

Business and human rights, free speech, surveillance, and illiberalism: Contextualizing academic freedom as a constitutional right and an emerging freedom under international law

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ABSTRACT

With special focus on free speech, as well as on classroom surveillance (proliferating in the Covid-pandemic digital learning environment), the paper aims to identify contextual dimensions for academic freedom as a matured legal concept – and one to be assessed via a business and human rights approach, due to its peculiar position between the public and private spheres. The project is triggered by the fact that despite its widespread usage in international documents and domestic constitutions, academic freedom remains underdeveloped in terms of conceptual tools, operationalizing mechanisms, monitoring methods and benchmarking schemes. There are also competing notions on how to best conceptualize it: as an individual right, a set of requirements for autonomous institutional design, a field to be regulated for market service providers or public commodities, a tool for international policy making, or academic ranking – not to mention the challenge of how to incorporate challenges brought by social justice movements. These considerations all require different policy tools and adjacent legal targeting.

KEYWORDS

academic freedom, business and human rights, speech, surveillance

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1. INTRODUCTION: CONTENTS AND CONTEXT

With special focus on free speech, as well as on classroom surveillance (proliferating in the Covid-pandemic digital learning environment), this paper aims to identify contextual dimensions that are relevant and can be useful in conceptualizing academic freedom: an emerging freedom (apparently on track for codification as a binding instrument) under international law and a habitually appearing constitutional provision. A Parliamentary Assembly Resolution¹ on ‘threats to academic freedom and autonomy of higher education institutions in Europe’ adopted in November 2020 by the Council of Europe (CoE), for example, calls for the adoption of a ‘European Convention on the Protection of Academic Freedom and Institutional Autonomy’.² The report supporting the resolution³ points out that, for example, in the majority of (CoE) member states, some form of constitutional or legal protection for academic freedom is provided. Besides 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 set forth protection for institutional autonomy. Among other CoE member States, five provide protection for teaching and for autonomy, and four for academic freedom generically. Yet, as will see, despite the general feature of legal codification to effortlessly define complex and complicated concepts (such as for example the ‘beginning or ending of life’ in the context of abortion or inheritance law), academic freedom remains quite ambiguous and underdeveloped in terms of conceptual tools, operationalizing mechanisms, monitoring methods and benchmarking schemes. There are competing notions on how to best conceptualize academic freedom: an individual right (of faculty and staff, and/or students); a set of requirements for autonomous institutional design; a field to be regulated for market service providers, or public commodities; or a benchmarking tool for international policy making or academic ranking – not to mention the challenge of how to incorporate the ‘Zeitgeist’ of social justice movements. The project set forth in the paper is thus triggered by the fact that all these considerations may require and call for different policy tools and adjacent legal targeting. Hence the substance of a *sui generis* freedom (under international and constitutional law) is yet to be developed and nuanced.

An important feature of academic freedom is that it is situated within the Scylla and Charybdis of neoliberalism and illiberalism, as analysts and stakeholders are wary of not only the encroachment of illiberal governments, but also the marketization of the higher educational and research sector. As the aforementioned Coe Report holds,⁴ in the ‘rise of the neo-liberal global knowledge economy, ... higher education is ... a monetised private good (where) [...] the university is more concerned with maximising cash, than delivering learning.’ The question

¹Council of Europe Parliamentary Assembly Res. 2352 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe.

²Also see the 2018 European Parliament recommendation to the Council, the Commission and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy on Defence of academic freedom in the EU’s external action (2018/2117(INI)) calling for the support of ongoing normative efforts at regional and international level.

³Council of Europe Parliamentary Assembly Report 15167 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe, Rapporteur: Brenner Koloman, Paras 55–56.

⁴Council of Europe Parliamentary Assembly Report 15167 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe, Rapporteur: Brenner Koloman, Paras 42–44.



(which cannot be answered in general terms) is then: who, in general terms, is more trustworthy: the state or the corporate sector? The Hungarian case shows that (neo)liberal and illiberal threats can even be combined and cumulative.

The paper connects and triangulates three concepts and issues: free speech, surveillance, and academic freedom. The latter is at the center of scrutiny and the former two will be eminent points of reference. Academic freedom is often conceptualized as complementary to free speech.⁵ This assessment argues for a different understanding of the term, approaching it as a *sui generis*, emerging right under international law, while recognizing that the content of academic freedom is intrinsically related to teachers' and students' freedom of expression. When assessing conceptual and practical dimensions of academic freedom, the habitual approach taken is to overview potential fora and dimensions for restrictions and infiltrations. As will be shown, surveillance becomes a cross-cutting feature here, whether it concerns efforts to control students or faculty by autocracies (as well as to monitor and profile potential infiltration by them), or to scrutinize politically sensitive academic content and speech. Besides such direct effects, recent developments bringing the proliferation of surveillance technologies in the Covid-era to monitor medical status, and crowd density, or contact tracing, as well as redefining the form of (online and video-based) teaching and examination have exacerbated the shrinking of academic freedom and free speech on campus. It will be shown that free speech will have different implications for faculty and students, and the two may even be in contradiction when students' endeavors to challenge dominant doctrines, or demands for a safe and socially just campus actually call for censorship or a purging cancel culture. Yet, both (and in particular finding the delicate balance between the two) are essential elements of academic freedom. Even if the assessment aims to be a predominantly legal one, discussions on academic freedom need to be interdisciplinary and cannot avoid being philosophical in the sense that the very essence of academia, the role of higher education and research (be it humanities, life- or social sciences) needs to be conceptualized, or at least circumscribed. For example, free speech calls for a special and specific understanding in the context of an academic campus (where its limits and boundaries may be different from those of the outside world): it is the very mission of universities to provide a forum for students to explore and exercise their political identities, inter alia in the form of organizing protests.⁶ On the other hand, the right of academic employees to free speech in matters pertaining to their work obviously need to be much broader in certain areas than in other professions. The very nature of education and research as a public service and the contribution of academics to the public good in this capacity thus requires different standards (even if most academics are not public intellectuals or media celebrities.) Although there is an obvious difference between how academic freedom (and its demon) surfaces in social sciences,

⁵Simpson (2020) 287. The U.S. Supreme Court has repeatedly held that academic freedom is a First Amendment right of university teachers. See, e.g., *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214 (1985). See the [American Association of University Professors \(n.d.\)](#). Whether or not academic freedom is part of freedom of expression is a source of considerable debate. See for example [Sultana \(2018\)](#), [Scott \(2017\)](#).

⁶As a former general secretary of the AAUP argues 'Student freedom is a traditional accompaniment to faculty freedom as an element of academic freedom in the larger sense.'[\(Reichman 2015\)](#)



humanities and natural sciences, it is also important to try to use, as this paper does, an all-encompassing concept of freedom and its threats.⁷

The paper is written from a ‘business and human rights’ (BHR) perspective: a distinct field of practice and study at the intersection of business, law and public policy, which has emerged over the past twenty-five years. It is simultaneously a practical movement for seeking justice for victims of human rights abuse, corporate accountability for human rights violations, and the adoption of human rights-protective business practices; as well as an academic subject addressing the responsibilities of business and the means to achieve the movement’s ends.

The BHR-movement has been in existence since the late 1970s, focusing on the human rights impacts of businesses (mostly transnational companies) in their global operations. A number of key, non-binding documents guide the field: the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises focus on fair investment activities, the Global Compact, initiated by UN Secretary General Kofi Annan at the Davos World Economic Forum in January 1999, broadened the focus and paved the way for the 2011 Guiding Principles on Business and Human Rights. This document sets forth a three-pillar set of commitments to Protect, Respect and Remedy. Pillar I is the state duty to protect against human rights abuses by third parties, including business; Pillar II is the corporate responsibility to respect human rights; and Pillar III calls for states and the private sector to provide victims with access to effective judicial and non-judicial remedies.⁸ Sections on the entanglement of corporate interests with academic freedom as funders of research and operators of higher educational institutions, as well as clients of the surveillance industry, accentuate the relevance of the link between BHR and academic freedom.⁹

For a final note on methodology and scope: due to spatial limitations, a number of important issues, for example the nature of academic freedom, will need to remain outside the scope of the analysis. As noted above, its main ambition is to highlight the most relevant contextual dimensions for understanding what academic freedom is.

2. STATE OF THE ART: ACADEMIC FREEDOM AND THE LAW (AND POLICY)

Even though academic freedom is already part of the human rights/constitutional freedoms canon, its contours are mostly vague and it is often intertwined with freedom of expression, or the right to education. We may also sporadically find declarations pertaining to the autonomy of certain institutions, although the term is rarely defined thoroughly and there is no agreed version of its common understanding. (For example, the European University Association distinguishes between organizational, financial, staffing, and academic autonomy.)¹⁰

As for binding international commitments (hard law): the EU Charter of Fundamental Rights¹¹ Article 13 sets forth that ‘The arts and scientific research shall be free of constraint.

⁷Parts of this paper have been published in Pap (2021a, 2021b).

⁸See for example Ramasastry (2015), Ruggie (2008) 189.

⁹For general discussions see, for example, Ewing (2016), Ruggie (2013), Ruggie (2011), Chronowski (2022).

¹⁰For example, see Orosz (2018).

¹¹The Charter was incorporated into the 2008 EU Revision Treaty.



Academic freedom shall be respected.’ Article 13 and 15 of the International Covenant on Economic, Social and Cultural Rights of 1966, respectively hold that the States Parties to the present Covenant ‘recognize the right of everyone to education’ and ‘undertake to respect the freedom indispensable for scientific research and creative activity.’ The treaty has 170 state parties, and the UN Committee on Economic, Social and Cultural Rights is preparing a general comment on Article 15, that is likely to elaborate on states’ specific obligations under this article. In a previous general comment on the right to education (Article 13), it already stipulated educational staff and students’ entitlement to academic freedom and the autonomy of higher education institutions. It states:

Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, must be consistent with systems of public accountability, especially in respect of funding provided by the State ... institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible ... [m]embers of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction.¹²

The right to education is also guaranteed by Article 2 of Protocol No. 1 to the European Convention on Human Rights (ECHR), but academic freedom is not explicitly provided for. However, the European Court of Human Rights has on several occasions brought matters related to academic freedom within the ambit of the European Convention, mostly under Article 10, which guarantees the right to freedom of expression.¹³

In its recent decision on the CEU-case, the European Court of Justice, while declaring that depriving universities of the autonomous organizational structure violates the EU Charter of Fundamental Rights, built its judgment that Hungary’s action constituted a violation of the General Agreement on Trade in Services (GATS) by failing to provide national treatment to the CEU.¹⁴

Also, there are numerous soft law documents. Probably the most comprehensive is the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel,¹⁵

¹²See [Spannagel, Kinzelbach and Saliba \(2020\)](#); also see European Commission for Democracy Through Law (Venice Commission) Hungary Preliminary Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education, Opinion 891/2017 CDL-PI(2017)005, Strasbourg, 11 August 2017 (Venice Commission on Lex CEU) Para 39.

¹³See the Venice Commission Report referring to *Hertel v. Switzerland*, Application no. 25181/94, 25 August 1998; *Wille v. Liechtenstein* Application no. 28396/95, 28 October 1999; *Stambuk v. Germany*, Application no. 37928/97, 17 October 2002; *Lombardi Vallauri v. Italy*, Application no. 39128/05, 20 October 2009; *Sorguç v. Turkey*, Application No. 17089/03, 23 June 2009; *Sapan v Turkey*, Application no. 44102/04, 6 July 2010; *Mustafa Erdoğan v. Turkey* (Applications nos. 346/04 and 39779/04), 27 May 2014.

¹⁴European Commission v Hungary Case C-286/12. See [Nagy \(2020\)](#), or [Nagy \(2021\)](#), [Chronowski and Vincze \(2021\)](#).

¹⁵Adopted on 11 November 1997.



which provides guidelines on a broad terrain of academic life, including ethics, peer review, and intellectual property, and declares¹⁶ that Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source, and Member States and higher education institutions should be accountable for effective support for academic freedom and fundamental human rights.¹⁷ UNESCO also issued a Recommendation on Science and Scientific Researchers (last updated in 2017), and is engaged in the process of designing a new reporting mechanism, intended to feed into the Universal Periodical Review (UPR) process at the UN Human Rights Council.¹⁸ The EU¹⁹ and the Council of Europe²⁰ have numerous declarations and non-binding instruments.

There are also numerous initiatives by professional networks (and all produce countless commitments and declarations to academic freedom). For example, the Association of University Professors (AAUP, active since 1915), the World University Service (active since 1920), the International Association of Universities (an NGO set up in 1950 at the initiative of UNESCO, operating since 1950, currently with representatives from 130 countries), the Council for Development of Social Science Research in Africa (CODESRIA, founded in 1973), and the International Consortium for Higher Education, Civic Responsibility, and Democracy (active since 1999) etc.

Specifically in Europe, in 1955, under the chairmanship of the Duke of Edinburgh, more than a hundred university leaders from 15 European countries convened in Cambridge, setting up the Standing Conference of the Rectors, Presidents and Vice-Chancellors of European universities. In 1960, the Council of Europe created a Committee for Higher Education and Research (CHER) that brought together university and political leaders. In 1988, at the 900th anniversary of the University of Bologna, 388 rectors and heads of universities from all over Europe and beyond signed the Magna Charta Universitatum, which defined the key philosophical concepts of a university as academic freedom and institutional autonomy, and in 1999, via the so called Bologna Declaration, 29 countries expressed their willingness to commit to enhance the competitiveness of the European Higher Education Area (EHEA), emphasizing the need to further the independence and autonomy of all higher education institutions. Adjacent to this, in 2000, the Observatory of Fundamental University Values and Rights was signed, and in 2003 the

¹⁶UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, Para 19 and 22.

¹⁷Under paras 27–28 it sets forth: ‘Higher-education teaching personnel are entitled to the maintaining of academic freedom... the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies. All higher-education teaching personnel should have the right to fulfil their functions without ... fear of repression by the state or any other source. ...Higher-education teaching personnel should not be forced to instruct against their own best knowledge and conscience or be forced to use curricula and methods contrary to national and international human rights standards.’

¹⁸See Kinzelbach et al. (2020).

¹⁹See for example the above mentioned 2018/2117(INI) recommendation.

²⁰See for example Parliamentary Assembly Recommendation 1762 (2006) on Academic freedom and university autonomy, Recommendation Rec(2007)6 of the Committee of Ministers to member states on the public responsibility for higher education and research, Recommendation CM/Rec(2012)7 of the Committee of Ministers to member States on the responsibility of public authorities for academic freedom and institutional autonomy.



Council of Europe European Cultural Convention (which does not mention academic freedom) became the framework of the Bologna Process, which was thus enlarged geographically.

As for the substance of the numerous commitments, most international documents include declarations of an essential and inherent link between democracy and academic freedom. The aforementioned 2020 CoE Resolution points out that ‘academic freedom and institutional autonomy of higher education institutions are not only crucial for the quality of education and research; they are essential components of democratic societies.’ It notes²¹ that ‘the Covid-19 pandemic has demonstrated to what extent academic freedom helps research and dissemination of reliable information in [a] global sanitary crisis,’ and recalls earlier recommendations stipulating that public authorities have the obligation to protect academic freedom and institutional autonomy, and that they must refrain from any action that would endanger or impinge on them (yet it also points out that in the absence of regularly monitored data and of a legally binding international agreement, the various forms of abuses go on unhindered and unsanctioned). The aforementioned Report behind the resolution points out that – despite being not a privilege but a necessary condition deriving from the right to education, and intimately linked with freedom of thought, freedom of opinion and freedom of expression, for higher education institutions to be able to fulfil their public function²² – academic freedom and institutional autonomy remain largely undefined concepts, and this results in low awareness among academic staff of their rights and hampers the possibility to sanction violations. It also points out that²³ 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.

This points to the question of what the substance of academic freedom is. Academic freedom involves teaching, research, and dissemination, and can be performed at research institutes as well as educational institutions. Reiterating a long list of concepts expressed in international language, the 2020 CoE Report²⁴ identifies the following essential elements: academic freedom is a professional freedom granted to individual academics including the freedom to teach and do research (freely determine what shall be taught; how it shall be taught; who shall be allowed to study; who shall teach; how students’ learning may be assessed and graded and who shall receive academic awards, the right to determine without duress what shall - or shall not - be researched; how it shall be researched; who shall research, with whom and for what purpose research shall be pursued; the methods by which, and avenues through which, research findings shall be disseminated. The supportive elements are: tenure, shared governance and autonomy (both individual and institutional and the latter including academic staff having an equal right to voice their opinions on their institution’s educational policies and priorities without the imposition or threat of punitive action), and academic freedom needs to include the academic

²¹Council of Europe Parliamentary Assembly Res. 2352 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe. Para 3.

²²Council of Europe Parliamentary Assembly Report 15167 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe, Rapporteur: Brenner Koloman. Para 8.

²³Council of Europe Parliamentary Assembly Report 15167 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe, Rapporteur: Brenner Koloman. Para 15.

²⁴Council of Europe Parliamentary Assembly Report 15167 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe, Rapporteur: Brenner Koloman. Paras 17–21 and 27.



freedom of students as well as scholars. As we can see, institutional autonomy and the exercise of particular rights for stakeholders is intertwined here. Taking a slightly more pragmatic approach (and due to spatial constraints, this is where the assessment of the long list of definitions stops in in this paper), the AAUP provides, *inter alia*, the following list of what and what does not fall under the scope of academic freedom:

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, and 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. 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 and universities withstand 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 them 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 on designing monitoring mechanisms and effective remedies raises considerable difficulty, as both the conceptual tools, operationalizing mechanisms, monitoring methods and benchmarking schemes are ambiguous and debated.²⁵

The reason why conceptualizing academic freedom is corollary is because policy making and legislation (be it domestic or international) needs to be tailored to fit requirements, being 'ends to means.' In order, however, to calibrate the boundaries and morphology of academic freedom, several lingering questions needs to be addressed; for example, what is education (and also, science), the core and defying concept(s) to which academic freedom, as a set of operationalizing and mostly procedural guarantees refer to? Is education (and science) a public or private commodity? A global or a national(ist) value?

The aforementioned UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, for example, declares²⁶ that higher education is directed to human development and to the progress of society, and 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. Yet, the Magna Charta Universitatum 2020 stipulates that Universities (which have a civic role and responsibility) 'are part of global, collegial networks of scientific enquiry and scholarship, building on shared bodies of knowledge and contributing to

²⁵See Nelson (2010).

²⁶UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel. Para 10.



their further development [...] immersed in and connected with global developments,' although adding that they 'also are embedded in local cultures and crucially relevant to their future and enrichment [...] (and) engage fully with and assume leading roles in local communities and ecosystems.' The 2020 CoE Resolution²⁷

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 [...] Universities, being icons of intellectual accomplishments of States [...] have a major role in preserving cultural and linguistic heritage.

The adjacent recommendation²⁸ holds that 'Higher education institutions must re-invigorate their function as societal actors for the public good.'

Having shown the state of legal and political commitments towards upholding academic freedom and having sketched the porous contours of its substance, let us now turn to the discussion of some of the contextual dimensions that are central in conceptualizing (and codifying adequate guarantees and monitoring schemes for) academic freedom.

3. CONTEXTUAL DIMENSION I: THREATS TO ACADEMIC FREEDOM BY ILLIBERAL AUTOCRACIES

The first, most obvious dimension of academic freedom refers to the prohibition and protection from infringement of various forms of academic activity from the government – practically, illiberal autocracies, which habitually cement and solidify illiberalism once the capture of constitutional institutions has been accomplished (or sometimes simultaneously). Attacks on academic freedom can target teaching, research, and dissemination, and be aimed at research institutes as well as universities. Governments outlawing or refusing to cooperate with or provide information to non-governmental organizations ('NGOs') and human rights defenders, which are valuable sources for research can also have a chilling effect on academic freedom.

To single out one, the Hungarian case²⁹ provides a vivid example of the multiple ways a government can curtail academic freedom, without jailing or denying exit visas for academics. Limitations on academic freedom in the field of research can take the form of bringing independent public research institutions under a more direct government control,³⁰ reallocating funds to an alternative network of government-dependent and government-friendly research institutes, think-tanks, and GONGO's, or adopting legislation, based on which government agencies can refuse to provide information to NGO's or charge excessive fees for public data requests.³¹

²⁷Council of Europe Parliamentary Assembly Res. 2352 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe. Para 6.

²⁸Council of Europe Parliamentary Assembly Rec. 2189 20/11/2020. Para 1.

²⁹See for example Pap (2021a, 2021b) or Kováts and Rónay (2021).

³⁰See for example Halmai (2019) and Vass (2020).

³¹See for example n.d. (2013).



Intrusions on academic freedom in the field of teaching have even more avenues. University autonomy can be curtailed through legislation reorganizing financial management with government appointed chancellors;³² cutting and divesting certain singled-out programs from state-funded institutions; denying accreditation for certain programs in public universities;³³ denying and withdrawing accreditation for certain, singled out institutions; taking-over the national accreditation board; privatizing public universities to foundations controlled by government cronies;³⁴ nationalizing public education; centralizing and taking control of public education-curricula; distorting the academic labor market by diverting funding to directly government-operated or favored institutions; and of course, firing faculty.

In the field of dissemination and publishing of research findings academic freedom can be curtailed by blatant or very subtle forms of censorship; blocking academic events that would involve blacklisted human rights NGO's or dissident academics; hosting political or propaganda events on university premises (and incentivizing students to attend); launching media campaigns to intimidate critical academics;³⁵ or retaliating against institutions where faculty or students protest the government.

In sum, infringement of academic freedom has many faces: censorship, defunding or banning academic programs, harassment, intimidation, tax raids, existential threats (termination or denial of promotion or simply restricting access to discretionary travel grants and other subsidies), and closing institutions or units. Self-censorship is a natural consequence: it is prudent and logical for university management to only recruit conformists. Thus, academics can face all sorts of external and internal pressures: psychological, existential and institutional. The effect of these pressures can be manifold: harassment and intimidation consume an incredible amount of energy and time, similarly to responding to tax authorities' targeted inquiries. Institutional insecurity (concerning university programs or entire institutions) paralyzes strategic planning, grant applications, and student recruitment. The increased level of stress and fatigue radically diminishes performance, be it research or teaching. Dismantling research centers, academic programs, or institutions causes irreversible harm: these communities are difficult to rebuild, even if the political regime changes abruptly. Also, restrictions on academic freedom disproportionately target junior faculty, as senior academics with tenure, established international networks, potential access to grants, and with non-government based resources are less affected.

As a reaction, recently initiatives have surfaced to incorporate academic freedom in academic ranking, thereby forcing stakeholders to take infringements seriously. The 2020 CoE Resolution points out that 'academic freedom and autonomy are not properly taken into account in any

³²See for example Ziegler (2019).

³³See, for example, Bajomi et al. (2020) 30–31. The institution of consistories, operating with a majority of state-appointed members with prior approval rights even on academic matters such as the university's research and development and innovation strategy is another example. See Rónay (2019). Also see Antonowicz, Rónay and Jaworska (2022).

³⁴See Szirtes (2020).

³⁵See for example Körtvélyesi (2020) and Enyedi (2018). For a Polish case see for example de Búrca, Morijn and Steinbeis (2019).



university rankings today, making some higher educational institutions of countries with the lowest scores of AFI appear to excel,³⁶ and the Assembly

calls upon the relevant stakeholders, including international organisations, national authorities, academic professional associations, universities and funders, to integrate the assessment of academic freedom into their review processes, institutional partnerships as well as ranking and financial support mechanisms.³⁷

The report on which the resolution was based specifically mentions³⁸ a new Academic Freedom Index and global time-series dataset, developed by the Global Public Policy Institute (GPPi), the Friedrich-Alexander-Universität Erlangen-Nürnberg (FAU), the Scholars at Risk Network, and the V-Dem Institute, introduced in March 2020, which is composed of five expert-coded indicators that capture key elements in the *de facto* realisation of academic freedom. (Freedom to research and teach; academic exchange and dissemination; institutional autonomy; campus integrity;³⁹ and freedom of academic and cultural expression.) The index is complemented by additional, factual indicators, assessing States' *de jure* commitments to academic freedom at constitutional and international levels, incorporating events-based data,⁴⁰ self-reporting data, survey data, legal analyses, and expert-coded data. The authors point out that a formal legal analysis is likely to miss the point; in 2019, for example, close to one-third of countries with the worst performances on academic freedom had constitutional protections for academic freedom in place.⁴¹

4. CONTEXTUAL DIMENSION II: THREATS TO ACADEMIC FREEDOM BY CORPORATE INTERESTS

As noted above, academic freedom in policy and political debates often serves as a tool for globalization and supranational integration, as well as an instrument for commercial interests. Over the past few decades higher education - an ancient and resilient formation - has undergone significant changes. As Aberbach et al.⁴² show, as with the administration, academic leadership is also increasingly professionalized and managerially oriented. Students have also transitioned

³⁶Council of Europe Parliamentary Assembly Res. 2352 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe. Para 7.

³⁷Council of Europe Parliamentary Assembly Res. 2352 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe. Para 11.

³⁸Council of Europe Parliamentary Assembly Report 15167 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe, Rapporteur: Brenner Koloman. Para 74.

³⁹Campus integrity means the preservation of an open learning and research environment marked by an absence of a deliberately, externally induced climate of insecurity or intimidation on campus. Examples of infringements of campus integrity are politically motivated (physical or digital) surveillance, the presence of intelligence or security forces or student militias, and attacks by third parties to repress academic life. See Kinzelbach et al. (2020).

⁴⁰Events-based data on attacks against academics and students have been collected by Scholars at Risk's Academic Freedom Monitoring Project since 2013., Kinzelbach et al. (2020).

⁴¹Kinzelbach et al. (2020).

⁴²Aberbach and Christensen (2018).



from subordinates to valuable costumers in a global market, who can always ‘take their business elsewhere.’ This is especially true since education became a robust enterprise with a diverse service portfolio, including housing, child care programs, health care and counselling, and better and more varied food at students’ canteens. Research activities are also no longer related to the activities of single professors, but are collective efforts where the administration plays a role in providing information and support for academic staff applying for research grants, reporting, and publicizing research results. Hence, universities have increasingly been given the status of enterprises, making them formally more autonomous from governments, partly in order to be more competitive on a global education market, and partly, in line with heightened demands from government under the ideal of ‘market-based research funding’, to obtain resources from external sources - both public and private. This leads to paradoxical dynamics: more institutional autonomy means more dependence on external sources. Increased formal freedom can mean less actual autonomy.⁴³

The Explanatory Memorandum of the Report (assembled by a rapporteur from the Hungarian far-right party Jobbik) on which the 2020 CoE documents mentioned above are built on, warns⁴⁴ of the ‘risk of financing decisions being used as a tool to quell dissenting voices’, and while it admits⁴⁵ that ‘external funding helps to boost research capacity and provides [...] institutions with the opportunity to perform larger and more complex research assignments,’ it also claims that ‘politically’ initiated research and commercial interests risks prioritizing research satisfying the financier’s needs and jeopardizes researchers’ integrity, and the independence, validity and reliability of the research results. It actually calls for increasing ‘[s]tate funding allocated to higher education in order to reduce the risks arising from the involvement of external sponsors.’ The Report holds that

The General Agreement on Trade in Services (GATS) has the possibility of “undermining local universities and colleges by creating provisions for foreign supply that do not meet local needs”, (and) the system could ... be overwhelmed and undermined by progressive liberalization and an influx of foreign providers.⁴⁶

5. CONTEXTUAL DIMENSION III: THREATS TO ACADEMIC FREEDOM BY ROGUE INFILTRATION

Academic freedom also has an international affairs/security dimension. Kinzelbach et al.⁴⁷ emphasize (2020) how the academic freedom index can help diplomats to express concerns over violations, or even provide fast-track visas for at-risk scholars or proactively distribute

⁴³Aberbach and Christensen (2018). For a complex analysis see Rónay and Niemczyk (2022) pp. 493–496.

⁴⁴Council of Europe Parliamentary Assembly Report 15167 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe, Rapporteur: Brenner Koloman. Para 2.

⁴⁵Council of Europe Parliamentary Assembly Report 15167 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe, Rapporteur: Brenner Koloman. Para 30.

⁴⁶For more, see Niemczyk and Rónay (2022).

⁴⁷Niemczyk and Rónay (2022).



information on available scholarships for persecuted academics. Others highlight various concerns that academic cooperation with non-democratic regimes can raise. There are two approaches: subscribing to the ‘change by exchange-ideal’, based on the assumption that ‘cooperation contributes to political and social progress’ and that bilateral people-to-people exchanges on education will assert soft power in autocracies. The other argument calls for disengagement and divestment, because democratic change through engagement has not worked as expected, and cooperation even comes with risks, such as involuntary technology transfer, theft of intellectual property, espionage, dual-use technology (meaning research meant for civilian purposes which can also have military applications). Baykal and Benner⁴⁸ 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), funded chairs or project funding partly channeled through state-owned or nominally private companies, as well as individual scholars from democracies (such as lucrative visiting scholar positions at research institutions in non-democracies). Along university exchange programs used for ‘educational diplomacy’, these institutions and projects are thus instrumentalized to popularize or legitimize autocratic narratives. Baykal and Benner⁴⁹ highlight that several national university systems (especially in the UK, Australia and the US) increasingly depend on fees paid by students from non-democracies. 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 and even local collaborators of a Western project may be exposed to danger of government repression. Baykal and Benner argue that large funding funneled into think tanks such as the Atlantic Council from China, Turkey and Russia are aimed at shaping foreign policy debates. Citing a Freedom House inquiry, they point to leading universities in the West accepting sponsorship from authoritarian regimes amounting to hundreds of millions of dollars to establish research centers and other kinds of partnerships.

Influence can also easily be transform into dependence. Baykal and Benner emphasize how in Germany, China is the number one country of origin for international students (42,676 out of all 394,665 students in the 2018/2019 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.’ Also⁵⁰ the US, UK, France and Australia (alongside Russia) are the biggest exporters of branch campuses, first of all to China and the UAE; needless to say, the state of academic freedom at branch campuses is a source of concern.

⁴⁸Baykal and Benner (2020).

⁴⁹Baykal and Benner (2020).

⁵⁰Baykal and Benner (2020).



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 where research requires specific natural or demographic conditions that are only present in few countries, making replication outside of these contexts almost impossible.⁵¹ Thus, dependence often brings about self-censorship. This not only affects students coming from non-democracies. For example, the Chinese Students and Scholars Association, partly by providing funding, is reported to make sure students maintain close ties with Chinese embassies and seeks to influence on-campus debates.⁵² Self-censorship is also prevalent for regional scholars who cannot risk declined visa applications to do field work.⁵³ Thorsten Benner in the *Washington Post*⁵⁴ directly addressed 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 and they ‘stand for everything authoritarians despise: open debate, independent.’ For guidance, Human Rights Watch published a [Code of Conduct for Colleges, Universities, and Academic Institutions Worldwide](#).⁵⁵

It needs to be added that the suspicion works both ways: the University of Arizona practically trapped a subsequently cleared scholar for the FBI, and⁵⁶ the University of Arizona survey of 2,000 professors, postdocs, and graduate students at more than 80 research-intensive universities found a ‘consistent pattern’ of racial profiling among scientists of Chinese descent, more than 40 percent of whom reported feeling profiled by the US government.⁵⁷

6. CONTEXTUAL DIMENSION IV: THREATS TO ACADEMIC FREEDOM BY IDENTITY POLITICS AND SOCIAL JUSTICE DEBATES

Academic freedom is at the center of culture wars beyond illiberal autocracies as well. It 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 to career-threatening battles between camps labeling dissenters as ‘woke social justice warriors for grievance studies engaged in mesearch’ on the 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 accusations 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 the majority of teaching staff.⁵⁸

⁵¹Baykal and Benner (2020).

⁵²Baykal and Benner (2020).

⁵³Baykal and Benner (2020).

⁵⁴Benner (2019).

⁵⁵Human Rights Watch (2020).

⁵⁶Fischer (2021).

⁵⁷Fischer (2021). Also see for example Kotkamp (2022).

⁵⁸See Kipnis (2015a).



The occasional controversial use, or even as some argue, abuse⁵⁹ of harassment procedures in the *#MeToo*-era⁶⁰ is a serious source of concern, even if it can 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.

The aforementioned UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, highlights⁶¹ the obligation to respect the academic freedom of other members of the academic community and to ensure the fair discussion of contrary views. Nevertheless, the aforementioned Report behind the 2020 Council of Europe resolution⁶² states that according to an EU-wide study, 21% of respondents practiced self-censorship and 15.5% reported being bullied by other academic staff.

As Michael Poliakkoff, president of the American Council of Trustees and Alumni argues,⁶³

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. [...] with a digital record of classroom discussions, bias response teams could be all the more pervasive. [...] Now that nearly all college courses have gone online, in which format they can be recorded in full, political opportunists, Left and Right, can exploit this permanent, decontextualized record against their opponents... Students and professors alike need concrete, credible guarantees that the virtual classroom does not become like Twitter, where a statement can go viral, ruin one’s career, and exist on a permanent record.

A study based on eight surveys of academic and graduate student opinion in the Anglo-American world examined the willingness of faculty to cancel controversial academics and to discriminate against political minorities (in the US, left-leaning academics are held to be outnumbering those on the right by a ratio of over 10 to one).⁶⁴ In the US, one in three conservative graduate students and academics reported they had been disciplined or threatened with discipline for their views, and 75 percent of conservative academics in the social sciences and humanities in the US and Britain said that their departments are a hostile environment for their beliefs.⁶⁵ In the US seven in 10 conservative academics in the social sciences or humanities said they engage in self-censorship.⁶⁶ An August 2020 survey found that four in 10 American academics would not hire a known Trump supporter and one in three British academics would discriminate against a known Brexit supporter for a job (where 52 percent of the population voted to leave the European Union).⁶⁷ Half of academics surveyed were uncertain whether they opposed or supported cancelling conservatives, but younger ones are twice as likely to back

⁵⁹See Kipnis (2015b, 2017a, 2017b), Kirkpatrick (2016).

⁶⁰Pap (2019).

⁶¹UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel. Para 33.

⁶²Council of Europe Parliamentary Assembly Res. 2352 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe. Paras 37 and 41.

⁶³Poliakkoff (2020).

⁶⁴See Kaufmann (2021).

⁶⁵Kaufmann (2021).

⁶⁶Kaufmann (2021).

⁶⁷Kaufmann (2021).



firing campaigns as academics over 50, and doctoral students are three times as likely. Social sciences and humanities scholars 30 and under ranked social justice and academic freedom equally, academics over 50 backed academic freedom over social justice by more than three to one.⁶⁸ The study found a political monoculture ethos to also be moving off campus into other professional organizations such as tech firms and newsrooms.⁶⁹ The phenomenon is not new, however: already in 2006, 40% of academics expressed concern at increasing threats to their freedom to express controversial or unpopular opinions and almost 25% reported self-censorship out of concern for institutional or peer disapproval.⁷⁰

Deplatforming and cancel culture is also not limited to humanities and social sciences. It is the cornerstone of the trans-movement that gender-critical approaches questioning the social construction of both gender and sex, are (applying the analogy of Holocaust denial) per definition transphobic and exhibit sanctionable hostile behavior that should not be tolerated within the boundaries of even academic freedom. Some medical and biological professionals have recently raised concerns in regards to how identity politics-conscious commercial and corporate interests of publishers are being allowed to unduly influence intellectual discourse, in relation to biological sex,⁷¹ even silencing medical assessment of distinct male and female physical features which can have significant implications for medical treatment of many different conditions, and silencing the relevance of these physiological differences in clinical practice, research, and policy.⁷²

7. SURVEILLANCE AND ACADEMIC FREEDOM

As noted above, surveillance is a horizontal feature, apparent throughout and at all contextual dimensions of academic freedom. The two lucrative fields of business (education in the ‘corporate university’ and the surveillance industry) are natural allies – with profits and proliferation expanding during the Covid-pandemic.⁷³ In the US, the educational-tech industry was estimated to be worth \$8-billion in 2018,⁷⁴ and the global education technology market was valued at USD 89.49 billion in 2020 and it is expected to witness a compound annual growth rate of 19.9% from 2021 to 2028.⁷⁵

Examples are numerous. Consider Bluetooth ‘beacon’ technology software that was used even before Covid-19 to track the class attendance of students with athletic scholarships on campus, in order for coaches and academic supervisors to monitor their activities.⁷⁶ As for a

⁶⁸Kaufmann (2021).

⁶⁹Kaufmann (2021).

⁷⁰Davies (2015).

⁷¹Hilton et al. (2021).

⁷²See for example Marinov (2020). Also see White (2021), Project Nettie (n.d.).

⁷³For more see for example Rónay and Niemczyk (2021).

⁷⁴Rosen and Santesso (2018).

⁷⁵Education Technology Market Size, Share & Trends Analysis Report By Sector (Preschool, K-12, Higher Education), By End User (Business, Consumer), By Type (Hardware, Software), By Region, And Segment Forecasts, 2021–2028, [link1](#).

⁷⁶Jenkins (2019).



more recent version, consider Oakland University, where along with wearing masks and social distancing, students living on campus were expected to wear a coin-size ‘BioButton’ attached to their chests with medical adhesive, which continuously measured their temperature, respiratory-, and heart rate, and monitored if they had been in close contact with a button wearer who had tested positive for Covid-19. Here, besides general privacy concerns, students worried what would happen if they went to a (say, Black Lives Matter) protest, where violence might break out. Could they be tracked down and disciplined? Also the app might signal if they sleep on the opposite side of a thin dormitory wall from an infected student.⁷⁷

Economic logic suggests that the technology and practices, once purchased are likely to stay and remain in use even despite apparent risks, controversies and vulnerabilities. Probably the most obvious case concerns proctoring programs, which take control of students’ computers, demanding views of students’ workspaces (or dorm-rooms), and even track eye movements to detect possible cheating. For applicants to professional or graduate schools, it may be of great benefit, enabling them to take exams without waiting for medical tests, or even travelling.⁷⁸ The technology was in use before the pandemic, but it spread in the pandemic with the mass migration to online classes. Some academic publishers quickly bundled remote-proctoring and browser-locking capabilities with its digital textbooks.⁷⁹ However, concerns about discrimination increased: studies have shown that facial-recognition software sometimes has trouble identifying the faces of dark-skinned students, and students with disabilities complained that a facial tic or other unexpected movements could cause them to be flagged, and the browser-lockdown feature can limit the use of tools that convert text to speech.⁸⁰ A scandal at the prestigious Dartmouth medical school, where a number of students were falsely accused of cheating received considerable media publicity.⁸¹ At a number of universities, students circulated petitions demanding online proctoring systems be abandoned.⁸² As for risks, also consider the cyber attacks against the online-proctoring software Proctorio, used by three million people and more than 2,400 American colleges (paying up to half a million dollars a year for the program).

According to Microsoft Security Intelligence, ‘Education’ was the industry most threatened by malware, making up 82.3 percent of reported cases in 2022.⁸³ In August, 2020, contrary to advice from the FBI, the University of Utah **paid** more than \$450,000 to prevent sensitive information from being released on the internet.⁸⁴

The implications of surveillance on academic freedom, however, are more far-reaching. The presence of a camera obviously changes the behavior of those surveilled.⁸⁵ The chilling potential

⁷⁷Mangan (2021b).

⁷⁸Kafka (2020).

⁷⁹Mangan (2021b).

⁸⁰Mangan (2021b).

⁸¹See for example Mangan (2021a).

⁸²Mangan (2021b).

⁸³Swaak (2022).

⁸⁴Insurance rates for cybersecurity protection have skyrocketed since the pandemic began, and in some cases, the insurer will connect the campus with a ransom negotiator. Mangan (2021).

⁸⁵See for example Villasenor (2020).



of recorded classes was present even before remote teaching (where students could and would record lectures illegally), but during the pandemic it became more eminent. With the culture war raging, for example, American professors report fears of being held accountable for something they say at class by both left-wing social justice radicals and right-wing vigilantes aiming to eradicate critical race theory.⁸⁶ Such a climate eliminates spontaneity and passion from lectures and cautious faculty will also seek to record classes to be able to answer to accusations made on statements used out of context.⁸⁷ The intersection of a surveillance potential in digitally enhanced or entirely remote education with illiberal regimes poses novel challenges to academic freedom. Reports from American university programs operating in China, Russia or Saudi Arabia, or simply involving students from these countries who are accessing classes remotely from home, point to the difficulty of providing discussion and debate-based American education without the benefit of (academic) freedom at US campuses.⁸⁸ When touching on a wide scope of politically sensitive issues, students pull out of the conversation, afraid that their government could be listening in. Furthermore, if the number of ‘captured’ students reaches a certain critical ratio, it may undermine those very principles at American colleges. Also, websites frequently used in classroom settings, such as Google, YouTube, and The New York Times, are banned in China.⁸⁹

Faculty members face tough choices teaching in newly global virtual classrooms: Do they change their courses to eliminate potentially contentious topics, or create two sets of materials, one for students in the United States, another for those abroad? Or do they stick with their original lesson plans, potentially putting their students at risk? Do they say to students, Sorry, this class is off limits if you’re studying from China? ... Countries including Russia, Turkey, and Saudi Arabia also have stringent censorship laws and monitor the internet.⁹⁰

In the 2018–19 academic year, 370,000 Chinese students were enrolled in American colleges, one in every three international students. In 2000 a national-security law for Hong Kong was adopted that makes speech it deems critical of the Hong Kong or Chinese governments unlawful — regardless of the citizenship or location of the offender.⁹¹

Not only are students in China at potentially greater legal jeopardy, but videoconferencing applications like Zoom used in remote instruction are vulnerable to Chinese government surveillance and data collection. Zoom came under fire in the spring for temporarily shutting down user accounts outside of China at the Chinese government’s behest.⁹²

The Association for Asian Studies, for example, published a statement and a set of recommendations for teaching remotely about China and students studying there,⁹³ warning

⁸⁶See for example [McMurtrie \(2021\)](#).

⁸⁷See for example [Kafka \(2020\)](#).

⁸⁸[Fischer \(2020\)](#).

⁸⁹[Fischer \(2020\)](#).

⁹⁰[Fischer \(2020\)](#).

⁹¹[Fischer \(2020\)](#).

⁹²[Fischer \(2020\)](#).

⁹³[Association for Asian Studies \(2020\)](#).



about the risks of requiring students to download readings that may be prohibited locally and of recording class discussions in which students are easily identifiable.

One solution could be to use a virtual private network, or VPN, which allows users to navigate around internet firewalls to obtain blocked content, yet unauthorized internet connections are now illegal in China as well as in Russia.⁹⁴ ‘While the ban is not regularly enforced, students caught using a VPN could have the infraction on their records for life, and it could have repercussions for their families. ... We shouldn’t be urging students to commit a crime.’⁹⁵ Yet, as we can see the challenge and the problem goes beyond technology.

In sum, the development of digital technologies (for teaching and surveillance) increases various incentives for self-censorship.⁸ Closing remarks.

The objective of this article was to provide a framework of contexts to understand academic freedom. Besides pointing to the constitutional and international relations aspects for potential infringements, via domestic and foreign illiberal states, threats coming from the corporate sector have also been highlighted. Using the example of surveillance and free speech, the paper made efforts to position the analysis through a business and human rights-lens. The BHR-framework and the academic freedom-discussion have a common element: both areas are at the center of heightened efforts to adopt a binding international norm.⁹⁶ This latter mission was, nevertheless, not accomplished here, only initiated, and the intention was only to stress the relevance of identifying more BHR indicators in the academy and how to balance the rights-focused and business-related challenges in the field. It is important to note how several important issues remained outside the scope of the analysis. The paper never intended to provide an answer to how future (international) legislation should approach the conceptual and codificational task of whether to prioritize academic freedom as an individual right (of academics and students); or a third generational right of the academic or national community; or to target guarantees of institutional autonomy; or, rather focus on accentuating and eliminating threats, inter alia from censorship, through marketization to digital surveillance, or even to provide a list what academic freedom should not cover. The paper could also have been more accurate in underscoring the specificities of public education and higher education, and the different focus required for ‘education’ and ‘science’. Spatial and conceptual limitations are the reason for these shortcomings. Also, there is an obvious, noted difference between social sciences and humanities and natural sciences in terms of challenges and infringements on many levels; the 2020 CoE report points out⁹⁷ that social sciences are under stricter control by the state, while natural sciences are more easily exposed to the influence of corporate money and that established fields of study and contested ones, or economically profitable and non-profitable sectors face different challenges; however, in line with international commitments, this paper found it important to assess the integrity of the academic community as a whole, as ‘it would be dangerous to excuse or relativise the infringements on some subjects by the freedom of others.’⁹⁸

⁹⁴Fischer (2020).

⁹⁵Fischer (2020).

⁹⁶See for example, De Schutter (2016).

⁹⁷Council of Europe Parliamentary Assembly Report 15167 (2020), Threats to academic freedom and autonomy of higher education institutions in Europe, Rapporteur: Brenner Koloman. Para 73.

⁹⁸See Spannagel, Kinzelbach and Saliba (2020).



Whatever the legislative, policy or intellectual responses may be, one thing is sure: academia and education is a communal exercise. If it ‘takes a village to raise a child’, it similarly involves an entire academic community for a Ph.D. degree to be earned, or any academic article to be published. When it comes to universities, as Kellerman puts it ‘education, is an experience in a community of inquiry ... [it] requires a cognitive presence (the learner), a social presence (the learning community) and a teaching presence (the professor) and students ... [who are] part of a necessary community-by-proxy.’⁹⁹

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⁹⁹Kellermann (2021).



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