

The Historical Perspective on the Relationship between the Government and Higher Educational Institutes and Its Legal Foundation

Min He^{*} *Dalian University of Technology* *Xuemei Jiang*^{**} *Liaoning Normal University*

Abstract: This article tentatively has a research on the history of the relationship between the government and the higher educational institutes and its legal foundation since China's Reform and Opening. It also puts forward the best principles of the relationship between the government and the higher educational institutes at the present stage.

Key words: relationship between the government and the higher educational institutes; historical perspective; legal foundation

The relationship between the government and the higher educational institutes (hereinafter referred as HE institutes) is the key issue to be settled urgently. Since 1978, the government has made great efforts to transfer the functions of the government in administering HE institutes and adjust the relations in order to orient this relationship to a more harmonious and reasonable one.

1. The Primary Adjustment of the Relationship between the Government and the HE Institutes

Under the conditions of the Planned Economy, there are no clear distinctions between the administrators and the school runners concerning their functions. Under this situation, the government confines the educational activities of the HE institutes too much, which is against many principles of the modern economy including efficiency, equal exchange, fair competition, overall opening, and encouraging innovations.

Since China's Reform and Opening in 1978, the cause of China's HE has undergone a process from recovery, rebuilding to further reform and stable development. During this period, the HE institutes are facing a main contradiction---on one hand, the society needs brains urgently; on the other hand, the HE institutes hanker for developing their own potential in order to make great contributions to the society, but they feel strictly confined by many rules and principle. Therefore, there is a strong desire and require for "expanding the autonomy of running schools". It is marked by an article from People Daily "endowing HE institutes with more autonomy" written by Buqing Su (the president of Fudan University) and several other famous presidents. And the editor of People Daily also made commends on it. This article commenced the first reform of the HE management system. In this reform, the central issue fell on the relationship between the government and the HE institutes. If this problem can't be solved completely, then the reform can't be carried out further.

^{*} Min He (1957-), female, PhD candidate of Dalian University of Technology, Vice Mayor of Dalian city; research field: education and human resources management; address: Dalian University of Technology, Dalian City, Liaoning Province, P. R. China; postcode: 116023.

^{**} Xuemei Jang(1973-), Master, lecturer of Liaoning Normal University; research field: comparison between Chinese and foreign education management; address: Liaoning Normal University, Dalian City, Liaoning Province, P. R. China; pstcode: 116029.

According to this, the Ministry Education of China and some local governments took some measures to widen the autonomy of the HE institutes, which was the beginning of the transform for the governmental functions and the adjustment of their relationship, these measures also challenged the highly restricted HE management system.

In May, 1985, the First National Education seminar was jointly held by Central Government and State Council. The central issue of this seminar is to discuss "The Decision of Central Government on Reform of Education of the Communist Party of China", and some procedures and measures were also put forward.

The "Decision" pointed out one weakness of the original HE system, "on the management purview of HE cause, the government controlled schools excessively, especially HE institutes. Thus, the schools are lack of enough vitality. While it is not done well that the government should administrate". "At present, the key of the HE system reform is to change the fact that the government confines the HE institutes too much. Under the guidance of the state uniform policies and plans, the government should endow the autonomy of running school with the HE institutes; enable the HE institutes to adapt themselves to the social and economic development". In document of central government, it was posed the first time "reforming management system, retrenching, transferring over to a lower level, expanding the autonomy of running school."

The "Decision" clearly endowed HE institutes with autonomy in six aspects, namely, "in the premise of executing the state's policy, decrees and plans, the institutes are entitled to enroll students by contracts and enroll commoners; have the freedom of specialty adjustment based on market demand, setting up teaching plans and outlines, editing and selection of text books; have the freedom of accepting contracting and cooperating with other institutions, carrying out scientific research and technical development, establishing joint units of teaching, research and production; have the freedom of appointing vice president and other level's administrators; have the freedom in arranging infrastructure investment and expenses funded by the state; and have the freedom of international education and academic exchanges by using self- collected funds, etc.

From 1985 to 1991, the HE institutes had carried out the exploration of the reform, centering on "Five Systems" (management system, school operational system, investment system, enrolling/assigning system, and internal management system). The reform has promoted the transference of the governmental function. In this way, the government gave up what it is not supposed to interfere, and spared more time to stress on macro management effectively.

Since the release of "Decision" in 1985, the macro control of the government on the HE institutes has been strengthened, and operation autonomy of the schools is also enlarged. Due to the improvement of the utonomy, the HE institutes can actively confront economic construction, some of the institutes have started to seek for jointly running schools, accepting contracted students, and assigning some of the graduates under the guidance of national policies, guidelines and plans; independently adjusting their specialty setup, formulating their own teaching plans/outlines and writing/selecting proper text books. However, due to stifling of the planned economy over the HE system, the HE system reform stumbles after the release of the "Decision". Not only is the fact of subordination of HE institutes to the government remained unchanged, lack of autonomy and vitality, but the situation that the mutual management of local and central government has not been realized and the function of each department is confusing and not substantially changed, The efficiency of school running still remain unchanged. The operational autonomy has not been carried out completely.

2. The Devolution and Implementation of the HE Institutes Operational Autonomy

With the deep reform of politics, economy, and scientific system, in 1992, the issue of expanding the HE institutes autonomy was addressed again. Same year in August, The Ministry of Education declared that 16 items for operational autonomy of the institutes were handed over to the directly subordinated universities. And right after that at the seminar on nationwide regular higher education affairs, leaders from the Ministry of Education pointed out: each province/autonomous region can refer to the above mentioned 16 items to appropriately hand over their rights to their subordinates.

In October 1992, 14th National Congress of Communist Party of China was held, during the conference, the reform target of establishing socialist market economy was confirmed. Under this background, in February 1993, the Central Government and State Council officially released *The Outline of the Reform and Development of the Education of China* (hereinafter referred as “Outline”). The Outline addressed that the main content of HE system reform was to settle the relationship between the government and the institutes, central government and local government, Ministry of Education and various ministries of the central government, and gradually achieve government macro management and independent operation of the institutes. The “Outline” had a big step forward than the “Decision” in solving the relationship between government and institutes. Therefore, the legal status of the institutes has been established from “expanding the autonomy of running schools”. The “Outline” clarified “separation between governmental and non-governmental functions should be applied in dealing with the relationship between the government and the institutes, and the rights and obligations of HE institutes should be defined by legislation to make the institutes a true legal entity that have the freedom in running schools”. Meanwhile, it was also clarified that “the operation autonomy should be further extended in enrollment of students, specialty adjustment, institution setup, appointment of administrators, handling of expenses, qualification assessment, salary distribution, international cooperation/exchanges according to the existing situations of individual institutes”.

Again in November 1993, the Decision on Issues Regarding the Improvement of the Socialist Market Economic System explicitly stated: “higher education should carry out reform in school operation system to change the confusing situation of local and central government management over the HE institutes. Except some special walks of life, the HE institutes should be transited step by step into a Two-tiered management system (central and local) and therefore expand the operation autonomy of local government and the institutes”.

In June 1994, the 2nd National Education Seminar was jointly held in Beijing by the central government and State Council. The central issue is to advocate that both Communist Party and society to carefully implement the “Outline”. In response to what the Central government calls for, each province/city/autonomous region can hand over the operation autonomy to their institutes. The relationship between government and HE institutes has marked a step further in a harmonious and balanced manner. Following up the seminar, the reform and exploration has made repaid progress in terms of co-management, school merging, joint operation of schools and transition to local government management. That is how “co-management, cooperation, adjustment and merging” came into being.

3. The Legal Foundation of the Relationship Adjustment between Government and HE Institutes

Taking “The Decision of Central Government on Reform of Education of the Communist Party of China” as

the landmark in 1985, “The People’s Republic of China Higher Education Legislation” decreed in the form of laws that “higher education institutes should run school legally in order to meet the demand of the society, and implement democratic management” This legislation also explicitly stated seven school operational autonomies of HE institutes including enrollment , specialty setup and adjustment, teaching, research and social service, international exchanges in science/technology and culture, personnel, handling of properties. We should say, it will take a long time to fully carry out the seven autonomies. However, that’s the primary rights which the law endows the institutes, at the same time, it implied the responsibilities borne by the institutes. As the legal entity, on one hand they enjoy the rights to run school; on the other hand, they should bear the responsibilities of quality. Furthermore, the institutes have to change the negative notions---waiting for, depending on and asking for. They must exert fully their own priorities. Therefore, in the service of economy, society, and culture, they are able to achieve the sustainable development and progress. Based on the laws, the relationship between the runners and administrators can be clarified, namely, “generally speaking, the runners hold the right to manage HE institutes, the administrators hold the right of decision-making”.

In June 1999, the Third National Education Seminar was jointly held by Central Government and State Council, and “Decision of Deepening Educational reform & Promoting Quality Education in an All-round Way” was made and launched. The theme of the seminar is to deepen the education reform and promote quality education. And about the relationship between government and HE institutes, the Decision stated that “The People’s Republic of China Higher Education Legislation” should be fully observed and implemented so that the HE institutes are given utmost freedom in running schools. Regarding to the issues and concerns about expanding HE institutes operation autonomy, it was re-confirmed that “the operation autonomy such as freedom in students enrollment and specialty setup should be further expanded”, and meanwhile it was pointed out that “supervision over the HE institutes and checkup of schooling quality should be strengthened. Therefore, a social supervision and evaluation system over the schooling activities and quality of the institutes could be steadily established to perfect the self-control and self-management system of the institutes eventually.”

4. The Key Points and Direction of the Relationship Adjustment between the Government and HE Institutes

From the perspective of reform process of HE system since 1978, macroscopically, the center is the relationship adjustment between the government and HE institutes. To be specific, there are two levels of reform: the first level refers to the management pattern, which aims at “separation and cooperation” of central and local government by amplifying the decision-making right of local government, to achieve the reform featured by “fine combination of central and local, reasonable setup of HE institutes and optimization/allocation of educational resources”, The second level refers to the reform that includes an operating system characterized by “macro control of the government, active involvement of the society, freedom in running schools” and the reform to smoothen the relationship between the government and the institutes.

The two levels of reform are interrelated and interdependent. If we say the reform in previous years stressed on the first level and has made some achievements, today’s focus should be on the second level of reform. The latter reform---smoothing the relationship between the government and the institutes---should not be ignored, avoided or delayed and it is the most priority of current higher education system reform.

When adjusting the relationship between the government and the HE institutes, two kinds of extreme patterns

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should be discarded, one is the government completely control the institutes, the other is the HE institutes are absolutely independent ignoring the government. These two patterns can both be seen in the history, but lasted for just a short period of time. Generally speaking, the proper relationship between the government and the HE institutes is to find the best interface of the two patterns to reach a balance and win-win of the two. This best interprets a philosophy in management science---“match of rights and obligations”. Based on this principle, the government and HE institutes must properly match their own rights and obligations to adjust the vernier to the best location. And a relationship of service, partnership and obligations should be set up based on mutual respect to achieve mutual balance and win-win so that both parties can work hand in hand to best serve the society, and to improve the social civilization and progress.

References (omitted)

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