positive sign is that academic freedom has been vigorously defended in Hong Kong. The Robert Chung affair was largely about the personal pride of the then chief executive. The Institute of Education incident was an attempt by a senior government official to silence the critics. On both occasions, there were public investigations. Interference with academic freedom was thoroughly and seriously scrutinized. In the affair of the appointment of the vice president, the interference is more worrying as it is both deterrent, in the sense that it intends to have a chilling effect on academics generally, and systemic, in that both the university council and the chief executive refused to instigate any public investigation. The whole incident was cloaked in confidentiality, the deliberations of the council remain secret, and information only came to light through unauthorized disclosure. As in the past, academic freedom has been most vigilantly defended by the academics, students, and alumni, as well as the community on this occasion. Yet their voices have fallen on deaf ears. The appointment of a new council chair of the University of Hong Kong, widely perceived as an attempt to bring the university under greater control and not in the best interest of the university, was made despite overwhelming opposition from the parties involved. These incidents highlight systemic issues that need to be addressed. The fact that the head of the government enjoys a power to influence if not also to manipulate the governing bodies of tertiary institutions is in itself inimical to the protection of academic freedom. There is no justification for the chief executive's being the chancellor of tertiary institutions and being conferred the power to appoint a significant number of members, let alone the chair, of the governance bodies of all tertiary institutions in Hong Kong. Public accountability has already been ensured in the funding allocation system as well as in regular review exercises, notably the mechanism administered through the UGC. At the same time, with a more

repressive political regime across the border and a more restrictive political climate in Hong Kong after the Occupy Central movement, “a storm of unprecedented ferocity”⁵¹ is gathering force, and academic freedom in Hong Kong is likely to be subject to the most strenuous test in the days to come.

Johannes M. M. Chan is a professor and a former Dean (2002–2014) of the Faculty of Law at the University of Hong Kong. Douglas Kerr is a professor in the School of English, Faculty of Arts, at the University of Hong Kong.

⁵¹ This phrase was first used by Justice Kemal Bokhary in his farewell speech upon his retirement from the Court of Final Appeal: (2012) 15 HKCFAR 861 at 866, para. 6.