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AUSTRALIAN UNIVERSITIES AND INTERNATIONAL STANDARDS: COMPLIANCE WITH THE 1997 UNESCO RECOMMENDATION CONCERNING THE STATUS OF HIGHER-EDUCATION TEACHING PERSONNEL.

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Abstract

Soft law, that is, regulation which is technically unenforceable, is one means whereby international ethical and professional standards are now increasingly enunciated. This paper looks at one specific standard-setting instrument, the 1997 UNESCO *Recommendation Concerning the Status of Higher Education Teaching Personnel*, and compliance with this standard by Australian universities. It is concluded that this specific standard-setting instrument is routinely ignored by Australian universities, specifically on the issues of commensurability of pay and recognition of research work for casual academics. There are many possible reasons for this failure to comply with the 1997 Recommendation, although three suggested reasons are 1) ignorance within Australian higher education regarding international standards and the ethical obligations associated with such standards, 2) the dominance of a neo-liberal agenda within higher education in Australia, and 3) a trend towards disregarding international standards and institutions generally by Australia. It is suggested that the solution to this is situation is not simple, although education and publicity may be two starting points. Through this it may be possible to encourage a greater degree of ethical and professional commitment on the part of Australian universities, and possibly within the universities of other countries.

Essay

The emergence of soft law and international standards

The growth in so-called soft law is one of the most marked phenomena of recent global politics. Soft law is a relatively recent concept, and in recent years soft law has been defined by Francis Snyder (1994:198), Karel Wellens and Gustaaf Borchardt (1989:274), and recently by Linda Senden (2004:112). The thrust [95/96] of the above definitions is that soft law is regulation which is technically non-enforceable and yet aims at certain results. Soft law has moral and ethical force. By contrast, so-called hard law is enforceable. Put simply, soft law is voluntary self-regulation, although soft law generally involves the enunciation of norms and principles by intergovernmental organizations which nation-states and actors within nation-states are invited to put into practice. As is implied by the notion of invitation, compliance in soft law might be best described as ethical rather than legal. Kenneth Abbott and Duncan Snidal (2000), Halmut Hillgenberg (1999), Daniel Ho (2001) and Mary O'Connell (2000) have pointed out that soft law does hold a number of advantages over hard law, including being easier to administer, due to the voluntary nature of compliance; it is flexible and does not infringe upon the rights of the nation-state or the actor.

The effectiveness of soft law can be summarized in that the person or organization complying with principles or norms is doing so because of a desire to do so, rather than any actual compulsion. Under these circumstances, the compliance with the principles and norms is bound to be more thorough and wide-ranging. If the effectiveness of government and governance is contingent on the consent of the governed, then it is logical to operate a system of government and governance which maximizes this voluntary compliance. The growth of the importance of soft law is mirrored in the growth of the importance of ethical and professional standards in contemporary institutions. The proliferation of codes of conduct also reflects the situation that it is generally recognized more effective to have individuals and institutions committed to certain principles and norms of behaviour, rather than attempt to impose these principles and norms by external fiat. Soft law is particularly applicable to labour standards. Indeed, Roger Blanpain and Michele Colucci (2004) suggest that, given the power structure of the world today, soft law is the only way to improve labour standards.

The 1997 UNESCO Recommendation

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is the intergovernmental organization with responsibility for setting standards or norms within education, and one important soft law instrument setting norms and standards for education has been the 1997 *Recommendation Concerning the Status of Higher Education Teaching Personnel*, accepted by unanimous vote of the General Conference of UNESCO on 11 November, 1997. The rationale behind the Recommendation (as expressed in the Preamble) is the importance of higher education for societies and the importance of ensuring financial and employment security for staff involved in teaching within higher education institutions. As with all UNESCO standard-setting instruments, the Recommendation was the result of extensive consultation with experts and with member states (UNESCO, 1981). As the Recommendation concerned employment conditions, there was also consultation with the International Labor Organization (ILO). It is noteworthy that although [96/97] the Recommendation itself is soft law, there is still the potential for this to be translated into hard law, through legislation by respective member states. However, regardless of whether member states might decide to pass supporting legislation, the Recommendation nevertheless is an important enunciation of ethical and professional principles and norms for the management of higher education.

It is instructive to see how Australia has responded to the Recommendation, especially as Australia likes to present itself as a country supportive of international standards. The maintenance of international standards is also very important for Australian universities, as Australian universities continually hold themselves up as being of world standard, and higher education in Australia is currently highly dependent on overseas international students. Thus any publicity about Australian universities not complying with international standards could be extremely damaging. There is also an element of credibility for Australian universities, as social institutions. John Rawls famously suggested that social institutions are crucial to a well-ordered society (1972:4-5, 453-54). Rawls proposed that basic social institutions are those which operate in accordance with principles of justice and which are publicly seen to operate in accordance with principles of justice. The United Nations is, no doubt, an imperfect and flawed organization. Nevertheless, it is difficult to see how the principles of industrial justice as enunciated within the 1997 Recommendation could not carry considerable authority for Australia universities, especially as Australia voted in support of the Recommendation in 1997. There is thus a strong argument that there is an ethical and professional imperative for universities to take cognizance of the Recommendation.

Where Australian universities fail to meet the international standard

The 1997 Recommendation suggests a range of entitlements and responsibilities for higher education teaching personnel. One key provision of the Recommendation is found in Article 58(b), which suggests what might be called a notion of commensurability of pay for higher education teaching personnel. What makes this provision especially relevant is that teachers within higher education regularly come from a background of practice in specific professions, and thus it is quite common for individuals with professional (as well as academic) qualifications and/or experience to be teaching within higher education. Even if this were not the case, however, the Article would still be relevant, as it stipulates that salaries of higher education teaching staff should “be at least comparable with the salaries in other professions requiring similar or equivalent qualifications”. The rationale behind this provision is quite simple. An individual involved in professional instruction should not be paid less than the normal pay for the profession he/she is instructing in. Similarly a person with certain qualifications should not be paid less within higher education than what the person could normally expect to earn outside of higher education. This is an important element of equity, and important also for the status and financial security of higher education teaching staff. [97/98]

Unfortunately, the principle of commensurability of pay, as enunciated within Article 58(b), is routinely breached by Australian universities. Payment for teaching within Australian universities is well below what professionals could earn outside of universities. By way of illustration, the *minimum* hourly rate of pay for a trained schoolteacher in Queensland (Australia) is \$A53.97 (Education Queensland, 2006). Yet the hourly rate of pay for University Liaison Lecturers, involved in the training of the same future teachers, is only \$A28.38 (QUT, 2006). The University Liaison Lecturer is required to be a trained teacher, is involved in the mentoring of future teachers, and yet only receives some 53% of the rate of pay for a trained teacher. This situation is reflected in comparisons of professional and academic rates of pay in a range of disciplines in Australian universities.

Another theme in the Recommendation is the importance of on-going independent research for higher education teachers, as reflected in Articles 6, 7, 12, 13, 14, 19, 22, 32, 33 and 34 of the Recommendation. In a sense, the 1997 Recommendation is not establishing anything new here, as independent research has long been recognized as central to the role of the university teacher. Yet, despite this, casual academics at Australian universities are not paid for any independent research. The payment of casual academics is related only to teaching, including preparation for the teaching, class contact, and marking. Independent research remains unrecognized in terms of payment, despite the central role of this activity for academics, and ultimately this failure to remunerate research properly must have negative effects for the quality of Australian universities.

Analysis of Australia’s failings

Why is that Australian universities fail to meet international standards, as enunciated in the 1997 Recommendation? It difficult not to suggest, at the outset, that ignorance may be major factor, in that Australian universities may simply not be aware international standards and of the ethical and professional obligations associated with such standards. Beyond this, however, one could argue that an important factor is the acceptance of a neo-liberal economic agenda by Australian universities, where the aim of the university is to compete with each other universities and to maximize profits. One of the most direct ways to do maximize profitability is to pay teachers within higher education as little as possible. Throughout all of this there is often quite a cynical disregard for compliance with ethical and professional standards by Australian universities, a disregard quite ironic given that universities often teach the importance of compliance with

ethical and professional standards. What exacerbates the situation is that increasing casualization of the teaching workforce within Australian universities, with the result that teaching staff are less able to negotiate and insist upon entitlements.

Perhaps the most disturbing aspect of Australia's disregard of the 1997 international standard is the wider context of Australia's apparent increasing [98/99] disregard of other international standards and institutions in recent years. This is again somewhat ironic, given that Australia generally likes to regard itself as a good international citizen. In recent years, Australia has operated a refugee policy that has been criticized by the United Nations (UNCHR, 2002). Within the Iraq War, Australia has participated in the invasion of a sovereign nation-state, without the approval of the United Nations Security Council, and seemingly in defiance of the United Nations Charter. The unilateralism in foreign policy and practice is mirrored in a unilateralism in educational policy and practice. Just as there is a feeling that Australia can do whatever it wants to within the arena of foreign affairs, so too there is also arguably a sentiment that Australia can and ought to do whatever it wants to do in the administration of higher education.

There are a number of possible defenses open to Australian universities for their non-compliance with the 1997 Recommendation. It is true that the Recommendation was approved by Australia, as a member state of UNESCO. One might argue, however, that Australian universities function as independent entities, and are therefore not beholden to what the relevant member state might, or might not, decide. Even so, this argument is something of a double-edged sword. In this case, there is no doubt that the 1997 Recommendation represents an international standard. If one argues that Australian universities are indeed independent entities, then there is a strong case that the universities ought to comply with international standards, quite independently of what the Australian government might or might not decide. Similarly, one might argue that Australian universities are only legally obligated to pay teaching staff in accordance with the relevant Industrial Award or Enterprise Bargaining Agreement. Yet awards and agreements only specify a minimum amount of payment. Further, any invocation of the legal obligations of Australian universities misunderstands the nature of soft law. The 1997 Recommendation, as soft law, is an enunciation of principles and norms regarding the management of higher education. As such, the Recommendation represents a set of ethical and professional obligations upon Australian universities, rather than legal obligation.

Interestingly, the 1997 Recommendation itself seems to have anticipated that universities might use the argument of institutional independence or autonomy as a means of attempting to circumvent the standards enunciated in the Recommendation. Articles 17-21 deal with the autonomy of higher education institutions, although Article 20 expressly indicates that "autonomy should not be used by higher education institutions as a pretext to limit the rights of higher education teaching personnel provided for in this Recommendation or in other international instruments". It is noteworthy that Article 20 confirms that the 1997 Recommendation ought to be regarded as an international instrument or standard. However, equally, the warning against using academic independence as a pretext for non-compliance suggests that this problem may well not be limited to Australia. [99/100]

The way forward

What can be done? One solution to the non-compliance with international standards by Australian and other universities is legislation. After all, it is quite standard practice for national governments to legislate to put into practice norms and principles enunciated by the United Nations. The alternative is moral persuasion, in encouraging voluntary compliance with the norms and principles of the 1997 Recommendation. One way this can be encouraged is through

education, particularly of those involved in the administration of higher education. As universities aspire to be institutions of moral and ethical leadership, it ought to be the case that the leaders of those institutions should be committed to compliance with ethical and professional standards. This ought to be pointed out to universities. The Australian Vice-Chancellors Committee, as the umbrella organization for universities in Australia, might also be encouraged to take a lead in this regard.

The other way one can encourage voluntary compliance is through appeal to self-interest and publicity. In a competitive market, it is arguably an advantage for a university to be seen to be complying with international standards, and conversely it is a disadvantage not to be so. The leaders of our universities may well see that it is to the advantage of institutions to be complying with the 1997 Recommendation, and conversely a disadvantage not to do so. Ultimately the point of soft law is that the norms and principles entailed therein demand a cultural change for implementation, such that institutions would want to be complying and seen to complying with professional and ethical standards. The prospects for such cultural change are perhaps difficult – but not impossible.

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