

CCPL Evening Lecture
**Appointment *ad personam*, confidentiality and secret operation of statutory
bodies – the Antiquities Advisory Board as example**

Date: 3 February 2016

Time: 18:00 – 19:30

Venue: Academic Conference Room, 11/F Cheng Yu Tung Tower, Centennial Campus,
the University of Hong Kong

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This lecture mainly touches on the issue of government's confidentiality policy and its tension with the right of the public to know. Mr. William Meacham, the speaker of the lecture, used his experience of dealing with the Antiquities Advisory Board as an example to reveal government's deed and discuss about possible solutions.

A. General introduction of the lecture and government's tools for confidentiality

Mr. William Meacham's lecture mainly based based on his E-book: *The Struggle for Hong Kong's Heritage*. The Synagogue case covers about 70 pages in the book and was considered to be a big 'battle'. So in this lecture it would cover about 20 minutes. The two contributions from other people include one from David Russell, written in 2006 and one from Elizabeth Sinn written in 1987.

Mr. Meacham pointed out that appointing members may be one of the main levers used by the government to control the Executive Council and even the district council. Apart from that, secrecy operation, control of illegitimate information, confidentiality, resistance of input of expert and public as well as other means are also used. They may not exist at the same time but may differs with different chairman.

B. The example in the area of heritage and former development of the Antiquities Advisory Board

As for the so called 'tool for trade' of the government, authoritative statement, selectively provided information, sometimes select delegations to attend the meeting without telling the members and that happened several times, shield from the public, and also methods like sending the whole bunch of information before the night of the meeting even used today in the Antiquities Advisory Board (AAB). The appointment of members is what Mr. Meacham is most against for after he was appointed as a member. Those members on board have problems like extreme difficulty to contact, hardly ever reply to any submissions from the public and lots of them are interested in future government appointments. So they become quite loyal to the authority that appointed them and hence pro-government. Sometimes they collectively rely on civil servant to 'explain' things.

The Antiquities and Monument Ordinance, passed in 1971 and enacted in 1976, was mainly due to pressure from the archeologist to get the ordinance passed, which turns the situation to a North Korean pattern proletarian control of archeologists by the government. The reading in the Legislative Council (LegCo) suggested that the government would show care and discretion in the detailed application of this ordinance, since government lack of previous experience in this area so hopefully this is not all record of prior antecedents of the future generation. However, the practice of this statement was not satisfying.

After 1976, the Antiquities Advisory Board (AAB) was established. But the chairman and the deputy were all civil servants, and some other members were appointed by the government. One thing the government may have regret in the future is that 'the procedure of the meeting would be such the Board made a term'. So under this provision the chairman cannot adjured the meeting but the members can. The list of the members of the second board was shown, including two academic staffs from the University of Hong Kong and the Chinese University of Hong Kong. At the same time, Mr. Meacham's first book, *Rock Carvings in Hong Kong: An Illustrated and Interpretive Study*, was published. This was remarkable since this was the first criticism about AAB in the media.

Going ahead to 1981, the incident of Lung Ha Wan was considered. Mr. Meacham have showed his concern to AAB that they needed to consider carefully before declaring an eroded feature as an 'ancient monument'. The 'cocky' response from AAB Chairman was that they had 'no doubt' on this issue and they had no obligation to consult the Hong Kong Archeological Society. This statement might be controversial with the Legco's reading of the carefulness of AAB's work.

However, what really brought the concern of heritage to the public is not archeologists' words but the big fight over preservation of KCR station. As a result of the government's proposal to demolish it, the Hong Kong Heritage Society was set up, with main players all from HKU, and battled to preserve the KCR station building. On the other hand, the AAB recommended that there was no need the preserve the whole building so better to preserve only the front part. But AAB Chairman made an amazing statement in front of the Urban Council Subcommittee, that the whole building should be demolished, as completely opposed to AAB's recommendation.

Another example may be the Murray House, which the Hong Kong Heritage Society wanted to preserve but the government have different opinion. The proposal of the Hong Kong Heritage Society was shown that to preserve the building by providing open space in the central of Hong Kong. The reply by AAB's chairman personally to Mr. Meacham was far from satisfying. The Chairman was of the opinion that during the development the foundation work would certainly weakened the stability of Murray

House. So they propose to abandoned it and rerecord it somewhere else. It was quite ridiculous that the AAB just accepted that without experts' opinion.

A list of the buildings demolished between 1976 to 1982 was shown, for audience to see the sad story behind establishment of AAB. The number of monuments been declared were of 19 by the end of 1982, which was quite a low number.

Onwards, in 1980s, there were signs that the situation might changed with the government mentioning heritage in their suggestions and a new chairman being appointed being very proactive. The last archeological letter by Mr. Meacham stated that all the things going on like AAB without real authority on board, the officials amending the law are quite a shame and the government just did not pay real effort to preserve the buildings. It can be seen that the government had dominated the board in the usual civil service way. The Urban Services Department (USD) being the main source of information and the director of USD is also the board chairman as well as the authority to whom the board offered advice. This kind of circular arrangement is quite absurd as Mr. Meacham concerned. Another letter from a member on board also calls for more democracy in this operation so that the public would have better input.

In the late 1986, Mr. Meacham was contacted by a staff member of the Municipal Services Branch (MSB) to attend a meeting with the Secretary of Municipal Services. The Secretary said that all the civil servants were to be removed from AAB and all persons on board was going to be appointed including representatives of the four societies, which means members are merely nominated by but not representing the societies. A list of members of the new board including Mr. Meacham was also shown in the lecture. Although the structure of AAB was better in the sense that no civil servants were on board, there were still a few people representing the council's interests.

C. The famous case of Synagogue building

Things went well for a short period of time before the incident of Synagogue building happened, which turned out to be one of the biggest battles for Hong Kong heritage. AAB members were told that there were informal discussions between the Chairman and the trustees, trying to pursue options on how to reserve the building. The result merged was a proposal to build a 'replica' on top of a podium. They said the main obstacle to the preservation of the building was a huge compensation the government would be liable for. But this turned out to be a lie. Later, Mr. Meacham asked David Russell and another architect to wrote a letter, which represented their advice on AAB, supposing that by preserving the Synagogue and develop the rest of the cite, no compensation would be payable. However, MSB said they got advice from the Attorney General that (1) as a matter of law, this was a set of compensation that the district court might decide (2) even though resumption not compensated there will be a large amount of cost, and a figure of \$500 million was presented. This figure caused heated discussion on AAB that they should not give advice to the government which costs that

much. However, those pieces of advice including the figure were not the identic quote from Attorney General. And the figure turned out to be untrue. Because later on, one of the civil servants who were handling the board asked Mr. Meacham for lunch at The Helena May and showed him secretly of the 5 pieces of legal advice from the Attorney General, which saying the compensation was actually near zero. Mr. Meacham then sent a memo to the members on board to ask the authority to do nothing until the situation was clarified. It was like a rebellion on the board. The authority then asked the members on AAB to see the Crown Solicitor, and from him the members knew that the compensation would be little even if the trustees put the government to court. Eventually, Mr. Meacham decided to sue the government in court. Although the litigation had little gain, they did get a paper showing the inner-communication of the government that the advice given to AAB was a too general 'summarize' of the Attorney General's advice (though already about 12 pages long) and in the future a full version of legal advice should be given to AAB. (However, this paper was supposed not to be viewed by the public since publishing it may constitute contempt of the court)

After this issue, the government was even more desperate to get AAB's approval to the replica, so that they put forward another lie. They said in England the demolition of such a building would be allowed. Their argument was that in the United Kingdom, with serious policies governing the preservation of buildings, this kind of religious building was expressly excluded in the monument legislation. However, after consulting English authorities, Mr. Meacham was sure that this kind of demolishment would not be allowed. So the crucial problem is whether the church is exempted from the ordinance. There was a case in England discussing this question of 'when is a church not a church'. The House of Lords held the position that the church was only a 'building' when it was not in ecclesiastical use. That again showed that the government was providing wrong information. There was, like the previous case, a second 'rebuke' or 'correction' from the Attorney General, saying that this information was only given to the authority but not AAB. However, this 'lie' remained unchanged three weeks later when the advice was given to the Executive Council and AAB.

After that, more deceptions were discovered. One was about the informal meeting between AAB Chairman and the trustees. The meetings obviously did not contain much commercial information after the minutes of those meetings were exposed, although they had used this as an excuse to keep the meetings confidential to members of AAB. One of the minutes of those 'informal' meetings was shown, and the attending members including trustees, architects and other parties involved in the development indicated that those meetings are not 'informal' at all. There were also conflict of interest of chairman of AAB on this issue that the Chairman, Jason Yuen was receiving scholarship from one of the trustees.

As previously mentioned, Mr. Meacham decided to take this case to go under judicial review. However, he called this one of the 'worst decisions' of him. The litigation against the government cost a lot, and trustees adjoining making the situation even

worse off. They eventually withdrew the case. It seemed, said Mr. Meacham, that in the end they won the war by the 'grace of god' although lost in every battle. The Synagogue was preserved although sacrificing the surroundings around. A picture of the 'save our Synagogue' member shown in the lecture indicated that there were actually many people willing to preserve the Synagogue building. The government, appeared to be quite grateful for the work done by Mr. Meacham and proposed to nominate him at the next round of as the Chairman for AAB, although appointing another nominee but not him.

Later, Mr. Meacham also took the issues to LegCo, in the hope that the LegCo could carry out investigations on those deceptions. The result was a complete whitewash of the government's deed. Feeling unbelievable, Mr. Meacham then took this issue in front of the the Ombudsman Investigates. He proposed the investigation should include the AAB was misled about the declaration of planning, repeatedly and deliberately deceived on points of fact, Chairman's conflict of interest and also the authorities' interference of the procedures of AAB which were all mentioned in the examples above. The Ombudsman did produce a quite thorough investigation. The result of the investigation showing those points raised by Mr. Meacham were of four points substantiated and two points part substantiated. He rejected the terms used by Mr. Meacham of 'collusion and manipulation' but used 'procedural errors' in stead. They said it was a serious case of maladministration. However, the government official received no punishment. The official was even awarded an employment as the head of the public service commission.

D. Other examples

Another example was the Nga Tsin Wai case. It was one of the last old villages in Hong Kong with old traditions that worth preserving, and the government decided to develop this area. The representative only involved Cheun Kong, who was not a core member or an authority on board. And this time AAB was giving opinion agreeing the demolition again. Criticism was also shown in one of the South China Morning Post papers in 2000.

The other case of Fiasco in Tsim Sha Tsui Hill. It was an old market building on Peking Road. The result of arguing was that only the building was preserved but not the whole site including the hill, the signal tower or the plants.

There were also incidents close to the present. One of them was the Star Ferry case. There was civil disobedience and protest by people to save the Star Ferry clock tower, which was actually not very old but only because it was a meaningful building to the citizens. There was also protest to preserve the Queen's Pier, which involved mostly students and young people. Those incidents gave the government a warn that more people paid attention to the preservation of heritage. However, AAB ignored this reaction of the public. It seemed the inherent arrogant attitude of the administrator and the government was not much changed from that time of David Russell. There was

even comments by South China Morning Post to demolish AAB because it did nothing useful to preserve the heritage, with flawed ways of operation.

Mr. Meacham was of the idea that confidentiality did not work – it was because the meetings are closed and private, so many academics chose to follow the will of the government.

E. The situation of AAB now

The situation did improve in some sense. AAB had its own webpage and it welcomed public submissions and comments. They did published agenda in advance. Most meetings were open with minutes published. The Chairman regularly briefed with the media. Members' names were even giving in the minutes for their words, too.

But the same old flaws stood: all 24 members are appointed; resistance to any expert or concerned group giving a hearing; the meeting was attended by civil servants, sometimes even out number the AAB members; still rely on civil servants to explain things and extreme difficulty to contact individual members. Also, recently AAB rejected a suggestion that at least the e-mail addresses and fax number of the members published like the LegCo. An example of persons in attendance at one of the AAB meetings also showed great number of civil servants presenting. In this case, there were 17 AAB members and 16 civil servants plus one taking the minutes. The government was still taking control in this way.

Another example in 2008 concerned rock carvings. The AAB got the Chairman of the Antiques and Monuments office to explain the condition of the rock carvings. She said it would be more appropriate to take a 'neutral' position on this issue. This was actually a misinterpretation of Mr. Meacham's idea in his first book. And the fact that Mr. Meacham was not allowed to give opinions himself was the core question that should raise concern.

The last example was of Ho Tung Villa and Gardens, which was of even higher cultural heritage value than King Yin Lei. The AAB decided this building would not be accepted as heritage by the Executive Council and therefore nothing more could be done. Mr. Meacham tried to use the same type of solution in Synagogue case to save the site. There were two submissions by him, also saying that the resumption may cost nothing. However, AAB refused him at the meeting and never consider his proposal. In the end, the building was not able to be preserved.

F. Conclusion

Mr. Meacham was of the opinion that the system of AAB operation (as well as other advisory boards) is intrinsically flaw. Some individuals wanted to raise concern but was under pressure of government, and instead of fighting they ended up subservient. Not long ago a senior civil servant claimed in according to another advisory board, that the individual appointees can be more objective than those from the organizations because

they can speak more rationally without pressure from there organization. He wanted to use this to support the idea of keeping things confidential so that the members can speak freely, but this was not the case as shown in the examples. More details about the relevant issues were in the e-book to be viewed.

G. Q&A sessions

Question 1

This question was from a member of a similar board as AAB which also included confidentiality requirements and a lot of government appointees. The member was concerned whether there was any advice to improve the situation.

Answer: ‘Get to’ the appointed members, since it was unrealistic to get them changed. Try to put as much pressure, information and public focus on them, because they are getting that as source of power from the government. Sometimes the appointed members were called by the government to discuss privately and they were under pressure of the media like Wen Wei Po so there is a need to counter-act that. In the case of Synagogue, this way worked and they did get a vote of 7-6 in favor of retaining the building as a monument status.

Questions 2

If there is a chance to clear the board and set again, is there a better structure or model to get the right person in place, since there are just few members on board now trained in heritage field so cannot give much professional contribution?

Answer: Mr. Meacham recalled when he was on board, there were two sub-committees: one for archeologists one for experts on restorable building. That might be a workable model. Thus the issues discussed can be dealt with two professional bodies. It was better to get people with direct relevance to the issues on board. Another model to be considered is the English Heritage foundation. They had set up Lord Wilson Heritage Trust. If a foundation is set up like that, millionaires might be attracted to contribute and properties might be bought. That would not cost the government any money.

Questions 3

In the lecture, it was mentioned that the transparency of AAB has improved over recent years. Is there any improvement of information about heritage outside of what is presented to AAB? Because it is now quite difficult to get information from the government before it presented to AAB.

Answer: It is obvious the government is still consulting and doing inner inquiries when getting to AAB before determining what is to be revealed to the public. And those meetings might be kept private and secret from the public. The only solution is to bare out the information, find out who heard anything or find out who might know. Mr.

Meacham also gave another example of a misvaluation of heritage from the Song dynasty by AAB and the government. He was of the opinion that the only method was to get the people inside to release the information and keep digging.

Question 4

Hong Kong government does not lack money, but why is it so reluctant to preserve historical sites and buildings?

Answer: The government had said they did not want to get into litigation that cost quite a lot of money and had to pay compensation. They expressed that they wanted to respect the owner's rights, too. This was also the argument they used in the Synagogue case. The piece of land offered will worth 7 billion dollars. So they found a kind of mid-resolution in the end. They also did not want to sell the land and pay the resumption, especially when the number reached billion. Mr. Meacham also mentioned the opinion for the Synagogue case given by one of the Justice of the Court of the Final Appeal in Hong Kong, that the compensation by the government would not be automatic but only optional. So the question is actually complicated relating to the government's own procedure and considerations depending on different cases. For example, the Supreme Court stays in the Central of Hong Kong partly because the Director of Public Affairs of the time likes the building.

Questions 5

If compare the strategic options available for policy challenge back in 70s and 80s and those available for policy challenges nowadays, is there any major change given the transition in political and societal work conditions, where more options might be available to those who did not agree with the government?

Answer: Mr. Meacham thought the change is minor. He had written to two members of Executive Council. However, there was no reply from them. It can be seen as an example that it is still difficult today to get into some highly restrictive area and core of policy. Many officials just do not reply the submissions from the public. The only way suggested is to find people that have access to power and try to persuade them.

The follow-up question

Back in the early 1970s people actually wrote to the Executive Council members, and is that method still workable today?

Answer: It might work, especially when this requirement was in the statute. Mr. Meacham recalled he was once denied the licence for archeological research and exploration. It is in the legislation that the licensee can appeal to the government. Many people were of the opinion it was hopeless to get back. The incident also amounted to a campaign in the press. When the appeal letter came to one of the governor, he wrote a memo to set a panel of 5 five people to decide this issue. The result of vote was actually 3-2 in Mr. Meacham's favor. This is a successful example of using this method

though this kind of examples are extremely rare. It can also be seen that try making up some press pressure might be quite helpful.

Question 6

If we have a conservation policy, would that give a foundation of a board that will change the situation now, although the notion is quite vague in the sense?

Answer: The government always left some grey in the policy. The problem is that the will of the governor comes first and leads the policy making. Mr. Meacham thought that there should be a press for more proper representation on either the advisory boards or the council of the university.