

Academic Freedom: A Test and a Tool for Illiberalism, Neoliberalism, and Liberal Democracy

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USING THE CASE STUDY OF HUNGARY, this article investigates the status and role of academic freedom in (neo)liberal democracies and illiberal regimes. Here, academic freedom is gauged in three dimensions: teaching, research, and publishing (cultivated at research institutes and universities). The inquiry begins with an overview of academic freedom under Viktor Orbán's Hungary. This case study provides a snapshot of how academic freedom can be curtailed in a hybrid illiberal regime.

The article's second half provides an assessment of the three contextual dimensions through which the case study may be relevant—particularly for a social science and international affairs audience. The first context shows how the second phase of emerging authoritarian regimes target cultural life as a soft tool to cement and solidify illiberalism once the capture of constitutional institutions has been accomplished. The second context refers to the role and ambition of international instruments to sustain autocracies in the making. The case of the Hungarian government's entanglement with the European Union (EU), Council of Europe's Venice Commission, and the European Court of Human Rights documents the institutional inability of multilevel constitutional organs to administer ex-post restorative constitutional justice. It also points to the tendency of these organs to experiment with "Al Capone"-like judicial strategies in referring to the breach of equal treatment and General Agreement on Tariffs and

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Trade (GATT) commitments to disguise inadequate rule of law shortcomings.

The third contextual dimension pertains to the multifaceted concept of academic freedom. Recent developments in international law indicate that such may be a new, emerging “freedom”—albeit quite underdeveloped in terms of conceptual tools, operationalizing mechanisms, monitoring methods, and benchmarking schemes. The peculiarity of academic freedom is that it is situated between the Scylla and Charybdis of neoliberalism and illiberalism: analysts and stakeholders are wary of the encroachment of illiberal governments and the marketization of the higher education and research sectors—in particular as it may involve doing business with autocracies. In addition, competing ideas exist surrounding how best to conceptualize academic freedom: as an individual right (of faculty and students); as a set of requirements for autonomous institutional design; as a field to be regulated for market service providers or public commodities; or as a benchmarking tool for international policymaking or academic ranking—not to mention the challenge of how to incorporate the zeitgeist of social justice movements.¹

INFRINGING ACADEMIC FREEDOM IN AN ILLIBERAL REGIME: THE CASE OF HUNGARY

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This first part of the article explores how, according to literary sources, academic freedom has been curtailed in the past decade of Viktor Orbán’s rule under his self-proclaimed illiberal democracy.² Examples are from academic and mainstream media sources, excluding hearsay. I am in a unique position of being affiliated with two institutions (the Central European University and the Centre for Social Sciences formerly operating within the Hungarian Academy of Sciences) targeted by government encroachment. I also teach at one of the government’s primary academic beneficiaries, the Ludovika University of Public Service. This article brings testimonies mostly from social sciences (and is based on experiences from legal academia in particular), but its trends and findings are applicable beyond social sciences and humanities.

INTRUSION ON FREE RESEARCH

Reported limitations on academic freedom in the field of research are fourfold. First, an entire web of autonomous research institutions, that cover nearly all fields of science and operated under the auspices of the Hungarian Academy of Sciences, was transferred to a government-controlled entity.³ 5,000 researchers at 38 institutes lost their public employment status.⁴ Second, the government

took over national science and culture funds. In 2020, the Ministry for Innovation and Technology unilaterally altered the list of funded grants from the National Scientific Research Committee, the main, and virtually only, source of basic research.⁵ Third, funds have been removed to an alternative network of government-dependent and government-friendly research institutes, think tanks, and government-organized NGOs.⁶ Lastly, after the adoption of a new privacy law, government agencies can refuse to provide information to NGOs and can levy excessive charges for public data requests.⁷ This cessation of cooperation with the civil sector and human rights defenders curtails academic freedom by blocking critical sources of data and research.⁸

INTRUSIONS ON FREE DISSEMINATION OF RESEARCH

There are four main ways that academic freedom is reportedly truncated in the dissemination and publishing of research findings. First, academic freedom is restricted by censoring academic publications. European University Institute Professor Gábor Halmai describes one of the few documented cases when the editorial board of a journal of the University of Debrecen Law School accepted a paper for publication, but the dean of the law school intervened not to publish it for admittedly political reasons.⁹ Second, academic events involving blacklisted human rights NGOs or dissident academics are often banned, even if these events are co-sponsored or run by international organizations, such as the Council of Europe or the European Union.¹⁰ In contrast, media outlets have reported that the rector of Miskolc University (a major public university) required students to attend a public lecture given by the Minister of Defense István Simicskó, canceled classes, and had faculty escort students to the lecture hall.¹¹ In a similar case, in another major public university in Győr, one of the professors counted attendance at the mayor's talk as 5 percent of each student's midterm test grade.¹² Third, pro-government media outlets have repeatedly launched smear campaigns to intimidate the government's academic critics. A government-friendly website even called upon students to report if their professors are critical toward the government. Fourth, institutions exhibiting solidarity face retaliation. For example, institutions of advanced studies have lost government funding for protesting against the banishment of Central European University.¹³ In another instance, a right-wing think tank (named after József Antall, the first democratically elected prime minister after the 1989 transition) fired a researcher for liking a Facebook post that opposed government plans of hosting the Olympic Games in Budapest.¹⁴ Sometimes censorship is blatant: following a political takeover,

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an issue of *Századvég*—a now government-friendly social science journal—was revoked from the press.¹⁵ In this milieu, several conference programs regarding contentious questions, like gender equality or migration, were canceled.¹⁶

INTRUSION ON FREE TEACHING

Throughout its past ten years in power, Viktor Orbán's government has continuously limited academic freedom in the field of teaching in various ways. In 2011—the Orbán government's first year in power—a new act on higher education was adopted, instituting the new position of financial director (chancellor), who, along with presidents (rectors) of all public universities, would be appointed by the government.¹⁷ At the same time, certain programs, such as the Social Studies BA and some international relations and media studies programs, have been cut and divested from state-funded institutions.¹⁸ In addition, claiming that it is incompatible with its view of society, the government simply withdrew the accreditation of the Gender Studies MA program in 2018.¹⁹ This means that no higher education institution—not even private universities—can issue a degree in the field of gender studies. In 2017, the government pushed through legislation denying and withdrawing accreditation for Central European University (CEU)—the leading university in the region, established and funded by philanthropist George Soros in 1991. The case received a great deal of publicity, especially after an infringement procedure was launched by the European Commission before the Court of Justice of the European Union. In October 2020, the Court found that the law was incompatible with EU and World Trade Organization (WTO) law; the case was also discussed in detail in the European Parliament.²⁰ In addition, the government launched a sweeping campaign privatizing major public universities under foundations owned or directed by Prime Minister Orbán's political allies.²¹ The remodeled institutions, which continue to receive state funding, are governed by boards of trustees filled by members of parliament, cabinet members (such as the Foreign and Justice Ministers), oligarchs, government-appointed academics, and business moguls.²² In the past year and a half, 15 of 26 state universities have been privatized (including the major medical and veterinary medical schools), and there are reports of an additional five to follow.²³ Not a single public university remains outside of Budapest. With the exception of the University of Theatre and Film Arts (where large-scale faculty resignation was accompanied by students occupying the campus in protest of the reorganization and the newly appointed university leadership in the fall and winter of 2020), all of this happened without mean-

ingful opposition or visible public outrage.²⁴

In addition to indirect nationalization, discussed above, curtailing academic freedom also takes the form of directly centralizing and nationalizing education. Starting as early as 2011, the federal government took over schools previously run by local governments. Elementary schools merged into one single state administrative unit where all teachers were obliged to enter the new National Teachers' Chamber. Along with taking control of appointing school directors, the government abolished the status of home-schooled private students to prevent the escape of dissatisfied families.²⁵ Simultaneously, the government centralized the public education curriculum, allowing very limited flexibility in terms of course content and teaching materials, which is generally held to be ideologically driven and often controversial.²⁶ The academic labor market was also distorted by the establishment of a directly government-operated institution (with the Justice, Defense, Internal Affairs, and Foreign Affairs ministries and the Prime Minister's Office as superintendents), the National (Ludovika) University of Public Service. Created in 2012 by merging the former Police College, the Faculty for Public Administration, and the Military Academy, the National University enjoys a monopoly on training officers and a priority for future diplomats and public servants. It also receives a large budget and an enormous amount of project support. Finally, we see cases of firing faculty: media and NGO sources report on the termination of faculty members in connection with undesirable political conduct.²⁷

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In sum, infringement of academic freedom has many faces: censorship, defunding or banning academic programs, harassment, intimidation, tax raids, termination of employment, and the closing of institutions. Censorship permeates the complete public education curricula, entire university programs (like gender studies), course materials, publications, conferences, and even chilling academic peer-review, as individuals are afraid to express critical views due to a lack of trust in anonymity.²⁸ Furthermore, in an illiberal setting, it is prudent for university management to only recruit conformists. Thus, academics face all sorts of external and internal pressures: psychological (harassment, intimidation, tax raids); existential (disadvantages in career progress and promotion, being laid off, lack of access to discretionary travel grants and other subsidies); and institutional (threats to accreditation of programs, units, and entire institutions). Internal pressures can also lead to self-censorship. The effect of these pressures can be manifold; harassment and intimidation consume an incredible amount of energy and time. In addition, answering tax authorities' targeted inquiries is an extremely time-consuming exercise. Concerns over institutional insecurity—re-

garding university programs or entire institutions—paralyzes strategic planning, grant applications, and student recruitment. The increased level of stress and fatigue radically diminishes faculty performance, be it in research or teaching.

Dismantling research centers, academic programs, and institutions causes irreversible harm to all stakeholders. These communities can hardly be rebuilt, even if the political regime eventually changes. And the prospect of being ousted or exiled from academia is terrifying. It is a profession that requires long-term investment and gradual development of one's profiles and identities; losing a particular appointment is a tolerable and reasonable risk, but being systematically ostracized is harrowing.

As constitutional law commentators argue, the goal of the Orbán government's reform has likely been eliminating intellectual and critical thinking, seizing the property of formerly independent institutions, and gaining access to EU funds.²⁹ Apart from the case of CEU—which triggered one of the largest series of demonstrations in Hungary against the Orbán government, bringing as many as 80,000 people to the streets and prompting solidarity from most Hungarian universities—these developments failed to generate large scale public protests or measurable decline in Orbán's popularity, and reactions rarely went beyond the academic community.³⁰ For example, although most of the university privatization reforms were carried out under the COVID-19 constitutional emergency regimes, the government—having a comfortable two-thirds majority in parliament and very little resistance from stakeholders—had no need to use any of the emergency measures.³¹ Similar to how the Baltic states requested to be incorporated into the Soviet Union in 1940, the transition from a state-funded to a privately funded education model formally started with the universities' "request" of this change, and it was followed by the adoption of a law in which the state created the respective fund.³²

The next part of the article provides an assessment of *three contextual dimensions* through which the Hungarian case study may be relevant for a social science and international affairs audience.

ACADEMIC FREEDOM IN THE TOOLKIT OF EMERGING AND SOLIDIFYING HYBRID AUTHORITARIANISM

The Hungarian case study of academic freedom shows how emerging authoritarian regimes target cultural life to cement and solidify illiberalism once the capture of constitutional institutions has been accomplished. Illiberalism is most often characterized by the democratic backlash that surfaces in the

dismantling of the institutional rule of law and protection under it, as well as the weakening of the system of checks and balances. The very nature of hybrid autocracies is that the blatant, direct infringement of fundamental rights and individual freedoms is not necessarily part of the picture. Even constitutional capture is instituted in an intricate way, incorporating long juridical debates with national and international institutions. Yet the second stage of building illiberalism concerns regime solidification and targeting economic and cultural life. Here, capturing academia serves as a method of illiberal indoctrination by shrinking dissent and obstructing the proliferation and evolution of new reservoirs of critical minds.

THE AMBITIONS, STRATEGIES, AND LIMITATIONS OF MULTILEVEL CONSTITUTIONALISM

The Hungarian case also points to five additional relevant features of illiberalism. First, justiciable procedures cover a very limited terrain of encroachments. Of all the above cases, only the CEU case reached a measurable legal impact. Second, even for “tip of the iceberg” constitutional or international legal discourse, elaborate lawyering often beguiles bona fide international monitoring instruments. The Orbán regime has a history of well-played legislative cynicism in instituting a “worst practice constitutionalism” that successfully circumvents international organizations’ scrutiny. “Worst practice” legislation builds legal regimes from elements that, in most cases, are

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not *prima facie* suspicious: those that demonstrate no eminent breach of international human rights standards or policies unprecedented in well-functioning constitutional democracies. Yet the larger picture presented by these mosaic pieces portrays a constitutional design in which institutional limitations on government power are dismantled, the protection of fundamental rights is severely weakened, and political freedom is curtailed. The Hungarian government’s arguments relying on comparative law succeeded for a time in hiding what Princeton University professor Kim Lane Scheppele calls a “Frankenstate,” legislation and a form of government created by stitching together perfectly normal rules from the laws of various EU members into a monstrous new whole.³³

Third, international instruments often lack either competence or proper

procedures to stand up against plebiscitarian autocrats. As we will see, academic freedom is not recognized as an independent freedom under international law. The EU faces severe criticism not only for allowing illiberal trolls to flourish within its ranks, but also for sponsoring these regimes with structural funds and other subsidies.³⁴ Not only does this direct support erode fundamental community norms but—as the potential veto of the COVID-19 relief-centered 2021–27 budget showed—it can also endanger the entire operation of the EU. The obvious lesson to be learned from European politicians and institutions folding to Orbán and Polish Prime Minister Mateusz Morawiecki's position in the budget debate is twofold. First, democracy is first and foremost a national project in which supranational actors can reinforce domestic procedures but cannot take responsibility for sustaining democracies. Second, despite the growing awareness of the internal illiberal threat and an organic (but of course, never fast enough) development of rule-of-law–focused procedures, the EU was not created primarily as a human rights or rule-of-law watchdog organization. Its primary goal was to foster economic cooperation and integration, and for a very long time, democratic institutions were only relevant insofar as they were necessary to secure the EU's primary goal of promoting macroeconomic liberalism. Hence, procedural options to sanction a democratic backlash remain extremely limited.

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Fourth, even if such legal procedures exist, it is within the nature of most legal instruments that by the time actual decisions are passed that find illiberal governments in breach, the damage is largely irreversible.³⁵ For example, by the time the Grand Chamber of the European Court of Human Rights announced that the removal of the Hungarian President (Chief Justice) of the Supreme Court was a violation of the European Convention on Human Rights, he had been out of office for four and half years and was never reinstated.³⁶ A parallel Court of Justice of the European Union (CJEU) judgment was adopted sooner, but it was again too late and unable to reinstate the dismissed judges to their original positions.³⁷ Likewise, the CJEU decision that deemed the termination of the tenure of the Data Protection Commissioner a breach of EU law came years after the entire institution had been transformed into a government office with no way to reconstitute former officers.³⁸ The large sums of compensations paid to the removed officers by the Hungarian state (which thereby can claim to be a fair player in the international game) are not doing much to fill the vacuum left by the dismantled democratic offices. In a similar vein, as much of a victory as the recent CEU judgment may seem, the university has already moved to Vienna and is highly unlikely to ever return.³⁹ Such damage is irreparable.

Finally, international instruments need to be credited for often being willing

to go the extra mile to include rule of law—or in our case academic freedom—requirements, even when lacking explicit textual authorization or competence. Csongor István Nagy, head of the Department of Private International Law at the University of Szeged, calls these “Al Capone tricks,” evoking the convictions against criminal kingpin Al Capone, who was convicted not for what he should have been, but for what he could be: tax fraud.⁴⁰ For example, in the above-mentioned cases, discrimination based on age was used to protect the independence of the Hungarian judiciary. The judgment is built on a violation of the General Agreement on Trade in Services (GATS) by failing to provide national treatment to the CEU—even though “it was obvious that the case... had absolutely nothing to do with international trade... The reason why it was not presented as such was that the EU reckoned that it had no power to address the rule of law issue directly and, hence, had [to] resort to some legal finesse.”⁴¹

ACADEMIC FREEDOM BETWEEN THE SCYLLA AND CHARYBDIS OF NEOLIBERALISM AND ILLIBERALISM

The third contextual dimension of the Hungarian case study is that it points to the numerous interpretations that the multifaceted concept of academic freedom engages. In this text, seven of such will be briefly broached: academic freedom can be conceptualized as 1) a tool to measure illiberalism; 2) a potential component to incorporate in academic ranking; 3) a potentially emerging freedom in international law; 4) a framework for market commoditization and a potentially dangerous instrument for neoliberal new management; 5) a tool for globalization; 6) a tool for foreign infiltration; and, finally, 7) an instrument for social justice.

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ILLIBERALISM (AND THEREBY ACADEMIC QUALITY) BENCHMARKED

As shown above, encroachment on academic freedom is an obvious indicator of illiberal state practices. Not only is the idea of censorship, political pressures, and other restrictions on academic freedom incompatible with constitutional democracies, but such infringements are important tools in solidifying and sustaining autocracies. Recent efforts to incorporate academic freedom in academic rankings have gained momentum, thereby forcing stakeholders to take infringements seriously. The 2020 Resolution of the Council of Europe’s Parliamentary Assembly on threats to academic freedom and autonomy of higher education institutions in Europe points out that some higher educational insti-

tutions of countries with the lowest scores of academic freedom can still excel.⁴² Future rankings must duly take academic freedom data and available indexes into account.⁴³ The Assembly calls upon international organizations, national authorities, academic professional associations and universities to integrate the assessment of academic freedom into their review processes, institutional partnerships, as well as ranking and financial support mechanisms.⁴⁴

ACADEMIC FREEDOM: AN EMERGING FREEDOM IN INTERNATIONAL LAW?

Academic freedom, although habitually addressed by various international instruments, is not actually codified as a stand-alone, autonomous freedom under international law. Aside from the EU Charter of Fundamental Rights—which sets forth that “[t]he arts and scientific research shall be free of constraint. Academic freedom shall be respected”—it is mostly addressed under the umbrella of the right to science or the right to education.⁴⁵ There are, however, numerous soft law documents, the most comprehensive of which have been adopted under the auspices of UNESCO.⁴⁶ These documents provide guidelines on a broad terrain of academic life, including ethics, peer review, and intellectual property, and declare that Member States are under an obligation to protect higher education institutions from threats to their autonomy.⁴⁷ In 1960, the Council of Europe created a Committee for Higher Education and Research (CHER) that brought together university and political leaders; their recommendations expressly recognize the importance of academic freedom and institutional autonomy as “essential values of higher education,” serving “the common good of democratic societies.”⁴⁸ The aforementioned November 2020 Council of Europe Parliamentary Assembly Resolution on “Threats to academic freedom and autonomy of higher education institutions in Europe” calls for the adoption of a European Convention on the Protection of Academic Freedom and Institutional Autonomy, which indicates that it may be a new, emerging “freedom.”⁴⁹

As for the substance of these commitments, most include declarations of an essential and inherent link between democracy and academic freedom. The Resolution emphasizes how the COVID-19 pandemic demonstrated that academic freedom helps research and dissemination of reliable information in a time of global sanitary crisis, but it also points out that, in the absence of regularly monitored data and of a legally binding international agreement, various forms of abuses of academic freedom go on unhindered and unsanctioned.⁵⁰ The Report behind the resolution points out that although academic freedom and institutional autonomy are not privileges but necessary conditions deriving

from the right to education (and intimately linked with freedom of thought, freedom of opinion, and freedom of expression), they remain largely undefined concepts.⁵¹ This results in low awareness among the academic staff of their rights and hampers the possibility to sanction violations.

Also, laudatory definitions in these declarations are rarely sufficiently detailed to enable the operationalization of a benchmark against which the level of (and changes to) academic freedom could be measured.⁵² As for domestic protection, the Report points out that, for example, in the majority of Council of Europe member states, some form of constitutional or legal protection for academic freedom is provided.⁵³ In addition to protecting freedom of speech, the constitutions of many EU countries also provide direct protection for academic freedom: 11 provide protection for teaching, 15 for research, and eight for institutional autonomy. Among other Council of Europe member states: five provide protection for teaching and for autonomy, and four provide protection for academic freedom generically. A binding international treaty obviously would provide some sort of potential protection for cornered academics in, say, Hungary, and would also spare treaty bodies from having to invent creative tactics. However, the adoption (not to mention large-scale ratification and coming into force) of such a convention is long down the road.

The scope and substance of such future international legislation is also yet to be seen—whether it will be individual right-focused (with academics and students in the center); institutional autonomy-centered; or mainly concerned with accentuating threats such as censorship, marketization, or digital surveillance. It could also provide a list of what academic freedom should not cover. In addition to those the ones by international organizations, there are also important initiations by professional networks, such as the Standing Conference of the Rectors, Presidents and Vice-Chancellors of European Universities, the World University Service, and the Magna Charta.⁵⁴

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THE SUBTEXT: WHAT IS EDUCATION?

In order to calibrate the boundaries and morphology of academic freedom, as well as its connection to liberal democracy and illiberalism, a lingering question needs to be addressed: what is education (and also science)? After all, it is the core and defining concept to which academic freedom as a set of operationalizing and mostly procedural guarantees refers to. Is education (and science), and in particular, higher education, which is the focus of this inquiry, a public or private commodity? A global or national(ist) value? Academic freedom in policy

and political debates often serves as a tool for globalization and supranational integration, as well as an instrument for commercial instruments.

As for the first question, the aforementioned UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel declares that higher education is directed to human development and to the progress of society. Moreover, the funding of higher education is treated as a form of public investment—the returns on which are, for the most part, necessarily long-term—subject to government and public priorities.⁵⁵

In addressing the second question, in Europe, for example, the aforementioned Bologna Declaration was built on the idea of the European Higher Education Area (EHEA) adopting a system of easily readable and comparable degrees.⁵⁶ While the Treaty of Rome did not consider education to be a European affair, in the 1980s, universities became partners in the shaping of European integration and lobbied for the creation of common programs for student mobility, in particular the ERASMUS mobility program that began in 1987.⁵⁷

12 Meanwhile, higher education, an ancient and resilient societal institution, has undergone significant changes in the last few years/decades. As Aderbach et al. show, non-senior professors, students, and administrative/technical personnel gained representation in internal university decision-making bodies on all levels, increasing internal democracy and producing more hybridity in representation and decreasing influence of full professors in decision-making processes.⁵⁸ Academic leadership is increasingly professionalized and managerially oriented. Students have also transitioned from subordinates to valuable customers in a global market who can always “take their business elsewhere.” This trend has become more prevalent since education became a robust enterprise with a diverse service portfolio, including housing, childcare programs, health care and counselling, and better and more varied food at the students’ eateries.⁵⁹ Universities have also increasingly been given the status of enterprises, making them formally more autonomous from the governments, partly in order to meet heightened demands to get resources from external sources—under the ideal of “market-based research funding.”⁶⁰ This leads to paradoxical dynamics: more institutional autonomy means more dependence on (both public and private) external sources. An increased formal freedom means less actual autonomy.⁶¹

This triggers severe criticism from some stakeholders. For example, the 2020 Council of Europe Resolution “expresses concern over the increasing external funding and commodification of higher education, which undermine the idea of higher education as a public good and public responsibility,” because “external financiers’ commercial and political interests may subvert the focus

of research towards increased profits and revenue flows for the companies that sponsor such research.”⁶² The adjacent recommendation holds that higher education institutions must re-invigorate their function defenders of cultural and linguistic heritage.⁶³ The Explanatory Memorandum of the Report on which these documents are built on warns of the risk of financing decisions quelling dissent and that “politically initiated” research and commercial interests jeopardize researchers’ integrity and independence, as well as the validity and reliability of the research results.⁶⁴ While cognizant of the threats coming from illiberal regimes, ironically, the Memorandum actually uncritically calls for increasing “state funding allocated to higher education in order to reduce the risks arising from the involvement of external sponsors.”⁶⁵

Academic Freedom as a Tool for Foreign Infiltration

Academic freedom also has international affairs and security implications. Kinzelbach et al. emphasize how the academic freedom index can help diplomats realize and express concerns over violations of academic freedom, and they also note that it can potentially help provide fast-track visas for at-risk scholars or proactively distribute information on available scholarships for persecuted academics.⁶⁶ Others highlight various concerns regarding academic cooperation with non-democratic regimes. There is a debate over whether cooperation contributes to political and social progress, and if bilateral people-to-people exchanges on education can assert soft power in autocracies. Proponents of disengagement and divestment point to risks of involuntary technology transfer, theft of intellectual property, espionage, and dual-use technology (i.e., research meant for civilian purposes that can also have military applications). Baykal and Benner provide a detailed account of the potential risks that come with non-democracies offering funding opportunities to universities and think tanks in democracies (such as Confucius Institutes, the China–United States Exchange Foundation, the pro-Kremlin Dialogue of Civilizations Research Institute, or the German–Russian Forum).⁶⁷ They also discuss the risks of funding being partly channeled through state-owned or nominally private companies.⁶⁸ Along with university exchange programs used for “educational diplomacy,” these institutions and projects are thus instrumentalized to popularize or legitimize autocratic narratives. Baykal and Benner highlight that several national university systems (especially in the United Kingdom, Australia, and the United States) increasingly depend on fees paid by students from non-democracies.⁶⁹ Freedom House showed how leading universities in the West accept hundreds of millions of dollars of sponsorship

from authoritarian regimes to establish research centers and other kinds of partnerships.⁷⁰ This all creates channels of influence from non-democracies into open societies, while at home, non-democracies tighten the screws on foreign NGOs, foundations, think tanks, and universities by limiting their ability to run their own programs.

Influence can also easily transform to dependence. Baykal and Benner emphasize how in Germany, China is the top country of origin for international students (42,676 out of all 394,665 students in the 2018–19 semester came from China), closely followed by Turkey (39,634 students). Russia ranked fifth with 13,968 students, and Chinese students are also the biggest foreign student group in the EU, making up a share of 11.2 percent (or 1.71 million students) in 2017. In Australia, Chinese students accounted for 38.3 percent (or 152,591 students) of all students in 2018. This is particularly important in tuition-based systems: in 2017, Chinese students' tuition made up between 13 and 23 percent of the total revenue of seven key Australian universities, which "become increasingly concerned with not irritating official China." Moreover, the United States, United Kingdom, France, and Australia (along with Russia) are the biggest exporters of branch campuses, primarily to China and the United Arab Emirates.⁷¹ Needless to say, the state of academic freedom at branch campuses is a source of concern.

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Dependence risks are not necessarily limited to funding: many research institutes resist disengaging from cooperation with partners in non-democracies, because there can be circumstances in which research requires specific natural or demographic conditions that are only present in few countries. This makes replication outside of these contexts almost impossible.⁷² Thus, dependence often brings about self-censorship, and its effects are not limited to students coming from non-democracies. It is also prevalent for regional scholars who cannot risk declined visa applications to do field work.⁷³ Thorsten Benner in the *Washington Post* called for Harvard, MIT, Georgetown, and other top universities and think tanks to "take the democracy pledge," as their work "is premised on independence, integrity and the search for truth."⁷⁴

A firm stance to divest of and sanction authoritarianism may prove efficient in the field of natural sciences, especially if a nuanced and flexible operational method is applied (as the large stock of "business and human rights" experience teaches us) to use financial rigor in scrutinizing corporate and state practices. For an analogy, consider how recent developments in the EU attempt to link rule of law to budget fund access.⁷⁵ However, in the humanities and social sciences, fellowships, short-term exchange, and academic visitor programs, collaborative

grants provide the moral and intellectual inspiration for scholars to carry on and sustain independent scholarship. Furthermore, high-ranking journal publications and participation in international networking will provide a certain degree of protection for academics, as most illiberal autocracies still wish to be part of the global academic market, where impact factor and Q1 publications (the globalized standards for scholarly excellence) are a sought-after currency.

ACADEMIC FREEDOM AND SOCIAL JUSTICE DEBATES

Academic freedom is intrinsically implicated in current debates regarding social justice and the “culture war” in the field of humanities and social sciences. Here, debates often turn into career-threatening battles between camps with those deemed woke social justice warriors for grievance studies engaged in research on one side and privileged paternalistic conservatives who endorse backlashes against identity politics on the other. In this world, the population of tenured professors is dwindling, and even those left are threatened by new forms of self-censorship, avoiding at all costs being accused of cultural appropriation. Avoiding classroom friction with unpopular opinions is an existential necessity for adjuncts, instructors, and part-time faculty with renewable contracts who make up a majority of teaching staff.⁷⁶

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The occasional controversial use, or even as some argue, abuse, of harassment procedures in the *#MeToo* era is a serious source of concern, even if it should be seen as a necessary side effect of the long-needed shift in how gender equality, gender roles, and the contours of social interaction have changed in Western societies.⁷⁷ The aforementioned UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel highlights the obligation to respect the academic freedom of other members of the academic community and to ensure the fair discussion of contrary views.⁷⁸ Nevertheless, the aforementioned Report behind the 2020 Council of Europe resolution states that according to an EU-wide study, 21 percent of respondents practiced self-censorship and 15.5 percent reported being bullied by other academic staff.⁷⁹

Distant learning and enhanced digitalization induced by the coronavirus raises the threat level. As Michael Poliakoff, President of the American Council of Trustees and Alumni, argues, “Many college campuses today operate Orwellian ‘bias response teams,’ whereby students can report peers or professors to the college administration for ‘offensive’ statements, loosely defined... Now that nearly all college courses have gone online... students and professors alike need concrete, credible guarantees that the virtual classroom does not become

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like Twitter, where a (decontextualized) statement can go viral, ruin one's career, and exist on a permanent record."⁸⁰

CONCLUDING REMARKS

The American Association of University Professors provides a thorough list of what does and does not fall under the scope of academic freedom. For example, academic freedom means that both faculty members and students can engage in intellectual debate without fear of censorship or retaliation; it includes a faculty member's right to remain true to their pedagogical philosophy and intellectual commitments. It preserves the intellectual integrity of the educational system and thus serves the public good. It gives both students and faculty the right to express their views—in speech, writing, and through electronic communication, both on and off campus—without fear of sanction, unless the manner of expression substantially impairs the rights of others or, in the case of faculty members, those views demonstrate that they are professionally ignorant, incompetent, or dishonest with regard to their discipline or fields of expertise.⁸¹

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Academic freedom also means that the political, religious, or philosophical beliefs of politicians, administrators, and members of the public cannot be imposed on students or faculty at universities, notwithstanding efforts by corporate or government sponsors to block dissemination of any research findings. Academic freedom gives faculty members and students the right to seek redress or request a hearing if they believe their rights have been violated and gives faculty members and students the right to challenge one another's views, but not to penalize one another for holding them. Academic freedom protects a faculty member's authority to assign grades to students, so long as the grades are not capricious or unjustly punitive.

Academic freedom, on the other hand, does not mean a faculty member can harass, threaten, intimidate, ridicule, or impose his or her views on students. Neither does academic freedom (or tenure) protect an incompetent teacher from losing their job or protect faculty members from colleague or student challenges to or disagreement with their educational philosophy and practices. However, defining academic freedom, especially with an eye toward designing monitoring mechanisms and effective remedies, raises considerable difficulty, as the conceptual tools, operationalizing mechanisms, monitoring methods, and benchmarking schemes used when discussing this concept are ambiguous and debated.

There is also a substantial difference between social sciences, humanities,

and natural sciences in terms of challenges and infringements. As the aforementioned report to the 2020 Council of Europe Resolution points out, the social sciences are under stricter control by the state, while natural sciences are more easily exposed to the influence of corporate money.⁸² The report also emphasizes the importance of assessing the integrity of the academic community as a whole, stating, “It would be dangerous to excuse or relativize the infringements on some subjects by the freedom of others.”⁸³ Defining the limits of academic freedom also poses the question of who is more trustworthy: the state (known to be potentially susceptible to illiberalism) or the corporate sector. Meaningful domestic and international instruments and legislation should need to reflect on both sources of threats to academic freedom that can weaken and jeopardize the mission of academia and science. In the case of solid or emerging authoritarian regimes, the focus should clearly be on the state, especially since these governments can then be masqueraded as corporate or private stakeholders in other states.

Several important issues remain outside the scope of this analysis. For


example, questions of privacy and surveillance have only been addressed tangentially. As closing thoughts, one can infer that political censorship and other forms of restrictions on academic

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freedom disproportionately target academics living in geographic, political, and socioeconomic peripheries, most of which are already burdened by linguistic barriers. This further accelerates the widening of the gap between East and West, North and South, along with the center and periphery, and it has a devastating effect on national, local, and regional academia and science. Also, chilling academic freedom primarily focuses on local (language) projects: academic events and publications. Furthermore, traditional patterns of marginalization also curtail academic freedom by merely limiting access to academic resources and recognition, and thereby structurally disfavoring and inhibiting identifiable groups within the academic community.⁸⁴ For example, as Gráinne de Búrca, Michaela Hailbronner, and Marcela Prieto Rudolph point out, women face sexual harassment, abuse, and even rape, as well as less visible but pervasive forms of gender discrimination. “These range from implicit bias in hiring and promotion to the gender pay gap to gendered expectations and judgments in mentorship and teaching evaluations to the fact that women bear a disproport-

tionate burden of the administrative work within universities, as well as of the domestic work at home.”⁸⁵

Thus, we can conclude that just as academic freedom should be factored into conceptualizing academic excellence, academic freedom itself must be conceptualized to include an awareness of social, gender, and racial injustice within its workings.

The article showed how the various ways of instrumentalization (both domestically and globally) and the curtailment of academic freedom can be a tool for agents of illiberalism. On the other hand, there are some remedies in sight: codifying academic freedom as an autonomous freedom under domestic and international law and incorporating academic ranking. 

NOTES

1. Sections of this text are part of a piece prepared in preparation for this article: András L. Pap, “Piecemeal Devourment: Academic Freedom in Hungary,” *UIC John Marshall Law Review*, January 5, 2021, <https://lawreview.jmls.uic.edu/piecemeal-devourment-academic-freedom-in-hungary/>.

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3. Gábor Halmai, “The End of Academic Freedom in Hungary,” *Hypothesis: Academic Blogs*, October 21, 2019, <https://ds.hypotheses.org/6368>.

4. Iván Bajomi et. al., *Hungary Turns Its Back on Europe: Dismantling Culture, Education, Science and the Media in Hungary 2010–2019* (Budapest: Oktatói Hálózat Hungarian Network Of Academics, 2020), 45–46.

5. Ábrahám Vass, “Science Academy President ‘Shocked’ After Ministry Unilaterally Modifies Basic Research Scholarship Results,” *Hungary Today*, September 8, 2020, <https://hungarytoday.hu/mta-science-academy-shock-ministry-palkovics-freund-basic-research/>.

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12. Sarkadi-Illyés Csaba, “Itt tartunk: beleszámít az egyetemi zh-ba, ha a diákok elmennek a fideszes polgármester előadására,” *Alfahír*, April 16, 2019, alfahir.hu/2019/04/16/borkai_zsolt_fidesz_oktatas_jobbik_varga_roland_egyetem.

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15. Zsolt Körtvélyesi, “Fear and (Self-)Censorship in Academia,” *VerfBlog*, September 16, 2020, verfassungsblog.de/fear-and-self-censorship-in-academia/.

16. Bajomi et al., *Hungary Turns*, 22–23; See: Tamas D. Ziegler, *Academic Freedom in the European Union: Why the Single European Market is a Bad Reference Point*, MPIL Research Paper, no. 2019–03 (Max Planck Institute for Comparative Public Law & International Law, 2019), 12. See: Christopher Adam, “Hungarian Academic of Sciences rejects conference proposals on political grounds,” *Hungarian Free Press*, October 2, 2018, <https://hungarianfreepress.com/2018/10/02/hungarian-academy-of-sciences-rejects-conference-proposals-on-political-grounds/>; Ziegler, *Academic Freedom*.

17. Bajomi et al., *Hungary Turns*, 7; Ziegler, *Academic Freedom*, 4–33.

18. Bajomi et al., *Hungary Turns*, 30–31, 41; Ziegler, *Academic Freedom*, 11.

19. Bajomi, *Hungary Turns*, 30–31.

20. European Commission v. Hungary, C-66/18 (2020) European Commission v Hungary, available from https://curia.europa.eu/jcms/jcms/j_6/en/; See: Michael Ignatieff, “Academic Freedom and the Future of Europe,” Centre for Global Higher Education Working Paper, no. 40 (2018): 6; See: Halmai, “The End”; Bajomi et al., *Hungary Turns*, 43; Comm. on C.L., *supra* note 1; Lilla Farkas, “The EU, Segregation and Rule of Law Resilience in Hungary,” *VerfBlog*, March 8, 2020, verfassungsblog.de/the-eu-segregation-and-rule-of-law-resilience-in-hungary/.

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23. See: Tímea Drinóczi, “Loyalty, Opportunism and Fear: The forced privatization of Hungarian universities,” *VerfBlog*, February 5, 2021, <https://verfassungsblog.de/loyalty-opportunism-and-fear/>; See: “Államilag elismert felsőoktatási intézmények,” Oktatási Hivatal, https://www.oktatas.hu/felsooktatas/kozerdeku_adatok/felsooktatasi_adatok_kozzetetele/felsooktatasi_intezmenyek/allamilag_elismert_felsookt_int; “Felsőoktatási Információs Rendszer Törzsadatok”, Felsőoktatási Információs Rendszer (FIR), <https://firgraf.oh.gov.hu/prg/int.php>; “Újabb két egyetem lehet alapítványi fenntartású,” *HVG*, February 11, 2021, https://hvg.hu/itthon/20210211_modellvaltas_alapitvanyi_fenntartas_bge; “Egy ITM-es prezentáció alapján nem választható lehetőség a további egyetemek magánosítása,” *HVG*, January 17, 2021, https://hvg.hu/gazdasag/20210117_Ujabb_egyetemen_vezetik_be_a_Corvinusmodellt; Bence Bogatin, “A szakszervezetek tiltakoznak a tanítóképzők többségének egyházi kézbe adása ellen,” *Mérce.hu*, December 1, 2020, <https://merce.hu/2020/12/01/a-szakszervezetek-tiltakoznak-a-tanitokepzok-tobbsegenek-egyhazi-kezbe-adasa-ellen/>; “Modellt vált a Testnevelési Egyetem is,” *HVG*, March 22, 2021,

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28. The author has personal experiences in this: over a half-dozen reviewers refused to formally review an article written by a government-friendly constitutional court judge, while off-the-record advising to reject it.

29. Tímea Drinóczi, “Loyalty, Opportunism and Fear: The forced privatization of Hungarian universities,” *VerfBlog*, February 5, 2021, <https://verfassungsblog.de/loyalty-opportunism-and-fear/>.

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31. Ibid.

32. Ibid.

33. Kim Lane Scheppele, “The Rule of Law and the Frankenstate: Why Governance Checklists Do Not

Work,” *Governance* 26, no. 4 (2013): 559–62.

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35. This also partially applies to soft law instruments, special procedures, and advisory bodies like the European Commission for Democracy through Law (Venice Commission) or UN or Council of or Europe committees, commissioners, rapporteurs, etc.

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38. *Ibid.*

39. Benjamin Novak, “Pushed From Hungary, University Created by Soros Shifts to Vienna,” *New York Times*, November 15, 2019.

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42. The report, in Paragraph 75, highlights that of EU member states, Hungary fares the lowest and ranks at the very bottom of the global list involving 144 countries. In comparison, Russia ranks 113th, and Turkey and Azerbaijan 137th.

43. Text adopted by the Standing Committee, acting on behalf of the Assembly, Resolution, Report of the Committee on Culture, Science, Education and Media, rapporteur: Koloman Brenner, Resolution 2352 on “Threats to academic Council of freedom and autonomy of higher education institutions in Europe,” *Council of Europe Parliamentary Assembly*, November 2020. Report Doc. 15167, Paragraph 7.

44. “Threats to academic freedom and autonomy of higher education institutions in Europe” Report 15167, Paragraph 11, Committee on Culture, Science, Education and Media, Parliamentary Assembly, October 16, 2020. See: Janika Spannagel, Katrin Kinzelbach, and Ilyas Saliba, *The Academic Freedom Index and Other New Indicators Relating to Academic Space: An Introduction*, Users Working Paper SERIES 2020:26 (Gothenburg: The Varieties of Democracy Institute, University of Gothenburg, March 2020).

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46. For example, see: “The Recommendation concerning the Status of Higher-Education Teaching Personnel”, Para 19 and 22, UNESCO, adopted on November 11, 1997

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49. Resolution 2352 on “Threats to academic Council of freedom and autonomy of higher education institutions in Europe,” *Council of Europe Parliamentary Assembly*, November 2020.

50. *Ibid.*, Paragraph 3.

51. “Threats to academic freedom and autonomy of higher education institutions in Europe” Report 15167, Committee on Culture, Science, Education and Media, Parliamentary Assembly, October 16, 2020, Paragraph 8.

52. *Ibid.*, Paragraph 15.

53. *Ibid.*, Paragraphs 55–56.

54. Josef Jařab Rapporteur’s Report to the Council of Europe Parliamentary Assembly Committee on Culture, Science and Education for the Academic freedom and university autonomy, “Recommendation 1762 on Academic freedom and university autonomy,” Parliamentary Assembly (2006), Paragraphs 11–12.

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60. *Ibid.*
61. *Ibid.*
62. “Threats to academic freedom and autonomy of higher education institutions in Europe,” Report 15167, Paragraph 6, Committee on Culture, Science, Education and Media, Parliamentary Assembly, October 16, 2020.
63. Rec. 2189, November 20, 2020, Paragraph 1.
64. “Explanatory memorandum by Mr. Koloman Brenner, rapporteur, Threats to academic freedom and autonomy of higher education institutions in Europe” Report 15167, Paragraphs 2, 30 and 46, Committee on Culture, Science, Education and Media, Parliamentary Assembly, October 16, 2020.
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66. Katrin Kinzelbach et al., *Free Universities*.
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