

Kovács, Kriszta; Spannagel, Janika

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SPECIAL ISSUE INTRODUCTION

# Academic freedom: Global variations in norm conceptualization, diffusion and contestation – an introduction

Kriszta Kovács<sup>1,2</sup>  and Janika Spannagel<sup>3</sup> 

<sup>1</sup>WZB Berlin Social Science Center, Reichpietschufer 50, 10785 Berlin, Germany; <sup>2</sup>ELTE University Faculty of Social Sciences, Pázmány Péter sétány 1/A, 1117 Budapest, Hungary and <sup>3</sup>Freie Universität Berlin, Kaiserswerther Str. 16–18, 14195 Berlin, Germany

**Corresponding author:** Kriszta Kovács; Email: [kriszta.kovacs@wzb.eu](mailto:kriszta.kovacs@wzb.eu)

## Abstract

This Introduction provides an overview of the topics covered in this special issue on ‘Academic freedom: Global variations in norm conceptualization, diffusion and contestation’, which explores what academic freedom means, how this may vary on a global level, how the norm spread around the world and what current contestations look like. The Introduction defines some terms essential to this debate, such as the freedom of science, academic freedom, freedom of scientific research and the right to science, and offers an analytical framework for the various contributions of the special issue. This includes, in particular, a distinction between illiberal and liberal science scripts and their relationship with academic freedom, as well as between different forms of contestations and limitations of academic freedom. Authors from varying disciplinary and regional backgrounds address different aspects of this theme in their respective contributions, of which the introduction gives a brief summary.

**Keywords:** academic freedom; contestations; freedom of science; limitations; science script

## Academic freedom and freedom of science

Academic freedom is a fundamental value that promotes freedom of science and the free exchange and expansion of human knowledge. Yet it is globally in decline, according to the latest data of the Academic Freedom Index.<sup>1</sup> While this trend does not affect all societies, some of the most populous countries in the world – including China, India and the United States – are among those where academic freedom levels have been

<sup>1</sup>The Academic Freedom Index assesses de facto academic freedom levels in 180 countries around the world. It is published by the FAU Erlangen-Nürnberg, Germany, and the V-Dem Institute at the University of Gothenburg, Sweden. Latest data available at <https://academic-freedom-index.net>.

deteriorating over the past decade. This leads to a situation where more than half of the world's population is currently seeing academic freedom in their country weakening – in addition to many other countries, where it is stagnating at an already low level.<sup>2</sup> These worrisome trends are challenging us as academics<sup>3</sup> to examine them in more depth, not only because they pose important intellectual problems, but also because the repercussions of a global academic freedom recession are affecting the global community of science as a whole.

Moreover, since the conception of this special issue, the violent attack by Hamas against Israel in October 2023 and the subsequent war and humanitarian crisis in Gaza have further created a tense backdrop to renewed encroachments on the university space in many countries. Student protests have spread widely, and university grounds in the United States, the United Kingdom, Germany, and many other places have become the site of Gaza solidarity encampments. The main focus of the public debates surrounding these protests is on limits of free speech on campus and its tensions with students' rights to a discrimination-free access to education.<sup>4</sup> However, there are also specific implications for academic freedom as professors, accused of sympathizing with Hamas or of protesting illegally, have been arrested, threatened with dismissal, suspended or been the target of defamation and harassment.<sup>5</sup> This is not to say that disciplinary action is unjustified in all cases or that academic freedom protects hate speech or illegal activities. However, it is clear that the heated atmosphere has emboldened critics of academic freedom and opened the doors to increased political scrutiny and interference in academic affairs.<sup>6</sup> While the contributions in this special issue do not directly address these recent developments, they speak to relevant broader questions of academic freedom and its limits, variations and contestations.

Specifically, the special issue engages with these questions in two ways. First, we aim to address the underlying question of what academic freedom means and how this may vary on a global level. We will look at the role of science and academic freedom from the vantage point of a liberal conceptualization to map what kinds of variations may exist and to explore where academic freedom ends. Second, and in light of these variations in academic freedom conceptions and practices, we want to better comprehend the contestations of academic freedom that often pre-date or accompany the curtailment of academic freedom that can be observed at different levels around the world.

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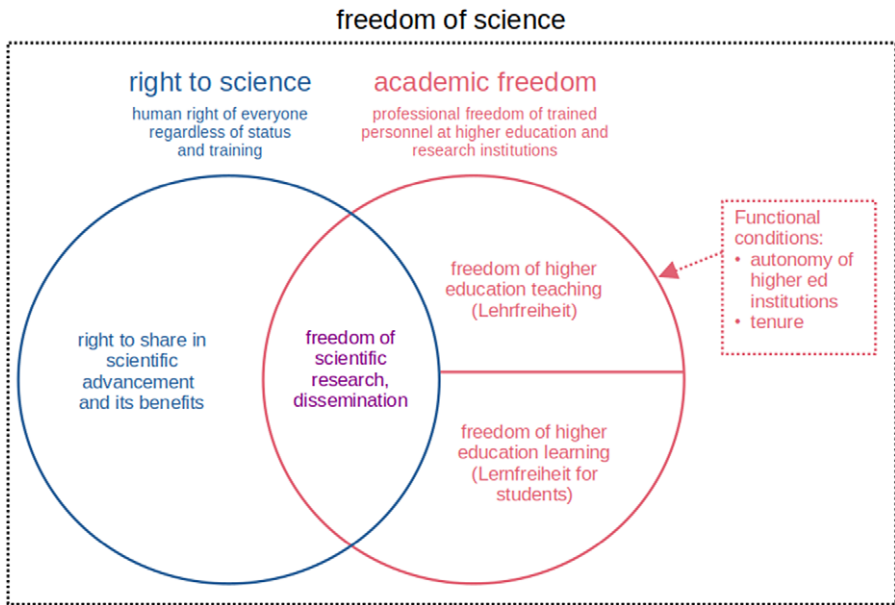
<sup>2</sup>K Kinzelbach *et al*, *Academic Freedom Index – Update 2023* (Berlin: FAU Erlangen-Nürnberg and V-Dem Institute, 2023).

<sup>3</sup>The terms 'academic' and 'scholar' are used in this special issue as shorthand terms for all members of academic staff (professors, researchers, lecturers, etc.) in higher education, though we acknowledge that the term 'scholar' may refer to anyone who conducts research in line with scientific standards and irrespective of a professional position at a university or research institute.

<sup>4</sup>LH Tribe & G Lukianoff, reply by D Cole, 'Free Speech on Campus: An Exchange', *The New York Review of Books*, 7 March 2024.

<sup>5</sup>See, for example, the cases of Kate Sang in the United Kingdom (S Francis, 'Michelle Donelan Told to Pay Damages to Academic Over Hamas Claim', BBC, 6 March 2024), of John Keane in Germany (C Burdeau, 'In Germany, Debate Rages Over a State Policy to Support Israel, No Matter What', *Courthouse News Service*, 5 December 2023) or of students and faculty arrested at various protests, such as that at the University of Pennsylvania in May 2024 ('Statement of the AAUP-Penn Executive Committee on the Penn Administration's Decision to Arrest Students and Faculty and the University's Imposition of Mandatory Leaves of Absence on Six Students', *Academe Blog*, 10 May 2024).

<sup>6</sup>For example, the hearings and investigations by the US House Education and Workforce Committee (I Mulvey, 'The Time is Now to Resist Political Interference', *AAUP Updates*, 8 February 2024) or suggestions that German professors who came out in support of student protestors should be surveilled by the domestic intelligence service (F Kain *et al*, 'Verfassungsschutz soll Uni-Profis überwachen', *BILD*, 10 May 2024).



**Figure 1.** The freedom of science and its elements.

Source: Authors.

When approaching questions of academic freedom, it is useful to clarify some terms commonly used in this debate and how they relate to each other, namely the freedom of science, the right to science, academic freedom, the autonomy of higher education institutions and the freedom of scientific research. Figure 1 provides an overview of how we understand and use these concepts in this special issue. Accordingly, the freedom of science is an umbrella term that encompasses the right to science, academic freedom, the autonomy of higher education institutions and the freedom of scientific research. The right to science is a human right that applies to every human being, regardless of their status or training, and it comprises both the right to share in the benefits of scientific discoveries and the right to freely engage in scientific research, defined as anything that, based on its content and methods, can be seen as a serious, systematic endeavour to discover what is true.<sup>7</sup>

Academic freedom, on the other hand, is a professional freedom of those who engage in scientific activity or higher education teaching and who are affiliated with a university or other higher education or research institution. It includes the freedom of scientific research (an overlap with the right to science, but from a professional perspective), the freedom of higher education teaching and the freedom of higher education learning.<sup>8</sup> The autonomy of higher education and research institutions, which encompasses both

<sup>7</sup>See, for example, Article 15 of the International Covenant on Economic, Social and Cultural Rights. For more on the right to science, see Kinzelbach's article in this special issue.

<sup>8</sup>More on the definition and justification of academic freedom, see, M Kumm, *Academic Freedom in Liberal Constitutional Democracies: Justifications, Limits, Tensions, and Contestations* (Berlin: Cluster of Excellence 2055, 2024), <<https://www.scripts-berlin.eu/publications/working-paper-series/Working-Paper-42-2024/index.html>>.

the independence and the self-governance of these institutions and certain professional privileges such as tenure, is thus conceptually not a direct part of academic freedom but rather a functional condition of its protection.

The freedom of scientific research, in our understanding, describes the area where academic freedom and the right to science overlap. While restricted to research, it also includes the right to communicate scientific results to other researchers and to the public. In this context, it is important to clearly delineate this freedom of scientific exchange and dissemination from the freedom of speech: while the latter covers anyone's equal right to utter almost anything, including irrational ideas, unreflected opinions and falsehoods, the former is bound by the disciplinary standards of methodical research and scientific verifiability.<sup>9</sup>

### Academic freedom and scripts of science

When trying to understand the extent of the freedom granted to academics, we need to ask what purpose and role they are thought to fulfil and how these are meant to be achieved. As the various contributions in this special issue highlight, variations in the conception of the role and organization of science in society may explain important nuances in the understanding and practice of academic freedom and its legitimate limitations. In this special issue, we refer to 'scripts of science' to describe such variations. Scripts are, more generally, shared understandings about the organization of society expressed in prescriptive and descriptive statements on how a society ought to be and is. A certain grammar links these statements and integrates them into a coherent set.<sup>10</sup> The liberal script specifically is built around equal individual freedom – understood as personal autonomy and self-determination – as well as collective self-determination.<sup>11</sup>

The liberal script of science espouses a vision of science and higher education that uses critical thinking, serious and systematic inquiry, and knowledge transmission to progressively further our understanding of the natural world and human affairs for the benefit of society's collective self-determination. For this script to be liberal, however, academic freedom is of vital importance: while society can have legitimate demands on academia and science in terms of their role in democracy and as cultivators of critical minds, as solvers of societal problems, and as gearwheels in the national economy and the labour market,<sup>12</sup> it is of quintessential importance that academia is largely in control of defining such goals, and the means by which they are pursued. As a consequence, there is a certain tension in the liberal script of science between the (individual and collective) self-determination of academia and the collective self-determination of society. The relationship between the two in the context of liberal societies, and how they pull the liberal science script in different directions, is schematically depicted in Figure 2.

<sup>9</sup>For more on the relationship between academic freedom and free speech, see Kovács' article in this special issue.

<sup>10</sup>TA Börzel and M Zürn, *Contestations of the Liberal Script: A Research Program* (Berlin: Cluster of Excellence, 2020), <<https://www.scripts-berlin.eu/publications/working-paper-series/Working-Paper-No-1-2020/index.html>>.

<sup>11</sup>TA Börzel and T Risse, *The Liberal Script Between Individual and Collective Self-Determination* (Berlin: Cluster of Excellence, 2023), <<https://www.scripts-berlin.eu/publications/working-paper-series/Working-Paper-26-2023/index.html>>.

<sup>12</sup>K Roberts Lyer, I Saliba and J Spannagel, *University Autonomy Decline: Causes, Responses, and Implications for Academic Freedom* (London: Routledge, 2022) 14.

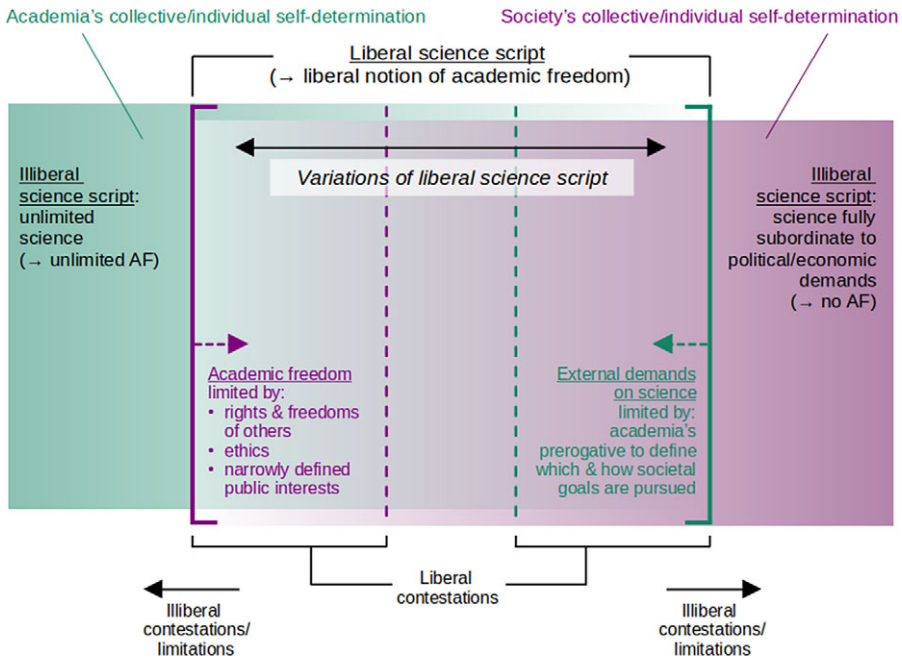


Figure 2. The liberal science script and its boundaries.

Source: Authors.

The visualization highlights that the liberal script of science – and with it a liberal notion of academic freedom – is placed on a spectrum between two illiberal extremes. On the right-hand side, it is demarcated by an illiberal script of science that emphasizes the collective interest of society to the detriment of the self-determination of academia. It sees science as fully subordinate to political and economic demands. The liberal science script defies this external control by placing academia in charge of the definition and pursuit of such societal objectives. In other words, the scope of academic freedom cannot be defined with reference to political judgements about whether and to what degree specific research or academic orientations will in fact further such political or economic purposes. On the left-hand side, the liberal script of science is demarcated by a version that places no constraints on academic freedom – which is also illiberal, as it emphasizes academic self-determination at the detriment of other individual freedoms and/or clearly defined compelling public interests. The same is true for unlimited university autonomy, which may even infringe upon individual scholars' academic freedom.<sup>13</sup>

In the liberal science script, academic institutional considerations can, of course, limit the freedom of the individual researcher.<sup>14</sup> Academic institutions are free to engage 'in the professionally competent forms of inquiry and teaching that are necessary for the realization of the social purposes of the university'.<sup>15</sup> They have their own interests

<sup>13</sup>For more on this, see Bernasconi's article in this special issue.

<sup>14</sup>J Vrieling, P Lemmens, S Parmentier and the LERU Working Group on Human Rights, 'Academic Freedom as a Fundamental Right' (2011) 13 *Procedia Social and Behavioral Sciences* 117.

<sup>15</sup>R Post, 'The Structure of Academic Freedom' in B Donumani (ed) *Academic Freedom After September 11* (New York: Zone Books, 2006) 64.

constituted by their perspective and horizons, and they have the right to choose scientific topics and methods. However, it is crucial to emphasize that ‘a researcher may not be forced, against his or her will or conscience, to research a particular topic’.<sup>16</sup> The institution has an obligation to respect the essence of research autonomy. Yet this does not mean that the researcher is free to research any kind of topic they choose independently of these institutional concerns. Academic freedom can legitimately be limited by fundamental rights and freedoms of others, by ethical considerations and by clearly defined countervailing interests of the academic institution as well as clearly defined countervailing public interests, like public health, provided the limitations are necessary and narrowly tailored to achieve such a compelling public interest.

The specific restrictions that are placed on academic freedom, as well as the processes through which such limitations are determined, vary between societies – as do the extent to and the particular means of academia’s self-determination. These are the essential areas where we see variations in the liberal science script and, accordingly, in the practices and limitations of the liberal notion of academic freedom. Societal demands for democratic legitimacy, greater inclusivity and economic viability create tensions with the liberal notion of academic freedom on both ends of the spectrum. These tensions are not only resolved differently across societies, but they also often lead to contestations that, to a certain extent, are internal to the liberal script and that can induce renegotiations of the legitimate boundaries of academic freedom and make them evolve with time. However, contestations can also be more far-reaching and cut to the core of what we consider academic freedom to be.

### Contestations and limitations of academic freedom

The way we use the term ‘contestation’ in this special issue relates to contestations as social practices that express objections to a norm, its interpretation or application. For instance, universities in several Western countries face societal pressure to abolish studies focused on ‘critical race theory’, ‘postcolonialism’ or ‘gender studies’, with some actors claiming that these disciplines undermine the values of liberal democracy.<sup>17</sup> To take another example, some ethical rules for research or speech codes on campuses have posed a challenge to academic freedom.<sup>18</sup> Market pressures are also present in liberal democracies: universities have long been exposed to market logic, and the commercialization of research<sup>19</sup> has to some degree threatened the freedom to pursue academic inquiry. Moreover, constraints imposed by various national and supranational research funding schemes have caused concerns for academic institutions.<sup>20</sup>

<sup>16</sup>Vrieland et al. (n 14) para 40.

<sup>17</sup>Kumm (n 8).

<sup>18</sup>JC Hermanowicz, ‘Introduction. Problems and Perspectives’ in JC Hermanowicz (ed) *Challenges to Academic Freedom* (Baltimore, MD: John Hopkins University Press, 2021) 1, 6. G Ragone, ‘Ethical Codes and Speech Restrictions: New Scenarios and Constitutional Challenges to Freedom of Teaching at University – the Italian Perspective’ in M Seckelmann et al., *Academic Freedom Under Pressure?* (Berlin: Springer, 2021), 217.

<sup>19</sup>American universities have been more exposed to market logics and competitive pressures than continental European countries, for instance. FO Ramirez, ‘American Leadership in American Higher Education’ manuscript on file with the authors. See also the statement of the British University and College Union on academic freedom, January 2009, <<https://www.ucl.ac.uk/academicfreedom>>.

<sup>20</sup>Kovács explores this issue in her contribution to this special issue with regard to gender-inclusivity in European research funding.

Contestations are also present at the individual level: scholars have been silenced by university communities<sup>21</sup> or blocked from speaking in academia (de-platformed)<sup>22</sup> because of their allegedly morally offensive minority moral or political views (what some have described as ‘cancel culture’).<sup>23</sup> Some students have advocated for ‘safe spaces’ in universities by limiting academic freedom in order to be protected from ‘disturbing ideas’.<sup>24</sup> We understand these contestations – up to a certain degree – as ‘liberal contestations’ since they invoke other core components of the liberal script (free speech, non-discrimination, etc.) to justify criticisms of the ways in which the academic freedom norm is interpreted and applied.<sup>25</sup>

The distinction between ‘liberal contestations’ and ‘illiberal contestations’ is made on the basis of both their justification and their intended effects: Contestations are liberal or internal to the liberal script if they contest specific practices and boundaries of academic freedom by raising other principles of the liberal script (such as free speech or equality). They are illiberal, or external to the liberal script, if they contest the core or the very existence of academic freedom – or if they demand limitless academic freedom by rejecting the very idea of other elements central to the liberal script. Within liberal societies, an example of illiberal contestations that aim to limit the self-determination of academia to a degree that is incompatible with academic freedom is calls on lawmakers for the de-funding of gender studies.<sup>26</sup> An example of illiberal contestations that demand unlimited academic freedom to the detriment of collective self-determination is individual anthropologists who refuse to return human remains to Native American tribes, arguing that ‘repatriation of human remains is a threat to amassing scientific knowledge’.<sup>27</sup> These examples may also serve to highlight that, in liberal societies, the boundaries between liberal and illiberal contestations are often particularly fluid and contingent over time.

At the same time, illiberal contestations of academic freedom are becoming an integral part of the system in contemporary regimes facing democratic regression. These include Hong Kong, Hungary, India, Iran, Mexico, Poland between 2015 and 2023, Russia,

<sup>21</sup>J Saul, ‘Beyond Just Silencing and Censorship: A Call for Complexity in Discussions of Academic Free Speech’ in J Lackey (ed), *Academic Freedom* (Oxford: Oxford University Press, 2018) 119, 120. An example where silencing academics is at stake is the policing of the so-called ‘Islamist-leftist’ research. T Perroud, ‘Academic Freedom, the Republic and “Islamist-Leftism”’ *Verfassungsblog*, 6 November 2020, <<https://verfassungsblog.de/academic-freedom-the-republic-and-islamist-leftism>>.

<sup>22</sup>RM Simpson and A Srinivasan, ‘No Platforming’, in J Lackey (ed), *Academic Freedom* (Oxford: Oxford University Press, 2018) 186.

<sup>23</sup>P Norris, ‘Cancel Culture: Myth or Reality?’ (2023) 71(1) *Political Studies* 145. As David Cole aptly puts it, cancel culture is ‘a “culture” of largely private intolerance, not a system of official repression’. D Cole ‘Who’s Cancelling Whom?’, *The New York Review of Books*, 8 February 2024.

<sup>24</sup>M Moody-Adams, ‘Is There a “Safe Space” for Academic Freedom?’ in J Lackey (ed), *Academic Freedom* (Oxford: Oxford University Press, 2018) 36, 37.

<sup>25</sup>It should be noted that the concept of academic freedom can also be misused in liberal societies. The spreading of proven falsehoods has been defended by scholars in the name of academic freedom, even if the circulated information lacks academic merit. Probably the most (in)famous example in this respect is the defence of Holocaust deniers’ right to express their views in the academic sphere. C Werner, *Partners in Hate: Noam Chomsky and the Holocaust Deniers* (Ware: Wordsworth, 1995).

<sup>26</sup>See the call by the National Association of Scholars in the United States in D Randall, ‘Defund Gender Studies’, *Minding the Campus*, 6 September 2022, <<https://www.mindingthecampus.org/2022/09/06/defund-gender-studies>>.

<sup>27</sup>See G Angeleti, ‘Anthropologist Opposed to Indigenous Repatriation Sues University for Alleged Threats to Her Free Speech’, *The Art Newspaper*, 27 October 2022, <<https://www.theartnewspaper.com/2022/10/27/elizabeth-weiss-anthropologist-san-jose-state-university-lawsuit-freedom-speech>>.

Turkey and Venezuela – states that rank low or have recently declined on the Academic Freedom Index. The autocratic leaders of these regimes tend to present rival understandings of science scripts by emphasizing the role of universities in nation-building<sup>28</sup> and downplaying the other politically involved purpose of the university: to encourage critical thinking that would correct the misuse of power and contest scientifically invalid truth claims.<sup>29</sup> A good example is the position of the Law and Justice (PiS) Party, which ruled Poland between 2015 and 2023, on the role of historiography: its purpose is to unite the nation rather than follow an academic, evidence-based discourse.<sup>30</sup>

Illiberal actors often label the conflict over academic freedom between them and vocal supporters of liberal democracy as a ‘culture war’ (*Kulturkampf*), in which they signal opposition to the moral-cultural transformation of liberal democracies.<sup>31</sup> Calling it a ‘culture war’ alludes to the abovementioned, largely liberal contestations over political correctness and campus speech codes. However, a more appropriate way of understanding this phenomenon is to regard these contestations against academic freedom as symptoms or consequences of broader contestations of the liberal script. What autocratic politicians present as ‘culture war’ often just draws attention away from creeping autocracy.<sup>32</sup>

There is a further important distinction to be made between contestations and limitations of academic freedom. Contestations are primarily discursive social and political acts, which may or may not result in de facto limitations of the academic freedom norm. Limitations of academic freedom can be justified or unjustified and both justified and unjustified limitations can occur in liberal and illiberal regimes. Recently, scholars have been subject to targeted harassment in liberal democracies: there are reports of severe smear campaigns and often violent threats against academics for exercising their academic freedom<sup>33</sup> in fields such as gender,<sup>34</sup> climate,<sup>35</sup> extremism<sup>36</sup> and human rights

<sup>28</sup>Often, they do this by developing a centralized parallel academic system. J-A Dillabough and A Peto, ‘New Deceptions: How Illiberalism is Hijacking the University’, *University World News*, 4 May 2024, <<https://www.universityworldnews.com/post.php?story=20240501143215958>>.

<sup>29</sup>M Ignatieff and S Roch, *Academic Freedom: The Global Challenge* (Budapest: Central European University Press, 2018). This phenomenon is more evident in post-colonial and post-authoritarian settings, where new nations emerge to claim identities suppressed by the former rulers. EW Said, ‘Identity, Authority and Freedom: The Potentate and the Traveler’, in L Menard (ed), *The Future of Academic Freedom* (Chicago: University of Chicago Press, 1996).

<sup>30</sup>A Leszczynski, ‘The Past as a Source of Evil: The Controversy Over History and Historical Policy in Poland’, *The Cultures of History Forum*, May 2016, <<https://www.cultures-of-history.uni-jena.de/politics/the-controversy-over-history-and-historical-policy-in-poland>>.

<sup>31</sup>Zs Enyedi, ‘Democratic Backsliding and Academic Freedom in Hungary’ (2018) 14(4) *Perspective on Politics* 1067.

<sup>32</sup>KL Scheppele, ‘What Culture Wars Hide’, *Verfassungsblog*, 19 May 2022, <<https://verfassungsblog.de/what-culture-wars-hide/>>, DOI: 10.17176/20220520-062111-0>.

<sup>33</sup>See E Väliveronen and S Saikkonen, ‘Freedom of Expression Challenged: Scientists’ Perspectives on Hidden Forms of Suppression and Self-censorship’ (2020) 46 *Science, Technology, & Human Values* 6.

<sup>34</sup>J Evans, ‘The New War on Gender Studies’, *The Conversation*, 6 January 2019, <<https://theconversation.com/the-new-war-on-gender-studies-109109>>.

<sup>35</sup>L Hickman, ‘US Climate Scientists Receive Hate Mail Barrage in Wake of UEA’, *The Guardian*, 5 July 2010, <<https://www.theguardian.com/environment/2010/jul/05/hate-mail-climategate>>.

<sup>36</sup>V Funk, ‘Natascha Strobl und “Don Alphonso”: Kolumnistin erwägt, rechtliche Schritte einzuleiten’, *Frankfurter Rundschau*, 12 August 2020, <<https://www.fr.de/politik/als-wuerde-ich-permanent-in-den-abgrund-schauen-90016007.html>>.

research.<sup>37</sup> In the context of the COVID-19 pandemic, virologists and professors have been brought before criminal courts by anti-vax organizations for their critical comments in (social) media outlets.<sup>38</sup> The question of whether such limitations constitute an unjustified intervention cannot be resolved on a conceptual level. The answer must be found in a judicial process. Academic freedom claims are tried before national and supranational courts, which should independently and impartially hear what both sides have to say for their justification. For instance, the European Court of Human Rights (ECtHR) held that the disciplinary proceedings against a Spanish military member and academic who expressed his position on the 'flawed' origin of the Spanish Constitution was an unjustified limitation of his academic freedom.<sup>39</sup>

In addition to the examples above (e.g. violent threats or disciplinary proceedings against academics), limitations of academic freedom in illiberal regimes take further, more severe forms to make academia subservient to fulfilling government purposes.<sup>40</sup> For instance, after the fall of 2022, universities in Iran had been central to the protests against the theocratic Islamic Republic, and this led to crackdowns on academia by state security forces.<sup>41</sup>

Universities are natural loci for dissent; thus, autocratic regimes tend to take control over them.<sup>42</sup> Both in Hong Kong and India, universities have been deeply affected by the national security rhetoric of the ruling regime<sup>43</sup> and campuses have been transformed to look more 'disciplined' and 'nationalist'.<sup>44</sup> Most Hungarian public universities have been transferred to foundations run by the ruling party and its loyalists after the capitulations of the academic leadership of these universities.<sup>45</sup> If universities resist this encroachment on their autonomy, they may face the risk of being shut down entirely. For example, Russian authorities have revoked the accreditation of the Moscow School of Social and Economic Sciences and closed the Faculty of Liberal Arts and Sciences (Smolny College) of St Petersburg State University. In Turkey, public universities have been closed in the aftermath of the failed coup attempt of 2016.<sup>46</sup> The Hungarian government has compelled the Central European University (CEU) to move its centre of operations abroad.<sup>47</sup>

<sup>37</sup>United Nations Office of the High Commissioner for Human Rights, 'Attacks Against Human Rights Advocate Threaten Academic Freedom in Northern Ireland – UN Experts', 24 March 2022, <[www.ohchr.org/press/releases/2022/03/attacks-against-human-rights-advocate-threaten-academic-freedom-northern](http://www.ohchr.org/press/releases/2022/03/attacks-against-human-rights-advocate-threaten-academic-freedom-northern)>.

<sup>38</sup>SLAPPS: Also an Issue in Belgium', 8 January 2022, <<http://legalhumanacademy.org/slapps-also-an-issue-in-belgium>>.

<sup>39</sup>*Ayuso Torres v Spain*, Appl no 74729/17, judgment of 8 November 2022. For more on this, see Kovács' article in this special issue.

<sup>40</sup>This is what Ronald Dworkin calls the culture of conformity as opposed to the ethical individualism as the culture of independence, which is essential for democracy. See R Dworkin, 'Why Academic Freedom?' in R Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Cambridge, MA: Harvard University Press, 1996) 244, 252.

<sup>41</sup>Editorial: 'Academia at Risk' (2023) 7(1–2) *Nature Human Behaviour* 1.

<sup>42</sup>MP Lynch, 'Academic Freedom and the Politics of Truth' in J Lackey (ed), *Academic Freedom* (Oxford: Oxford University Press, 2018) 23, 33.

<sup>43</sup>See Fu's article in this special issue.

<sup>44</sup>N Sundar, 'Academic Freedom and Indian Universities' (2018) 53(24) *Economic and Political Weekly* 52.

<sup>45</sup>See Ziegler's article in this special issue.

<sup>46</sup>Scholars at Risk Network, '15 Universities Shut Down in Connection with State of Emergency' 26 July 2016, <<https://www.scholarsatrisk.org/2016/07/15-universities-shut-connection-state-emergency>>.

<sup>47</sup>See PL Lánzos, 'The State of Academic Freedom in Hungary: The Saga of the Central European University and the Research Network of the Hungarian Academy of Sciences in Light of National and

In these regimes, there are also problems at the individual level: scholars who voice criticism of the regime face censorship, career blocking, intimidation, dismissal,<sup>48</sup> or even imprisonment and prosecution.<sup>49</sup> The problem is that these cases of academic freedom limitations can very rarely reach an independent court. These rare exceptions include the cases of those Turkish academics who were dismissed from their universities for signing the strongly worded ‘peace petition’.<sup>50</sup> Another example is the case of the CEU, in which the Court of Justice of the European Union (ECJ) found that the Hungarian authorities were not successful in justifying restricting academic freedom by the arguments based on maintaining of public order and the prevention of deceptive practices.<sup>51</sup>

### Overview of the special issue: Structure and findings

The special issue emerges out of a project called Science Friction: Patterns, Causes and Effects of Academic Freedom Contestations, which is part of the Cluster of Excellence Contestations of the Liberal Script (SCRIPTS). In addition to the contributions of our project team members, we invited four distinguished scholars from Chile (Andrés Bernasconi), Ghana (Kwadwo Appiagyei-Atua), Hungary (Tamás Ziegler) and Hong Kong (Hualing Fu) to explore the conceptions and contestations of academic freedom in their respective regions. The special issue is divided into two parts, although the issues arising in a given article (e.g. diffusion or contestation of the academic freedom norm) communicate with the concerns of others (e.g. justification of norm violation).

### Part I: Conceptualization and diffusion of academic freedom as a global and regional norm

The discussion starts by delineating the distinction between academic freedom and the right to science. While academic freedom should be regarded as a professional freedom that protects scholars and academic institutions, the right to science is a human right that everyone enjoys independently of their status and training. Katrin Kinzelbach focuses on the origin and contested meaning of freedom in the human right to science. She explores the drafting history and codification of Article 15(3) of the International Covenant on Economic, Social and Cultural Rights and its precursor, Article 27 of the Universal Declaration of Human Rights. Kinzelbach points out that the drafters of these texts understood scientific freedom as a participation right of every human being and examines some controversies that emerged during the drafting process. Moreover, the fact that the right to science was included in the category of cultural rights emphasizes the link between

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European Guarantees of Academic Freedom’ in *Academic Freedom Under Pressure? A Comparative Perspective* (Berlin: Springer, 2021) 61.

<sup>48</sup>Zs Körtvélyesi, ‘Fear and (Self-)Censorship in Academia’ *Verfassungsblog*, 16 September 2020, <<https://verfassungsblog.de/fear-and-self-censorship-in-academia/>>, DOI: 10.17176/20200916-211242-0.

<sup>49</sup>Scholars at Risk Network, 26 May 2022, <<https://www.scholarsatrisk.org/report/2022-05-16-allameh-university>>.

<sup>50</sup>The petition, titled ‘We will not be a party to this crime!’, urged Turkey to end curfews and military operations in Kurdish settlements. The petition is available at <<https://barisicinakademisyenler.net/node/63>>. The case *Kamuran Akin v Turkey* and 42 other applications, Appl No 72796/16 is pending before the ECtHR.

<sup>51</sup>Case C-66/18 *Commission v Hungary*, Judgment of 6 October 2020, paras 132, 138. For more on the case, see Kovács’ article in this special issue.

scientific freedom and the essential human capability to explore and create. The two UN documents are remarkable because they highlight the relevance of scientific freedom for everyone, not only for professional academics.

Turning to the question of norm diffusion and drawing on a new dataset, Janika Spannagel investigates the global spread of domestic codifications of academic freedom norms by mapping constitutional provisions over time and space. The article explores patterns in the worldwide diffusion of the norm to explain the geographically diverse, yet comparatively limited, adoption of academic freedom provisions in constitutions today. Her analysis suggests that main facilitators of diffusion have been the availability of relevant models in nearby countries and the significance of the domestic higher education sector. However, some countries also adopt academic freedom provisions if they are motivated to domestically protect academic freedom or signal their norm-adherence to an international audience. The still-large pockets of the absence of academic freedom provisions appear to be a result of the norm's close link to higher education development and a strong path dependency in constitution-making.

Tanja Börzel and Janika Spannagel are similarly interested in how academic freedom norms have diffused, focusing on the role of international and regional institutions. Through detailed analyses of a range of relevant international and regional declarations and agreements, their content and drafting context, they show that the codification of academic freedom has been lagging behind other parts of the liberal script. Börzel and Spannagel argue that even when codification efforts did take place, international and regional institutions were norm-takers rather than norm-shapers, as the process was driven by higher education and civil society networks, which have increasingly mobilized in the face of academic freedom contestations and pushed for better protection.

From a regional perspective, one variation of the liberal science script that deviates clearly from the often-discussed US and European models can be found in Latin America, where the emphasis within academic freedom is placed on collective as opposed to individual self-determination. As a result, the recognition of the academic freedom of individual academics has a subordinate position to the concept of university autonomy. A clear political and developmental mission serves as the rationale for strong university autonomy in this region, and Andrés Bernasconi explores the origins, evolution and current status of this concept. He argues that in contrast to the US and European concepts, autonomy in Latin America is vested in the university as a corporate agent, not in its scholars. Chile follows this regional tradition but deviates from the Latin American norm in two respects: it lacks constitutional recognition of academic freedom and university autonomy, and it is unusual in the extent of state regulation that is deemed compatible with the latter. The reason might be the dominance of the private sector in Chilean higher education, which is viewed critically by many, and has been attributed to loose state oversight in the past.

With regards to Africa, Kwadwo Appiagyei-Atua argues that the rationale and understanding of academic freedom norms differ from the dominant European and other variants. Here, academic freedom finds its origins in the pre-colonial African university space, in particular the Egyptian intellectual tradition. This ancient academic tradition spread to other parts of the African continent, yet these centres of higher learning in Ethiopia, the empires of Mali and Songhay, Carthage and Morocco have all but disappeared or were destroyed by colonialism. After independence was gained, academic freedom was not enshrined in African independence constitutions. It was only in the early 1990s, when African countries adopted democratic constitutions, that academic freedom was explicitly protected by constitutional texts. Yet, the curriculum

system in most African universities remains colonized and has suffered from neoliberal interventions; hence, exposure of the ills of and undoing of the long-standing effects of colonialism has yet to occur.

### *Part II: Contestations of academic freedom*

This part turns toward the contestations of academic freedom and the possible responses and remedies. Kriszta Kovács' article explores how the boundaries of the 'liberal science script' are contested and (re)defined in Europe. First, it considers how far academic freedom is limited by other fundamental rights and freedoms by focusing on the issue of extramural speech in the academic context. Then it turns to the question of how much demands policy-makers can legitimately place on science and academics by taking the example of gender equality requirements for European Union research funding. The article reconstructs the underlying theoretical conceptions of scholarship adopted by the ECtHR and the ECJ by engaging in a doctrinal analysis of the two European supranational courts' leading case law on the justified and unjustified limitations of academic freedom.

Limiting academic freedom has recently become prevalent in certain Central and Eastern European countries. Tamás Ziegler's article describes and analyzes the illiberal academic freedom contestations in Hungary and Poland and explains the framework of authoritarian policing in academia and its anti-enlightenment foundations. Scholars in these countries find themselves stuck between the European Union's research governance and domestic authoritarianism. Thus, Ziegler addresses the question of what kind of tools could counter these tendencies from the perspective of the European Union. He finds that the crisis in academia in the Central and Eastern European region is rooted in a value crisis within the societies concerned, and argues that measures countering this phenomenon should also include EU programs that promote Enlightened rationality and pluralism at all levels of these societies.

Finally, the last contribution is concerned with the illiberal contestations of academic freedom in Hong Kong. As Hualing Fu explains, academic freedom is explicitly protected by the Basic Law of Hong Kong, and it had long been defended with rigor and persistence. The 2020 National Security Law turned out to be a game changer with regard to Hong Kong's political structure. Still, it has not yet changed the institutional design below high politics, including university governance. Unlike in mainland China, here there is no institutionalized censorship, no party secretaries at the faculty level, and a student informant remains an alien and offensive concept. Nonetheless, there are changes, including symbolic moves (national flag-raising ceremonies, removal of sculptures regarded as seditious), the introduction of compulsory national security education courses, and the naming and shaming of 'unpatriotic' scholars. Yet Fu suggests that academic freedom can survive under such circumstances, albeit in a modified and limited form: as a freedom to research and teach in the 'ivory tower', in retreat from public intervention.

The contributions to this special issue show that there *is* such a thing as a liberal notion of academic freedom that has, to a certain degree, diffused across the world alongside the global expansion of higher education. Its scope extends to the protection of academics' scientific work and teaching, it covers their intra- and extramural speech related to their area of expertise and students' freedom of learning, and it implies the autonomy of universities and other higher education institutions. The justification of academic freedom is fundamentally rooted in the knowledge-pursuing function of science in the service

of the common good – the content and method of which can only be determined by academia itself – and its limitations are determined by other individual and collective freedoms embedded in the liberal script. Yet, the contributions on Africa and Latin America also highlight that there are variations to this liberal concept of academic freedom, as different societies grapple with how limitations to this freedom – at an institutional or individual level – are defined in practice. On the other hand, illiberal rival scripts of science, such as in contemporary China or Hungary, (seek to) determine and impose a particular social and political role on academia from the outside, thereby threatening the core or the very existence of academic freedom.

On the whole, we find that there are many cases where contestations of academic freedom clearly overstep the boundaries of the liberal science script and become illiberal. Yet at the same time, there are also cases where the determination of legitimate limitations on academic freedom is less clear-cut. Democratic societies across the world have different sensitivities as to which interests may prevail over others in a given context, but these sensitivities also change over time within a given society in response to liberal contestations of current practices. These divergences lead to variations in the liberal science script we can observe in different democratic countries around the world. That said, at a time when societies become more and more reliant on scientific knowledge, science is at risk of becoming increasingly politicized and more frequently exposed to various types of contestations, including many illiberal ones. This special issue introduction, alongside the eight contributions, has proposed a conceptual framework that we hope will prove useful for more in-depth analyses of the liberal science script, its liberal and illiberal contestations and their consequences.

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