Why 'teacher-student affair' should not be a crime?

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概要

我們經常會在報張中看到關於「師生戀」(Teacher-student Affair)的報導。有人主張政府應立法禁止師生戀，以保護兒童免遭老師侵犯。本文將嘗試以不同角度，包括人權、傳媒對師生戀的報導焦點、現行相關法例、師生權力關係等去探討應否立法禁止師生戀行為。相關本地新聞、傅柯(Foucault)對於權力的視點，以及何春蕤(Josephine Ho)對於年青人的性的看法將被簡潔地論及。此外，本文將嘗試建立一套原則，讓師生可在一個平等的基礎上發展師生戀(有甚麼是老師不應做的)。
Abstract

‘Teacher-student affair’ （師生戀） is not something strange we may see the relevant news from the newspaper occasionally. Some people argued government should prohibit such affairs by enacting the laws because society should ‘protect the children’ from the abuse of teachers. This paper is going to examine the above argument by different dimensions including the human right angle, the news reporting focus of the teacher-student affair cases, current relevant laws, the influence of power relationship between teacher and student, and etc. Several local news of teacher-student affair and the arguments of Foucault's power perspective and Josephine Ho's (何春蕤) view on the sex of youth will also be briefly discussed.

Moreover, the paper will try to establish a principle (what teacher should(not) do) for the teacher to develop the relationship with student on the fundamental of equality.
**Introduction**

‘Sex’ belongs to one of the most argumentative topics in human history we may talk about in every realm. When discussing the issues regard to sex, we are always not to talk about this in itself, but the power relationship among different people. Thus, ‘power’ is the core concern or the hidden agenda behind the issues we mention. For example, when tackling the sex worker issues, we will easy to come up with the conclusion/questions such as ‘sex workers should (not) have the rights to do the job’, ‘Why can't sex workers control their own sexuality?’ ‘Who have power to decide whether it is a “job”?’ .... People are also willing to respond by the moral and legal aspects. Another topic we are easy to hear from newspapers or even experience in daily life is also argumentative, this is the romance between teacher and student: ‘teacher-student affair’. Recent years, several cases of teacher-student affair were largely reported by mass media in Hong Kong\(^1\), some of them had been put to the court finally. Different people like scholars, legislators, teachers, parents, students, and etc were keen to voice out their opinion. Some people argued government should restrict teacher-student affair by criminalized that kind of ‘immoral’ and ‘harmful’ behavior as our children have to be protected from such abuse. Perhaps, government should at least provide the guidance or moral education for the teachers so that the

\(^1\)「師生開房全城嘩然，轟教局監管不力 家長考慮轉校」。太陽報，2008年1月19日。
「陳樹渠中學認查師生戀」。星島日報，2008年6月7日。
violated ones would be de-registered from the teaching profession!²

Different from the above arguments, I would like to argue in the paper that teacher-student affair should not be prohibited by law straightly because:

1. This should be a kind of human rights for teachers and students to choose their partners voluntarily.

2. Teacher-student affair is not the sexual offence and we already have the laws against for sexual abuse.

3. Teacher-student affair can also be the just, caring and beautiful love affair when some factors have been eliminated.

_People's human rights to choose teacher-student affair_

Reviewing the Universal Declaration of Human Rights (UDHR) of United Nation (1948), we will not find any article which mentioned about the rights for choosing partner or love and sex relationship directly. However, article 12 argued that people's privacy should be protected without interference:

‘No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation.’

²「陳樹渠中學認查師生戀」。星島日報，2008 年 6 月 7 日。
Love affair is a part of people's private life and people should have the right and autonomy to choose who his/her lover is, no matter what his/her occupation and role are. ‘Teacher’ is also the ordinary people/citizen even it is so called a ‘professional’, they should also have the rights to enjoy their private life under the protection of UDHR.

Moreover, people in modern society generally believe that ‘love’ is the fundamental of marriage and further development of family so that people can chase for the ones they love freely. The first sentence of article 1 of International Covenant on Economic, Social and Cultural Rights (ICESCR) also stated very clearly:

‘All peoples have the right of self-determination.’

The restriction of teacher-student affair implies that their freedom of having marriage and family is also restricted in some circumstances. This unaffordable violates from article 16.1 of UDHR:

‘Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.’

We see that from article 16.1, adults are entitled to look for their marriage and family.
Nevertheless, when attacking the teacher-student affair, the case involving student who is older than 16 will also be addressed (though this will be treated as a more serious case when the student is younger 16). Actually, even both the leading roles tell that their love story is perfect and they are willing to get married, the teacher is still easy to become ‘unprofessional’ from the others' eye, especially, his/her colleagues’ and supervisor's. People's unfriendly attitude may apply on the teacher that's mean s/he will face the unfavorable working environment. In that situation, people surrounding the couples may not only be violated from article 12 of UDHR (to attacks upon his honor and reputation) but also article 23.1:

‘Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.’

And article 7 of ICESCR:

‘… the right of everyone to the enjoyment of just and favourable conditions of work which ensure.’

Teacher-student affair belongings to their privacy but this would make the teacher fall into the difficult situation due to his colleagues' query and the pressure of management. S/he may not be necessary to resign from his/her post (even this is not
strange just like the case of Chan Shu Kui Memorial School), however, that’s may make the teacher to work in the depressing atmosphere that will influence on his/her working performance, his/her job security and even the chance of promotion (in)directly. The condition of the student is similar as his/her academic performance and the further learning opportunity may also be affected because of the undesirable influence by the others due to the personal affair. Someone may argue this is not unusual that students' study is badly affected by love affairs so that they should not fall in love too early. However, in the case of teacher-student affair, the greatest shock on student's school work maybe mainly due to the unnecessary pressure from others' negative comments rather than the problems of the relationship itself.

I agree the application of ‘human right’ is not absolute and not always be sound, this depends on its context (Clapham, 2007). I would try to discuss with it more detailed afterwards. However, this is important to point out that people should have their own rights to develop ‘teacher-student affair’ generally under the protection of human rights.

**Making teacher-student affair prohibited?**

‘Protecting the children’ is one of the major reasons people make use of to against
for teacher-student affair. In the case of “Child sex tutor guilty’(The Standard, 19th May 2009), a primary school teacher aged 30 something had nearly 300 times of intercourse with his student since she was 12. He was guilty. That case may become the significant back up to support that society must make the teacher-student affair prohibited, otherwise, more and more students will be abused by the ‘evil teachers’. Inerasable shadow would be left in students' deep heart after suffering from the teachers and this would effect on his/her psychosocial development. Hence, this is a must to impose legal protection on the pure and innocent students to prevent the ‘abnormal’ teacher-student affair…

The above notion/moral panic is easy to find from the newspapers or come from the mouths of the so called ‘experts’, therefore general public may tend to believe teacher-student affair is only a kind of sexual abuse rather than love affair. Yes, this is undeniable that sexual behaviors are always involved in different cases and sexual abuses might also happen. Nevertheless, before thinking whether it is necessary to have the new laws to ‘protect’ the children, I would like to ask: ‘Why media often insist to focus on the sexual part of teacher-student affair?’ In other words, are they having intention to posit the affair as merely the sexual behavior/abuse case at the very beginning? For example, in the news report of Sing-tao Daily on 7th June 08
about a case of teacher-student affair\(^3\) of Chan Shu Kui Memorial School, the second sentence described this as the ‘dubious scandal of sexual behavior between a male teacher and a F. 5 female student.’ Except *Sing-tao Daily, Apple Daily*\(^4\) and *Ming-pao*\(^5\) also used ‘teacher made love/had intercourse with female student in the school’ as the news titles. ‘Did they have intercourse?’ and ‘Where did they do it?’ were seemed the main points in the news and those were also the ‘guilty’ of the teacher though the girl was 16 years old already. I agree ‘sex’ was one of the important parts we need to consider as the teacher might be committed crime if the girl was under 16. If this was the ‘forced sex’ the teacher might be charged by the more serious offence and this would become the more complicated moral issue.

However, when the media emphasized too much on sex, the ‘love story’, subjective experience and active agency of the involved parties have been put aside, the audiences will be guided to the narrow dead end of understanding of the issue so that they are easy to come up with the conclusion: ‘we should force the sexual crime in the school by the tough laws…’ I think the question is not ‘Should we enact the new laws to against for teacher-student affair?’ We should first reflect on the issues holistically that includes the relationship between the teacher and student. If they love each other

\(^3\) 『陳樹渠中學認查師生戀』。星島日報，2008 年 6 月 7 日。
\(^4\) 『教師與女生校園做愛，校方隱瞞停職了事』。蘋果日報，2008 年 6 月 6 日。
\(^5\) 『陳樹渠師生校內交歡 教局斥校方遲通知』。明報，2008 年 6 月 7 日。
and the relationship is built on the equal, open, and caring foundation, this can be the
nice and positive love affair just like ours. Do we still need to arrest the man to
‘protect’ the girl in this situation?

When regarding to the point of ‘protecting the children’, we have to firstly clarify in
what aspects we need to protect them. If this is focusing on the area of ‘sex’, we are
having at lease two laws currently. Anyone who has sexual intercourse with a girl
under the age of 16 and 13 will be committing crimes. For the first one, offence will
incur maximum 5 years jail. For the second one, life penalty maybe the return that is
the heaviest penalty in Hong Kong legal system which is without death penalty. I am
not going to criticize the rationality and suitability of the above laws, I am just curious
why this is necessary to impose news specific offense on the sex of teacher and
student when the current laws also cover this area (to protect the girls under 16). The
primary teacher was guilty finally even he empathized their sex was built on the love
relationship (but the girl didn't recognize it). But in the case of Chan Shu Kui
Memorial School, the girl was 16 already that's mean current laws are not workable to
cover all kinds of sex happened between teacher and student. New laws are then
needed, someone may argue. Regarding to this argument, I would like to query
another question: ‘In what ground we have to restrict the affair of teacher and student
aged 16 (include either love or sex) when this belongs to people's human right?”

Society is never encouraging the youth trying or enjoying sex. School belongs to one of the most significant state apparatuses to socialize students to keep distance from sex before marriage. Thus, when teacher had sex with his student just like the case of Chan Shu Kui Memorial School, the easiest and fastest way to tackle the ‘scandal’ is to fire the teacher to save the authority of the school: to secure the smooth operation of state apparatus. Also, the new laws to against for that deviant teacher-student affair may also be needed to maintain the order of patriarchal society. The public will feel panic if the order dissolved as we have been socialized by the patriarchy for the long time. However, Ho (何春蕤, 1994) argued:

‘The responsibility of society (the responsibility of parents, family and state) is not to suppress or prohibit the sex of youth.... is to actively create the open, pleasurable and autonomic environment for the more safe and pleasurable sex of youth.....’ (1994: 178)

Will it also be a time for us to seek for another way out of the sexual autonomy? Unless society builds up the open, friendly and positive atmosphere for us to try different sexual practices, we cannot acquire the real liberty and autonomy of sexuality.
**The power relationship between teacher and student**

The dominated discourse is teachers have power over the students so that they may employ such power which is back up from their teacher title as a tool to chase the students. For example, teacher may ask the student out for dating and promise to give him/her some tips of exam as a ‘gift’. In contrast, teacher may also threaten to punish him/her when s/he refuses the dating. Another case, teacher tries to ‘concern’ the student when s/he is upset. Since this is one of the ‘job duties’ for the teacher to take care the student who may easy to open his/her heart for the teacher but not the others.

In our culture, teachers are always trustful, helpful and kind (though this maybe a myth only). Teacher can grasp the opportunity to take care the student and to win their positive feeling and even love when they are unhappy and helpless. In this situation, the teacher will have comparative advantage over the others (such as his/her classmates) to chase the student and such advantage comes from the formal power (eg. Controlling the information of exam) and the cultural factor (eg. Student should trust the teacher and tell him/her deep heart feeling). The above ‘tools’ maybe useful for the teacher in the affair but those should be restricted as they are unethical:

1. This is unfair for others (just one people has the tips of exam). Teacher should not distribute such important information aim at contributing own benefits.
2. Teacher becomes a threat when student refuse him/her (will be punished) so that their relationship becomes abusive and students can no longer make decision freely and voluntarily.

3. Student trust him/her just because s/he is a ‘teacher’: an identity/role/position.

That trustful relationship should be for the convenience of the work only rather than private relationship.

Although I argued teacher-student affair can be developed just like the other kinds of romance and this belongs to the part of human rights, we should still resist from the above ethical problems. When teacher is going to develop the just and positive love affair with the student, s/he should take the initiative to eliminate the influence due to the above problems. Teacher not only should separate the work and personal life so that the power of teacher will not be applied but have to develop the relationship on the basis and equality. For example, teachers maybe willing to listen to the students, they are rare to tell the students their privacy and deep heart thoughts. Thus, teacher should also open his/her heart for the two ways and interactive communication. This makes the power relationship more equal in the love affair. After acquiring more information of the teacher (potential lover), student is easier to decide whether s/he will fall in love with the teacher. The information can help the student to make the
voluntary and ‘real’ decision.

Paradoxically, Foucault (1984) argued that power is never the dual suppressive-depressive relationship:

‘Power is exercised from innumerable points… where there is power, there is resistance.’ (Quoted from Jagose, 1996: 80-81)

Teacher seems having the great power but this is not absolute and the student may also resist. Actually, the teacher is often in the dangerous place when the others (school, parents, mass media, and etc.) know s/he is in love with the student, especially, if they had sex already. The discourse of ‘protecting the children’ is the weapon attacks the teacher and s/he is very hard to defend. The above mentioned power and comparative advantage may disappear immediately once the affair is known publicly. This is the threat all the time. His/her little lover may say: ‘please treat me nice unless you want to lose your job…’ The case of Chan Shu Kui Memorial School was the obvious example. The man lost his job just because his girlfriend shared her joyful romantic experience with her friends…

**Conclusion**

To reflect the teacher-student affair deeply we have to look into its actual context.
This is unjust to make moral judgment simply and to prohibit all those affairs, especially, the dominated discourse tends to punish the teacher as people generally believe teacher is always the ‘abuser’. In reality, the affairs can also be the beautiful love story. This is important for the teacher to eliminate his/her comparative advantage and to communicate with the students interactively if s/he would like to develop the love affair. I argued people can chase for their romance include the one between teacher and student but teacher should not employ the power that captured from his/her position for own benefits.

On the other hand, we learned from Foucault's argument, power relationship is never fixed and this is not the dual suppressive-depressive relationship between teacher and student. Both sides may also be the threat for each other. Teacher will never control all dominated power anytime. Except talking how to ‘protect’ the children, why don't society try to make the environment friendly for people to try and to chase for love and sex by own autonomy? Actually, this should also be the rights protected by UDHR and ICESCR. Everybody should own their liberty to do the things they like included teacher-student affair.
**Bibliography**


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