



PALGRAVE CRITICAL UNIVERSITY STUDIES



Academic Freedom in the European Context

Legal, Philosophical and Institutional
Perspectives

Edited by
Ivo De Gennaro · Hannes Hofmeister
Ralf Lüfter

palgrave
macmillan

Palgrave Critical University Studies

Series Editor

John Smyth

University of Huddersfield

Huddersfield, UK

Aims of the Palgrave Critical University Studies Series

Universities everywhere are experiencing unprecedented changes and most of the changes being inflicted upon universities are being imposed by political and policy elites without any debate or discussion, and little understanding of what is being lost, jettisoned, damaged or destroyed. The over-arching intent of this series is to foster, encourage, and publish scholarship relating to academia that is troubled by the direction of these reforms occurring around the world. The series provides a much-needed forum for the intensive and extensive discussion of the consequences of ill-conceived and inappropriate university reforms and will do this with particular emphasis on those perspectives and groups whose views have hitherto been ignored, disparaged or silenced. The series explores these changes across a number of domains including: the deleterious effects on academic work, the impact on student learning, the distortion of academic leadership and institutional politics, and the perversion of institutional politics. Above all, the series encourages critically informed debate, where this is being expunged or closed down in universities.

More information about this series at
<http://www.palgrave.com/gp/series/14707>

Ivo De Gennaro • Hannes Hofmeister
Ralf Lüfter
Editors

Academic Freedom in the European Context

Legal, Philosophical and Institutional
Perspectives

palgrave
macmillan

Editors

Ivo De Gennaro
Faculty of Economics & Management
Free University of Bozen-Bolzano
Bolzano, Italy

Hannes Hofmeister
Faculty of Economics & Management
Free University of Bozen-Bolzano
Bolzano, Italy

Ralf Lüfter
Faculty of Economics & Management
Free University of Bozen-Bolzano
Bolzano, Italy

ISSN 2662-7329

ISSN 2662-7337 (electronic)

Palgrave Critical University Studies

ISBN 978-3-030-86930-4

ISBN 978-3-030-86931-1 (eBook)

<https://doi.org/10.1007/978-3-030-86931-1>

© The Editor(s) (if applicable) and The Author(s), under exclusive licence to Springer Nature Switzerland AG 2022

This work is subject to copyright. All rights are solely and exclusively licensed by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, expressed or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Palgrave Macmillan imprint is published by the registered company Springer Nature Switzerland AG. The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Preface

Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties. John Milton (1644)

As long as freedom reigns supreme, it mostly goes unnoticed. Conversely, the fact that freedom becomes the subject of closer attention and extensive consideration bespeaks that it is either in danger or already lost. Academic freedom is no exception to this rule.¹ Over the past years, a growing number of publications,² manifestos³ and institutional initiatives⁴ suggest that academic freedom, including the freedom and fate of the institution that harbors it, i.e., the university, is severely challenged. But what, exactly, does academic freedom mean, and what are the threats that it must face?

¹ “Academic freedom rarely if ever names, refers to or describes an existing state of things; rather it is always a normative ideal, called up precisely at moments when it is lacking or appears to be under threat.” John Higgins, quoted in Scott 2019, p. 5.

² A selection of titles—many of which in fact concern the American context—is listed at the end of this *Preface*.

³ Most recently, the manifesto published by the *Network for Academic Freedom* in Germany (see: <https://www.netzwerk-wissenschaftsfreiheit.de/en/about-us/manifesto/>).

⁴ For instance, the *Council for the Defence of British Universities*, founded in 2012 (see: <http://cdbu.org.uk/>).

In the American context, academic freedom falls under the fundamental right of free speech;⁵ it is therefore granted constitutional protection, without being specifically acknowledged as such. European constitutions, on the other hand, typically grant a specific, heightened protection status to the freedom of scientific research and teaching.⁶ Article 13 of the *Charter of Fundamental Rights of the European Union* reads: “The arts and scientific research shall be free of constraint. Academic freedom shall be respected.” This suggests that, in the European tradition, a peculiar relation is established between science and freedom, in that the latter is seen to be crucially dependent on the former: because (free) scientific enquiry (including the education toward such enquiry) is the highest form of the pursuit of freedom, a curtailment of that freedom is considered an attempt on the very “capacity for freedom” of a political community, hence on that community as such.

In this volume we understand academic freedom primarily in the “European” sense outlined above—which *also* clearly comprises the right of free speech in the academic space. This, in turn, explains why we distinguish between two different types of threat to academic freedom: internal and external. *External* threats are commonly understood as threats to the freedom of science: they consist in different forms of heteronomy, be they political (e.g., when the ideology of a regime or the *raison d'état* subjugate the free pursuit of truth), social (e.g., when citizens’ needs claim satisfaction without admitting a critical examination of their scope), cultural (e.g., when stipulations of public discourse suppress scientific argumentation) or economic (e.g., when marketability and the generation of value become the driving motives of all aspects of academic life).

On the other hand, the *internal* threat originates from within the sciences themselves, and from the supposed institutional strongholds of their freedom: this threat involves, in the first place, the above-mentioned “capacity for freedom” as a distinctive trait of the epistemic constitution

⁵ For a recent study on free speech at American universities, cf. La Noue 2019. For a philosophical reflection on accountability and professional freedoms in the same context, cf. Martínez-Alemán 2012.

⁶ The relation between the two concepts of academic freedom is discussed in P. Engel’s article in this volume.

of scientific inquiry; consequently, the sciences' self-conception and understanding of their task, which can become extrinsic to the inner scope of science itself; and, finally, the academic institutions' willingness and capacity to preserve an autonomous governance for the sake of free enquiry and free education, which can be replaced by an attitude that preemptively internalizes the motives of the said external demands, so that freedom is abolished even without the "assistance" of extra-academic powers.

The sciences, and specifically the modern sciences, originate from philosophy—not because philosophy has produced or designed them, or provided them with a foundation; rather, in the sense that the very *conceivability* of a scientifically knowable world is not a product of science itself, but an inheritance from the knowledge that philosophy has created in its own domain. This is why, while threats to academic freedom can be recognized and denounced wherever the spirit of science is alive, philosophical interrogation is capable of a peculiar diagnostic perspective on these threats: again, not because philosophers are more intelligent, or because philosophy is, in general, conducive to deeper insights, but simply because, being itself nothing but a pure practice of freedom, it immediately perceives and reflects the annihilating power of its negation.

The extent to which a political community carries in its core the awareness that free scientific inquiry is the highest warranty of freedom *tout court*, first manifests itself in the legal order it chooses to adopt: while the fundamental law, or the foundation of jurisprudence, will more or less explicitly establish that academic freedom is to be protected, special laws and the overall legal context will reveal how that protection is understood and in what manner its realization is intended. Finally, the institutions to which the enactment of legally warranted scientific freedom is entrusted, will devise and regulate, monitor and govern the workings of academia in accordance with (or otherwise in defiance of) that originary need and obligation. Philosophical perception, legal protection, institutional enactment—this tripartite structure of what we might call, in its unity, "the institution of academic freedom", is at the basis of the composition of this volume.

The peculiarity of philosophical inquiry is that its questioning proceeds within the hermeneutic horizon of an ultimate purpose, or “what for”, which, in a more or less explicit manner, is itself part of the interrogation. “Ultimate” here means: having the character of a first principle. In philosophy, this principle is not treated in the same way as in the sciences, where it is encased in assumptions that serve as an unquestioned basis for the elaboration of explicative theories. The interrogation of academic freedom is not an exception to this characterization. Hence, philosophical considerations on academic freedom are always also, and indeed in the first place, occasions for asking questions such as: “What is freedom?”, “What is the human being?”, “What is knowledge?”, “What is learning?”, which refer to that ultimate horizon. Specifically, the issue of academic freedom cannot be treated without simultaneously asking, and maintaining a willingness to question, what academic institutions are in the context of our larger political communities, in light of the status of science and education as fundamental ways of establishing a human world within the tradition of a philosophically instituted humanity, or, in other words, of a humanity insofar as it seeks freedom (as its ultimate “what for”) through knowledge.

If the philosophical contributions in this volume respond to this requirement in different ways, from different perspectives, and with different foci, in their entirety they restore the issue of academic freedom to its central role within the human enterprise, and thus highlight the vast scope of what is at stake when academic freedom is threatened. The opening chapter by *Gino Zaccaria* places the issue in its widest context—which, as it turns out, most immediately affects day-to-day academic life, and most momentously determines the conditions for teaching and research as fundamental exercises of freedom. This is the context of time, and more specifically of the “time of study” (or *scholē*), which is shown to be “the political institute par excellence”, meaning that, if this time—namely, the space for free studying—fails to be instituted, there is no *polis* (i.e., no house of freedom for a free humanity) in the first place. On the other hand, the essay shows how the concept of value, which informs the nowadays omnipresent and pervasive practices of evaluation in the academic sphere, fundamentally undermines precisely that institution, and, by implication, the *polis* itself.

Seeing that the issue of time appears to be at the core of the question of academic freedom, *Ivo De Gennaro's* chapter further elaborates on this notion. Based on the definition of an “ethical” notion of free-time, and related notions of freeness, truth and autonomy, it addresses two related kinds of threats to academic freedom: “the internal threat”, which is realized when the sciences, having assumed a fundamentally technicized and politicized character, finally forfeit the “scientific difference” through (self-imposed) a-scientific evaluation procedures; and the “external threats” stemming, on the one hand, from the *polis* at large (through its demands for results whose usefulness remains unquestioned), and, on the other, from an unmindful implication of teaching and research in technological settings ruled by self-contained purposes of effectiveness.

In a related direction of enquiry, *Ralf Lüfster's* chapter demonstrates how the hermeneutical horizon of an ultimate purpose, characteristic of philosophical inquiry, implies a notion of “academic freedom” which is not conceivable in merely negative terms, namely, as independence of research institutions and their members from external interferences (be they of a political, religious, economic, or organizational nature). However desirable and valuable the condition of independence may be, the “reciprocal coalescence” of scholars and students implies a kind of freedom that is to be achieved, in the first place, as the ultimate end of the (free) pursuit of knowledge. While drawing its name from the eponymous grove in the outskirts of the *polis* of Athens, sacred to the hero Academus, academic freedom—the end of a “coalescent” pursuit of knowledge—offers to the *polis* itself its “essence” as a site for true human dwelling.

The peculiarity of academic freedom vis-à-vis the freedom of speech is the focus of *Pascal Engel's* chapter. The clear demarcation between these two forms of freedom is based on the fact that the former is meant to foster and preserve that in which the latter, on the other hand, is not engaged, namely the *production* of knowledge that conforms with the criteria of scientific truth. In short, academic freedom is *knowledge*-based rather than *opinion*-based, and thus a positive freedom rather than a negative one. The notion of positive freedom implies that a certain action does not simply enjoy freedom, but actually produces it. As Engel writes, “the knowledge-based view of academic freedom rests on two tenets: the

first is that knowledge is different in kind, and not only in degree, from opinion; the second that knowledge is the foundation of this freedom.” Hence, freedom of speech must be taken as a *consequence*, not as a prerequisite of the freedom of research and teaching. Among other things, this view leads to the identification not only of external intrusions into academic freedom, but also of intrusions coming from within universities, through administrative oversight or internal conflict.

The chapter written by *Maurizio Borghi* provides an analysis of anonymity in today’s governance of science. It unveils what remains implicit in the matter-of-course understanding of anonymity as a tool for ensuring “free” and “objective” judgments in different domains of academic life. Borghi identifies three functions through which anonymity “operates as an instrument of control from inside the scientific dialogue and academic interchange”: the apparent obviousness of the “defence function” in fact dissimulates how the exceptional circumstances that could justify the adoption of anonymous procedures have become permanent and normal in the academic world; the related “objectivity function” results in judgments that are divorced both from their source and from their consequences, hence in a disruption of scientific dialogue; finally, the “function of parametrization”—to wit, the systematic transformation of judgments into parameter-values—emerges as the function that directs the former two in view of the implementation of measurement procedures decoupled from the standards of science.

Following an approach of cultural epistemology, *Sharon Rider* examines both the inner and outer factors which enable academic freedom for the faculty (i.e., university scholars, scientists and teachers), in a situation in which universities are forced “to navigate the treacherous waters of social usefulness and relevance” while attempting to preserve their nature as institutions “devoted to autonomous research and instruction”. Inspired by Max Weber’s lecture *Wissenschaft als Beruf* (“Science as Vocation”), she questions both the subjective conditions of autonomous reason and the objective conditions of its exercise. While the German term *Beruf* means both “profession” and “call”, or “vocation”, this latter meaning opens up a perspective on “the demands of a higher purpose”—an “ultimate aim” that requires and thus justifies “free intellectual pursuit” and calls for the exercise of autonomy as the free act of submitting

oneself to “inquiry and study”. Academic “disciplines” as such, and all questions concerning their development, which are addressed in the essay, obtain their meaning from this “higher purpose” or “ultimate aim”.

* * *

Having thus explored the philosophical foundations of academic freedom, the volume turns to an examination of the normative framework of academic freedom, hence to the legal protection afforded to it, in different European legal systems.

In Austria, academic freedom is protected—as *Magdalena Pöschl* argues—by three different human rights catalogues. Her chapter briefly sets out the background against which these rights were drafted and analyses both the substantive and the personal scope of these rights. While these aspects are largely uncontested, there is nonetheless increasing uncertainty as to what actually constitutes a violation of this freedom. “This uncertainty arises to some degree from Austria’s current science policy, which could be described as ‘smart research governance’: It consists of many individual low-impact measures, which act in concert to noticeably steer science, but do so in a much more sophisticated way than conventional command and control instruments. It is no coincidence that these low-impact measures are less tangible than common state interferences and that they accordingly frequently evade traditional justification schemes. The difficulties this more subtle approach create will be demonstrated using three examples of such measures employed in Austria—the duty of universities to subject research to ethical assessment, qualified research funding as well as the recording and evaluation of scientific performance at universities” (Pöschl, this volume).

In Germany, scientific freedom is enshrined in Article 5(3) of the *Grundgesetz*, i.e., the Basic Law of the Federal Republic of Germany. In his chapter, *Christian Hillgruber* analyses restrictions of this fundamental freedom, emanating both from the state and from the scientific community itself. In his view, we are witnessing a paradigm shift at the moment: restrictions of scientific freedom are less likely to emanate from the “traditional villain in the civil rights drama”—i.e., the state—but rather from

the autonomous system of science itself. In his view, scientists all too often subject themselves to political goals in an almost defeatist manner and accept criteria for funding which are inappropriate to science. Another increasingly worrying phenomenon analyzed in his contribution is the threat posed by students or other activist groups who exert psychological pressure on scientists. Here the state is called upon to step in and fulfil its constitutional “duty to protect” (*Schutzverpflichtung*). Yet, in practice, this form of protection is deficient. The essay analyses, inter alia, the reasons for this development.

These aspects are also emphasized by *Belen Olmos Giupponi* in her chapter on the protection of academic freedom in the United Kingdom (UK). She provides an overview of the evolution of this right in the UK. The UK constitutes an exception (and was included in this volume precisely for this reason) insofar as it is the only country analyzed in which there is no constitutional protection of academic freedom. Rather, academic freedom is protected only by Acts of Parliament, such as the 1988 Education Act and the 1992 Higher Education Act. This lack of constitutional protection derives from the particularities of the Common Law system which, until the enactment of the Human Rights Act of 1998, had no written catalogue of fundamental rights at all. Working against this backdrop, she then critically analyses the trend towards quality assurance procedures and other new restrictions of this freedom in the UK system.

Roberto Caso's chapter concentrates in particular on the evaluation of scientific research—with a special focus on the situation in Italy. The latter has become more and more controversial for a number of reasons, anonymity being one of them. With the evaluation of scientific research becoming increasingly anonymous (for example, as part of the “double blind” peer review process), he rightly fears a “shift from democratic to authoritarian science”. One way to address this issue is the concept of open science. Yet, according to Caso, this will only work if certain pre-conditions are met as outlined in the contribution, e.g., “the acceptance of open science as the legitimate successor of all the principles that public science has brought about in the analogue age” (Caso, this volume).

The situation in France is analyzed by *Olivier Beaud*. In France, the status of universities, and the protection of academic freedom in

particular, is comparatively weak when compared to Austria, Italy or Germany, but also when compared to other francophone countries, such as Belgium. Beaud analyses the reasons for this shortcoming and the current threats to academic freedom in France. Of these threats, the increasing employment of legal defamation suits brought against academics is particularly striking. These actions were deliberately aimed at intimidating academics, so that they refrain from making use of their freedom. Another recent threat to academic freedom can be described as an “internal threat”, namely, the threat coming from student activist groups, who increasingly rely on social media to exert pressure on academics. According to Beaud, it is not so much the state which academics should fear, but increasingly “the new forces for morality and good” (Beaud, this volume).

Finally, *Hannes Hofmeister* analyses the protection of scientific freedom on the European level, as provided by Article 13 of the European Charter of Fundamental Rights. This Article, which became binding law only in 2009 with the enactment of the Lisbon Reform Treaty, has thus far remained a legal *terra incognita*. His chapter therefore attempts to shed some light on this new provision and analyze whether effective remedies can be sought on a European level against potential infringements of scientific freedom.

The comparative analysis of legal aspects leads to a number of interesting insights. For instance, there seems to be a *shift from external to internal threats*. While threats to scientific freedom still emanate from the “traditional villain in the civil rights drama”, i.e., the state, there is an increasing tendency for them to come from “within academia” itself. Scientists all too often voluntarily subject themselves to political goals imposed by big research organizations and accept criteria for funding which are wholly inappropriate to science. The increasing relevance of the internal threats category also manifests itself in the behavior of certain student groups—euphemistically referred to as “activist groups”. As outlined by *Hillgruber*, scientists are increasingly put under psychological pressure or even threatened with physical harm by these “activists” because of their scientific research or teaching. Although the state has a duty to protect the threatened scientists under the concept of the *Schutzpflichtenlehre*, this duty is only half-heartedly performed. This has

significant consequences: self-censorship by academics or a retreat into inner exile.

Moreover, there is also a *shift from evident to subtle restrictions*. Pöschl, in particular, notices that there is a trend in science policy, which can be described as “smart research management” (SRM): SRM employs a plethora of subtle measures which—when seen cumulatively—exert a strong influence on science and potentially infringe scientific activities. However, they do so in a much more sophisticated and subtle manner than classic state measures, which hitherto relied on overt coercive instructions. Given their subtle nature, traditional legal concepts struggle to qualify them as infringements and to deal with them adequately.

Both the shift from external to internal threats and the shift from evident to subtle restrictions pose significant problems for the traditional normative order. While there are attempts to cope with these shifts—such as the application of the duty to protect—the legal protection afforded to scientists is still deficient in many ways. The contributions by the above-mentioned authors address and analyze these deficiencies and make recommendations as to how to deal with them.

* * *

The last two chapters of the volume provide an exemplary insight into the institutional reality of science governance and its implications for academic freedom. Two complementary perspectives are offered on the working of one and the same institution: to wit, the Italian National Agency for the Evaluation of Universities and Research Institutes (ANVUR). Drawing on her experience as a member of ANVUR’s Governing Board (2015–2020), *Susanna Terracini* asks if strategic initiatives involving merit-based fund allocation threaten academic freedom. While admitting such threats exist, Terracini argues that the alternatives to qualitative assessment—either purely quantitative criteria (i.e., referred to the mere “magnitude” of “outputs”) or a uniform distribution of funds based on the number of faculty members—are “delusional” and thus not preferable. The risk that this kind of assessment of research outputs unduly influences the orientation and choice of topics is seen as

manageable. Centralized fund allocation based on the evaluation of scientific merit must be comparative, which involves numerous and delicate definitory problems. ANVUR, whose Governing Board is drawn from the scientific community, is seen as playing an important role in this process, in that its combined expertise helps to avoid arbitrary policy-making and thus to defend academic freedom.

Giuseppe De Nicolao, on the other hand, critically assesses ANVUR's approach and methods: he sees the agency as an institutional "Grand Evaluator" restoring the academic world to a state of minority. One of the issues addressed here relates to the quantitative scaling of the assessed quality of research, with awarded marks directly and proportionally determining shares of funding. The chapter then identifies several distortive effects on research resulting from "governing by numbers". These include the emergence of several malpractices (such as courtesy authorship, forced citations and others), and the erosion of academic citizenship (a complex of practices, including mentoring and peer review, which suffer from the pressure exerted by the increasing use of quantitative metrics of academic performance). Finally, the essay discusses the unfavorable influence of mechanical evaluation on innovative, and, in fact, useful research.

* * *

Is the freedom of academic science—in the form of research and education—at risk? What is science without freedom? And what are our political communities without free science? While this edited volume offers a contribution to the critical examination of these questions in the European context, the issues it addresses are as global as science itself and the implications of the knowledge that it generates. Indeed, what would be left of the present notion of a "global world" were we to take away its character informed by modern science? As the chapters of this volume show, the endangerment of academic freedom is not only an issue raised by a preoccupied academic community vis-à-vis extra-academic forces, but also one on which this community must critically examine itself.

An extract from a 2004 decision of Germany's Federal Constitutional Court (often dubbed "the philosopher court") might serve both as a suitable conclusion of this *Preface* and an opening to the following chapters: "When it comes to academic freedom, one always has to take into consideration the underlying rationale of this peculiar freedom, namely that it is a form of science which is freed from notions of social utility and political expediency that ultimately best serves the state and society".⁷

Bolzano, Italy
Bolzano, Italy
Bolzano, Italy

Ivo De Gennaro
Hannes Hofmeister
Ralf Lüfter

References

- Beaud, Olivier. 2010. *Les libertés universitaires à l'abandon? Pour une reconnaissance pleine et entière de la liberté académique*. Paris: Dalloz.
- Bilgrami, Akeel, and Jonathan R. Cole, eds. 2015. *Who's Afraid of Academic Freedom?* New York: Columbia University Press.
- Collini, Stefan. 2018. *Speaking of Universities*. London and New York: Verso.
- De Gennaro, Ivo, and Gino Zaccaria. 2011. *The Dictatorship of Value. Teaching and Research in the Planetary University*. Milano: McGraw-Hill.
- Fish, Stanley. 2014. *Versions of Academic Freedom: From Professionalism to Revolution*. Chicago: University of Chicago Press.
- Juergensmeyer, Erik, Anthony J. Nocella II, and Mark Seis, eds. 2020. *Neoliberalism and Academic Repression. The Fall of Academic Freedom in the Era of Trump*. Chicago: Haymarket Books.
- La Noue, George R. 2019. *Silenced Stages: The Loss of Academic Freedom and Campus Policy Debates*. Durham: Carolina Academic Press.
- Martínez-Alemán, Ana M. 2012. *Accountability, Pragmatic Aims, and the American University*. London and New York: Routledge.

⁷Translation by the Editors. The original reads as follows: "Zugunsten der Wissenschaftsfreiheit ist stets der diesem Freiheitsrecht zugrundeliegende Gedanke mit zu berücksichtigen, daß gerade eine von gesellschaftlichen Nützlichkeits- und politischen Zweckmäßigkeitvorstellungen befreite Wissenschaft dem Staat und der Gesellschaft im Ergebnis am besten dient", BVerfGE 47, 327, 367 et seq.

- Özmen, Elif. 2021. *Wissenschaftsfreiheit im Konflikt: Grundlagen, Herausforderungen und Grenzen*. Stuttgart: J. B. Metzler.
- Pinto, Valeria. 2019. *Valutare e punire*. Napoli: Cronopio.
- Readings, Bill. 1997. *The University in Ruins*. Cambridge: Harvard University Press.
- Reichman, Henry. 2019. *The Future of Academic Freedom*. Baltimore: Johns Hopkins University Press.
- Scott, Joan Wallach. 2019. *Knowledge, Power, and Academic Freedom*. New York: Columbia University Press.
- Williams, Joanna. 2016. *Academic Freedom in an Age of Conformity: Confronting the Fear of Knowledge*. London: Palgrave Macmillan.

Acknowledgments

The idea for this book goes back to a conference on academic freedom held in December 2018 at the Faculty of Economics and Management of the Free University of Bozen-Bolzano. The Editors are grateful to the participants in that conference as well as to the colleagues from Universities across Europe who subsequently joined the project.

The Editors also wish to express their sincere thanks to Bridget Pupillo and Marcel Böhme for their valuable assistance in proofreading the texts of this volume. Finally, they would like to thank John Jeremy Mossop and Ian Silver for the accurate translation of, respectively, Oliver Beaud's and Magdalena Pöschl's contribution.

Contents

| | |
|---|-----|
| Part I Philosophical Perspectives | 1 |
| Time and Value | 3 |
| <i>Gino Zaccaria</i> | |
| Abolition of Time, Alienation from Truth, and the Heteronomy of Academia | 21 |
| <i>Ivo De Gennaro</i> | |
| Academic Freedom: To what End? Notes on the Ethical Dimension of Scholarship | 55 |
| <i>Ralf Lüfter</i> | |
| A Knowledge-Based Conception of Academic Freedom | 75 |
| <i>Pascal Engel</i> | |
| Anonymity as a Threat to Academic Freedom | 95 |
| <i>Maurizio Borghi</i> | |
| Autonomy for Whom? Governance of What? The Rationality of Academic Freedom | 117 |
| <i>Sharon Rider</i> | |

| | |
|---|-----|
| Part II Legal Perspectives | 149 |
| Freedom of Research in Austria <i>Magdalena Pöschl</i> | 151 |
| Freedom of Science in Germany: Constitutional Guarantee and Current Hazard Situation <i>Christian Hillgruber</i> | 187 |
| Academic Freedom in France: A Concept Neglected and Liberties under Threat <i>Olivier Beaud</i> | 205 |
| Academic Freedom from the Perspective of the United Kingdom <i>Belen Olmos Giupponi</i> | 241 |
| The Darkest Hour: Private Information Control and the End of Democratic Science <i>Roberto Caso</i> | 259 |
| The Protection of Scientific Freedom Under the European Charter of Fundamental Rights: A Critical Analysis <i>Hannes Hofmeister</i> | 289 |
| Part III Institutional Perspectives | 323 |
| Academic Freedom Versus Institutional Evaluation of Research <i>Susanna Terracini</i> | 325 |
| State-fostered Immaturity? Kant, Galileo, and the Grand Evaluator <i>Giuseppe De Nicolao</i> | 333 |
| Index | 351 |

List of Contributors

Olivier Beaud Université de Panthéon-Assas, Paris, France

Maurizio Borghi University of Turin, Turin, Italy

Roberto Caso University of Trento, Trento, Italy

Ivo De Gennaro Faculty of Economics & Management, Free University of Bozen-Bolzano, Bolzano, Italy

Giuseppe De Nicolao University of Pavia, Pavia, Italy

Pascal Engel École des hautes études en sciences sociales, Paris, France

Belen Olmos Giupponi University of Portsmouth, Portsmouth, UK

Christian Hillgruber University of Bonn, Bonn, Germany

Hannes Hofmeister Faculty of Economics & Management, Free University of Bozen-Bolzano, Bolzano, Italy

Ralf Lüfter Faculty of Economics & Management, Free University of Bozen-Bolzano, Bolzano, Italy

Magdalena Pöschl University of Vienna, Vienna, Austria

Sharon Rider Uppsala University, Uppsala, Sweden

Susanna Terracini University of Turin, Turin, Italy

Gino Zaccaria Bocconi University Milan, Milan, Italy

List of Tables

Academic Freedom from the Perspective of the United Kingdom

| | | |
|---------|--|-----|
| Table 1 | REF—Overall quality profile: definitions of starred levels | 250 |
| Table 2 | Teaching Excellence and Student Outcomes Framework (TEF) | 251 |

The Protection of Scientific Freedom Under the European Charter of Fundamental Rights: A Critical Analysis

| | | |
|---------|--|-----|
| Table 1 | Constitutional protection for freedom of speech and academic freedom | 301 |
|---------|--|-----|

Part I

Philosophical Perspectives



Time and Value

Gino Zaccaria

Santa Claus: May I ask you a question?

Death: Go right ahead.

SC: What's the easiest thing to sell?

D: Knowledge.

SC: Knowledge—without understanding?

D: Correct.

SC: No.

D: Absolutely.

SC: But that's absurd!

D: Absurd—and also tragic; yet a fact.

In this empty un-understanding world
anyone can sell knowledge; everybody wants knowledge,
and there's no price people won't pay to get it.

— Become a Scientist and your fortune's made.

SC: Scientist?

D: Or, in plain English, a knowledge-salesman.

(Cummings 1946, 2009, p. 18)

Σχολῆ ὄζιο chiamavano gli antichi i luoghi,

i tempi ec. degli studi, e gli studi medesimi (onde ancora diciamo,

G. Zaccaria (✉)

Bocconi University Milan, Milan, Italy

e-mail: gino.zaccaria@unibocconi.it

senza intendere all'origine, scuola, e scolare per istudente,
 e gl'inglesi scholar per letterato, che dall'etimologia
 sonerebbe ozioso) che per gran parte
 di noi sono il solo o il maggior negozio.
 (Leopardi 1829, 1997, *Zibaldone*, p. 4520)

1 Introduction

Time and value: in the context of this discourse, the conjunction inserted between the two words is not to be understood as signaling the joining together of two given concepts, but rather as marking an inter-relation or inter-dependence between the two—where the prefix “inter” confers the traits of mediation and mutual concernment. This means that (the sense of) value, in order to aver itself as such, and thus find its primary use in a human community, also requires (and imposes) a certain conception of time, just as time itself, in order to be accepted and inhabited in what it is, indicates the way in which the sense of value must be understood within that same human community. Time and value are gathered in an originary “betweenness” that attunes them, each one towards the other.

So, how should we proceed? By posing the following two questions of course:

What is time?

What is value?

But with which question should we start? And, most importantly, in what manner should our questioning be conducted?

From these first few lines, it becomes clear that we are dealing with an unusual sphere of sense: we are posing questions about the being of time and the being of value, but not about time tout court (as a notion and an instrument) or value tout court (as a principle and/or “idea”, or as a guide for action). Indeed, the being of time is surely not time, to wit, it is not temporal (nor is it anything extra-temporal or “eternal”), just as the being of value is certainly not a value, to wit, it is neither value-based (“value-form”) nor evaluable (or invaluable). Well then, if we must reason

according to such guidelines, which are only roughly sketched out here, then we are moving within a dimension traditionally known by the name “philosophy”.

What is time—knowing that its being is nothing temporal (nor extra-temporal)?

What is value—being aware that its being does not have a value-based trait?

2 Time

A key point in the logic of this attempt consists in the following: we cannot establish the being of time by adopting its common formula, considered conceivable and trustworthy without any verification—especially when the conceivableness and trustworthiness of this formula is obtained by referring to clocks, or (if we want to go back “in time”) to water clocks, or to clepsydras, or, if we look at the sky, to the movement of the stars and the galaxies, or even—if we look within ourselves and at our everyday world—to the so-called “sensation” of the equally so-called “passing of time” or “transitoriness”. This is certainly not to negate the movement of clocks, clepsydras, heavenly bodies, or life! Nor, in general, do we intend to confute or refute the movement itself or—to use a more philosophical word (although only so in appearance)—the “world’s becoming”. Nevertheless, in observing such movements (which are, according to the case at hand, variations, rhythms, turns, passages, currents, progressions and paths, cycles and circles, sequences, series, concatenations and alternations, and so on), the being of time does not make an appearance, also because in things such as clocks and clepsydras, stars and living beings, skies and lands, “matter and spirit”, “mass and energy”, time itself is openly presupposed, and therefore already “in vigor” as regards its being, insofar as it has already been understood and interpreted in one way or another by us mortals.

I mentioned the common formula of time, namely time—as we know it—as a sequence or flux of moments. Now, this resides in a “thought” that has ancient origins: it comes from the Aristotelian phenomenology

of temporality that was elaborated in chapters 10–14 of Book IV of *Physics*, whereas chapters 1–9 deal with space, or more specifically, with place, locus, ὁ τόπος (ho topos) and void and vacuum, τὸ κενόν (to kenon). (Note, a complete study should, therefore, follow this order, even if Aristotle does not provide any reasons for the arrangement of his phenomenological analytics. Indeed, why does his inquiry into space precede that of time, and what are the relationships between ὁ τόπος [space as locus] and ὁ χρόνος [ho chronos]? But the philosopher does not provide any answers to these questions. Diagnosing the origin of such “Aristotelian negligence” may not be impossible, but it is without doubt no simple task.) Nonetheless, in chapter 11, after some very delicate and hard to translate passages, Aristotle arrives at his determination of the being of χρόνος.¹ In this known (albeit always misunderstood) determination, the philosopher interprets χρόνος—which here means “time” qua “stable duration” (but not qua “temporal interval”)—as an ordering element of human understoodness of being and the sense of things. This is an understoodness that the Greeks assigned to the constitutive aptitudes of νοῦς (nous) as a trait of ψυχή (psychē), or, as we say, of “noetic psyche”. Now, the order conferred by χρόνος to the noetic psyche is that of “before and after”, to wit, of the ordering of “antero-posteriority”. That is why, according to the philosopher, the χρόνος-duration—which emerges as such thanks to νῦν (nyn), the noetically noticed and glimpsed moment—possesses the feature of ἀριθμός (arithmos), which in fact means harmony and category, from which the (secondary) meanings of number, numeral, and digit stem. The duration sparked or ignited by the moment is the (also numerable) durative order of antero-posteriority.

So, after some phenomenological steps, which I omit here for the sake of brevity, we can obtain the common formula of temporality:

Time is the dimension of the qualitative or quantitative calculation of the duration that elapses and flows on the basis of the “one-after-the-other”-format—a format consisting in the time-line, or also (using an expression commonly found in physics) in the “arrow of time”.

¹ Chapter 11 is the one that has most attracted the attention of scholars and commentators since post-Aristotelian antiquity.

Or:

Time is the sphere of the qualitative or quantitative computation of the period (amount, magnitude) that occurs, passes, and flows out according to the structure of “one-after-the-other”—a format-structure that consists in a temporal sequence, or even (according to the customary terminology used in physics) in the “arrow of time”.

This concept of time (which, as we can see, is “intrinsically circular”, and, in itself, fully justifiable, and to which I attribute the abbreviated denominations “deadline-time” or “limit-time”, or better yet “check-time”) shows itself, therefore, as a daughter-notion of the Aristotelian notion, the philosophical clarification of which was characterized—as previously mentioned—by a phenomenological intent. By this I mean that, in this clarification, the reference to man (to mortals) was kept within view (and alive). In fact, the Aristotelian elucidation of χρόνος aimed (as we may recall) toward bringing temporality into focus as a trait of the existence of mortals in their understanding of the being of things—a temporality which (in the terms as employed above) attunes and orders the noetic psyche since it is pre-attuned and pre-ordered by the latter, and which (using an adjective that is no longer Greek) I will call “existential time” or “existence-time” (not to be confused with supposed “psychological”, “subjective”, “non-physical”, or “philosophical” time, or however you want to call it).

A crucial question suddenly emerges here: was existential time, existence-time, fully attained in Aristotle’s physical analytics? The matter appears all the more crucial the more we learn to consider and think of such analytics in its role as the genesis of subsequent attempts, including those of present day (and beyond). The circumstance that the nexus between space and time remains unclarified, and indeed obscure, already provides an answer to the question posed: in Aristotelian phenomenology—and, therefore, in all of its philosophical derivations and affiliations (including Bergson’s analytics)—existence-time was indeed considered, but to an insufficient degree. It only began to come to light, for those who think in this field, at the beginning of the previous century, in Husserl’s philosophy (Husserl 1928, 2000), and later on, in a manner

that remains to be acknowledged by current philosophy, in Heidegger's thinking (Heidegger 2007).

However, all of this occurs precisely in the age of negligence of existential time, which, at this point, is covered and ensconced by... which time? Which temporality? Which sense of time and space? We will not be able to answer such a crucial issue here. But we know that it consists in a spatio-temporality that is planned and set up on the basis of "check-time".

Now we shall interrogate the being of time. However, this interrogation now includes a more precise term; in fact, it asks: what is existential time, existence-time, being aware of the circumstance that its being is not anything temporal (nor is it extra- or supra-temporal)?

That being said, what I will now state may seem like a sort of verbal sleight of hand: we can only reach and grasp the being of existential time fully if we question the very sense of being itself.

If we stay with what we have just heard for a moment, we may note how our dismay at the words' artifice is also accompanied by a touch of surprise due to the pretentious, if not arrogant, character of the interrogation. My goodness—"the very sense of being itself"? As a result, and somewhat bewildered, all we can do is take a step back and retire from the game altogether!

But this bewilderment is only the other face of the irritation our discussion has provoked from the very start. In an attempt to soothe it, at least to some extent, and until we are hopefully able to quieten ourselves within ourselves, let me characterize our situation in the face of the question concerning the scope of being—a situation that, in philosophy, is defined as "aporetical"—paraphrasing the well-known passage on *tempus* from chapter 14 of Book XI of Augustine's *Confessiones*.² So, let us say it in this way: "What 'is' being? If we do not ask ourselves this question, we will know it (in other words, we know the being of being); but if we attempt to explain it to ourselves, then we no longer know it (i.e., we are left without words)".

In fact, as far as being is concerned, things stand exactly as follows: we know being as an empty and indetermined concept, so we cannot explain

²Quid est ergo tempus? Si nemo ex me quaerat, scio; si quaerenti explicare velim, nescio. (Quid est ergo natura entitatis vel natura essendi?)

what it means, but we understand it fully and in a perfectly determined manner. To us, “being” seems like an abstract and vague word; nevertheless, we perceive its meaning concretely and clearly in every instant of our existence.

So, in the end, what does “being” mean?

We will now follow a path that is only seemingly “linguistic”: we will, in other words, consider an ordinary statement in which the verb “to be” is presented in the singular third person form of the simple present tense—the little word “is”.

Consider the following simple statement: “the seminar is in room 3”. What does this “is” mean here? Answer: it means “takes (or will take, or is taking) place”. Now, we can all see how, in the expression “to take place”, one refers to both space and time: indeed, the fact that an event takes place means that it obtains or “is obtaining” the necessary temporaneousness for itself. If, for instance, the event consists in a work of knowledge or a scientific seminar, its fulfilled taking-place requires a time that consistently sustains it in what it must be: a seminar only... but truly a seminar, or, in other words (at least one hopes), the genuine semination of trustworthy and accurate knowledge.

In the expression “to take place”, our language implicitly refers to an existential space and time, to wit, an occasion and an opening for the generation of a dimension in itself capable of accepting something sensible, reliable, and conceivable: in other words, something true. But we must be more rigorous, and say this: in taking place, there is an implicit sense of taking aside and then giving, extending, conceding, providing, offering... And in what way is an existential place, an abode, that may accept a sense that suits man’s being, offered? This question is not difficult to answer: it (the place) is offered thanks to a certain time—and since time is, in turn, gifted, the offer of a place generates itself thanks to a “gift of time”.

Taking-place—in other words, the act of being, or, better yet, being (without the premodifiers)—means, therefore: a gift of time that offers space in the form of a place that is devoted to verity, namely in the form of a collocation of the true. The statement “the seminar is in room 3” actually says: a time that offers (will offer) a place for a seminar (as mentioned earlier) that is truly such, and therefore precisely the semination of

something true, is given, gifted. In the term “is”, an expectancy or a hope of (a certain) verity is implicit. We are surprised by the circumstance that the little word “is” contains all of this within itself. But that’s the way it is! Other examples of the sort could be proposed, and we would always and invariably find these same meanings.

So, and here is the point: what, therefore, is existence-time? We may answer: existential time consists in a gift, a favor, in that gift or favor (which is never evaluable or negotiable or plannable) that generates the conceivability of a place that is dedicated to the safekeeping of sense and care for verity. (For instance, consider a game of soccer, when the attacking team approaches the opponents’ penalty box: the timeliness of play, which involves the whole team, is always what suddenly discloses the “action space” needed to score a goal, that seals the truth of the play itself, and therefore the truth of the entire game. [In fact, in soccer, one speaks of “timing” and not of an improbable “spacing”; also, think about the concepts of “change of pace”, in order to get a good “shooting position”, and of “counterattack” or “ball control”, “header”, “penetrative pass”, “through pass”, “lead pass”, and so on; all of this is always a matter of—obtained, found, attempted—time! Finally, consider the expressions “time!” or “you’ve got time!”, which are also commonly used in soccer.])

We will, therefore, speak of “space-of-time”—a formula that, in our discussion, obviously does not mean “temporal interval”, where one presupposes that time may be divided into abstract spacing, but rather “place-space” that is generated in virtue of the time-gift, the time-favor—in the same way as, for example, with the sayings “an act of grace” and “a position of responsibility”, one does not mean to say that grace is divisible into acts (there are also graceful intentions, or graceless inertias), or that responsibility may be broken down into positions (there are also “positionless” or “status-free” responsibilities, or responsible and responsive errancies), but rather that that determined action is the result of a surge of grace, clemency, decency, and that that position has to be attuned to responsibility, seriousness, and truth. So, we can also speak of “space-by-way-of-gift-of-time”—abbreviated to “space-by-time”.

The way in which “being” speaks (in all of its uses) simply and constantly reminds us of the originary meaning of existential time as a gift and a favor (on the background of a refusal and a nay-say)—and all this,

regardless of our personal opinions or ideas or theories with respect to whatever its meaning or “value” may be.

However: if existence-time is a gift that “makes space”, a favor that offers and generates a place for sense and truth (and therefore for the [ever-temporary] very meaning of verity, and also for falsity in all of its articulations until the annihilation of the very meaning of the true), and since each gift, like grace, contends with refusal and denial, and struggles within the nay-say, hence it (existence-time) cannot be insurable or repeatable. Existential time is—always and abruptly—unique, perpetually unaccustomed, and repentine; it eludes and fleets (it is fugacious), even if it does not run or elapse; it retains in itself, even if it does not stay; it is neither linear nor circular, neither cyclical nor spiral nor helical (it is neither “spati-form” nor “simili-space” in any sense); in fact, it is not geometrizable under any guise; it rejects (disconfesses and disengages) any sort of computation, for in any computation it dissolves and vanishes; it is “only” firm (it gifts firmness and tenacity), immense (it offers immensity and magnitude), and profound (it confers depth and sharpness), and it is—let’s say—that which must be awaited, obtained, cared for, and instituted in every sphere of the scope of being. It is intrinsically contentious. And it may be that it never arrives.

As Sophocles has Ajax claim at the beginning of the third monologue of the homonymous tragedy (v. 646), existential time is μακρὸς καὶ ἀναρίθμητος (*makros kai anarithmētos*), immense, indeed, and therefore “anarithmetical”—to wit, not subjectable to any category, number or figure that grasps it upon counting—and thus inestimable and un-evaluable, which respectively mean: a. free from any estimate; and b. scinded ab origine from every manner of evaluating. Its sooth does not have a value-form: it is, therefore, “value-free”.

Existential time is rare, it is pure extemporaneity (it is the *ex-tempore*). Instead, its denegation (or infirmation) is common and frequent; and this occurs in accordance with, or, better yet, on the strength of the previously mentioned temporaneousness established on the basis of “check-time”, the clarification of which we had to suspend. (Dis-existential intensity or counter-existential self-infuriated infuriating furor: “systematic growing self-empowering temporicide”—according to an unheard sense of “*temps perdu*” as well as “dying time”, “dead time”, “downtime”).

Existential time is the most precious fruit of being. It is the luxury of perfect frugality, originary richness without which every prosperity and well-being would irreparably degenerate into insatiable opulence, to wit, into the most indigent misery—up to slavery masked as “freedom”.

Thus, we become aware of a fundamental mode of existence-time, which we implicitly referred to (and not by chance) in the example of the seminar and the room (with the intent of explaining the little word “is”). It is that particular (spacing-collocating) gift of time without which any genuine act of creation is not conceivable (let us think of technology and technique, technics and science, art and philosophy), and that the Greek philosophers and scientists grasped perfectly within the word σχολή (scholē; normally rendered as “leisure”), along with its opposite ἀσχολία (ascholia, commonly translated as “occupation”)—all this even though their thinking was burdened, as mentioned, by an insufficient understanding of existential time.³ The Latin word *schola*, from which the word “school” derives, was formed on σχολή, whereas the Romans used the term ἀσχολία as a model upon which to coin the noun *negotium*, where the negation of *otium* as a trait of σχολή (i.e., as a tone of the so-called “recess-time” and “re-creation time”, which paradoxically indicate a pause or a break from scholastic commitments) seems implicit. The etymology of the word σχολή is questionable: perhaps it contains the meanings of withdrawal and concession, and thus indeed of gift; in other words, of giving favor without expecting any reward or advantage in return. Σχολή is not, therefore, that so-called “free time”, and even less so is it idleness, leisure, a pit stop, or a pause, and so on (which are but consequences or

³ I thank Ivo De Gennaro who opened my eyes to the originary meaning of σχολή. To this regard, see five of his works: 1. Ivo De Gennaro. 2013. Σχολή. Platon und das ökonomische Problem. In *Wirtliche Ökonomie. Philosophische und dichterische Quellen. Erster Teilband (Elementa Economica 1,1)*, eds. Ivo De Gennaro, Sergiusz Kazmierski, and Ralf Lüfter, 43–88. Nordhausen: Verlag Traugott Bautz. 2. Ivo De Gennaro. 2014. Was ist Muße? *Freiburger Universitätsblätter* 206: 5–17. 3. Ivo De Gennaro. 2020. “The promised land”. *Das Bild der Zukunft in Keynes’ “Economic Possibilities for our Grandchildren”*. In *Imagination und Bildlichkeit der Wirtschaft. Zur Geschichte und Aktualität imaginativer Fähigkeiten in der Ökonomie*, eds. Walter Otto Ötsch, and Silja Grape, 275–296. Wiesbaden: Springer. 4. Ivo De Gennaro. 2019. *Etica del lusso*. Anterem. *Rivista di ricerca letteraria* 99: 80–83. 5. Ivo De Gennaro. 2020. Despotism and truthless science. *European Review of History: Revue européenne d’histoire* 27 (5): 582–597. On the meaning of σχολή in Plato’s metaphysics, see the extensive excursus of the Theaetetus on philosophical existence (172 c 2—177 c 5).

mere suspensions of deadlines or “check-times”; so, they too are afflicted by the “dying-back”, or the lability, of the moment); but rather it is existential time itself, transiently affranchised from the attacks and temptation—the threat—of value and computation. That said, such affranchisement is never the result of a “liberation”: σχολή generates itself, provided that it does generate itself, in its entrusting itself to *studium*, whose original sense is “care for the sense of verity”, which is, on the other hand, also the first meaning of the word φιλοσοφία (philosophia). A Greek adjective that we might use to characterize σχολή is αἴσιος (aisios)—which means “favorable”, “suitable”, “auspicious” —, in which we can hear the verb αἴνυμαι (ainymai; “to benefit from, to enjoy, a gift”), and that vibrates with the words “ease” and “adage” (of French origin). So, we could perhaps understand σχολή as that ease that finds its own temporality in adage (as the temporality of caution, awareness, and farsightedness, and not mere slowness). Only the adage of σχολή—school as adage—suits *studium*. And only in such an adage may genius be truly rapid and ready; in other words, timely, tempestive. Then again, another word that could convey σχολή in English is the term “truce” (Italian *tregua*), which has the same root as the German verb *trauen*, in the sense of *Sich-Verlassen*, entrusting oneself, entrustment. Thus, we find an exemplary form of the contentious trait of existence-time: σχολή is that truce that—insofar as it has to be contended with the hostility and fury of computation—generates trust in the truth. Therefore, we call σχολή, as the time of adage, “the truce of verity”—a truce that is the only state of being within which and thanks to which one can fight for the very sense of verity. (Truce in the name of and dictated by verity; truce = for verity’s sake!)

To summarize, we can say:

If the ultimate sense and sooth of “schooling” consists in *studium*, the first sense of *studium* rests in the spaciousity of σχολή. There is no school without *studium*, and there is no *studium* without the truce of verity (i.e., without epochē, the suspension of all forms of validity, values, and interests): this is the existential-temporal sphere of every human understanding and creation, a sphere that cannot be accomplished by itself of course. It needs to be founded, instituted, and erected by and within the πόλις (polis) each

time; it is, therefore, an eminently political institution, or better yet: it is the political institute par excellence.

Every school concept, project, and plan is destined to suffer a setback if it, first and foremost, does not “push backward” to the point of rigorously pre-conceiving, pre-planning, and pre-establishing the genuine sense and sooth of σχολή in order for it to be finally taken as the first source of the institution itself and its life. What would a school be if it were not, every day and first and foremost, a “school of (the gift of) time (that offers space for a place)”? If we must speak about academic freedom, this seems to be its plan, horizon, and scope: σχολή—or *tempus pro spatio academiae*: spaciousness for and of creating ingenuity and ingeniousness: the school of the spaciousity of a world.

3 Value

Similarly to the issue of the being of time, the being of value cannot be attained by appealing to, or playing on, what the word “value” seems to signify in our everyday lives: whether it be a quality or a merit, a virtue or a relevance, or whether we seem to grasp it in a principle, in a price, in a number, or in a certain type of good, until finally perceiving it in something that is efficient and indeed “valid”.

Above, I mentioned value when discussing the adage of σχολή, the truce of verity. Thus, the essential point has already made its appearance. Why, then, does value undermine existential time? What does “to evaluate” mean? What is an evaluation?

The origins of the verb already explain it all: “to evaluate” is formed on the French *évaluer*, coming from the Latin verb *valeo* (*valere*), which conveys the traits of strength and force, power and potency (*validare* means “to enforce”, and *validus* signifies “strong”, “forceful”, “powerful”, “efficient”; finally, is the acquisition of power). Therefore, “to evaluate” means to compute the profit, usefulness, gain, and revenue deriving from something that is already of worth, that already values, that already has “the value of...”; in brief, deriving from a thing consisting in an already given value, to wit, from a strength, a power and a potency, and an energy that

are under way, that are in actu *undefined*—“actual”—within themselves. This is why the philologist and linguist Niccolò Tommaseo (1915, ad loc.) illustrates the meaning of the Italian verb as follows:

Valutare non ha senso traslato, se non per uso corrotto o barbaro; nel proprio, denota la determinazione d'un valore da potersi o doversi pagare in moneta. Valutasi per pagare, per vendere, per computare, per raffrontare il valor della cosa a una somma di danaro.

(The verb “to evaluate” does not have a metaphorical meaning; it assumes such a meaning only as the result of corrupt or barbaric use: it indicates, in itself, the determination of a value that may or must be paid in cash [currency]. One evaluates in order to pay, to sell, to compute; in other words, to compare the value of something with a sum of money.)

Now, the “corrupt or barbaric use” denounced by Tommaseo has, on the contrary, spread widely, becoming common and threatening to become increasingly “popular”. This has not just sprung up overnight. Hence, “evaluating” has acquired, and is increasingly acquiring, all possible metaphorical and figurative meanings, from estimating to establishing, from considering to analyzing and studying, up to discerning, distinguishing, and therefore judging, to the point that a judgement or a verdict only has substance and meaning, or rather is of “value” to us, if it produces—or rather if it is—a rating (a rated scientist, a rated artist, a poorly rated philosopher, a barely rated historian, a highly rated article, a book or a play that is not worthy of any rating, and so on).

We are unable to demonstrate—the last drops of water have now fallen in the clepsydra—the origin of this extremely silent and worrisome transformation of our “forma mentis” *undefined*.

In truth (who can deny it?), a genuine act of judging will never be an act of evaluating; it is, in fact, by its own constitution, an act of thinking—a meditation—that is, first and foremost, directed toward understanding the sense of something in order to safeguard it within its sooth and verity (whatever it may be!); in other words, to defend it from the voracity and impetus of the circuit of usefulness and profits, and therefore the disheartening and humiliating value-based sphere, and finally from business. But life does not judge, one might say: rather, it evaluates because it is only interested in strength and power, in force and potency.

This may be the case. But the essential matter remains: scientific judging pertains to the adage of *σχολή*, to the soothing truce of verity, while the act of evaluating—precisely in its substituting the faculty to judge, and consequently in its saturating every act of thinking, every meditation (and remedy), in this manner—sets up (whether it be aware of it or not) the (chaotic) regime of *ἄσכולία*, to wit, of rush and rushing, hurrying and urging, and fretting. It offends existential time (breaking its law), and, in “the meantime”—namely while the offense proceeds and powers up “thanks to it” —, sets up within the various creating communities the dominance of unease and systematic harassment (a dominance that provokes the sparking of arbitrariness and despotism which wears the mask of “procedure”). What should surprise us and, once again, unsettle and disquiet us—for it is a true “countersense” that has insinuated itself in our very existence as scholars —, is that we are the perpetrators and bearers (the supporters) of this threat!

Thus, the task remains for us to draw our conclusions from the considerations made up to now—a task that could start from an open reflection of the following question (which is rhetorical in appearance only): what will be the fate of our scientific schools, our cultural institutions and research departments, our systems of higher education and advanced studies, our arts and “creating ingenuity”, if we entrust the judgement of and verdicts on their activities to agencies that carry in their very titles—and therefore in their action programs—a methodical (and thus meticulous and decisively pedant) reference to the act of evaluating?

To conclude, I quote some well-known Italian, French, Spanish, and English ministerial acronyms which should now sound very different from what our conditioned ears were used to: in Italy, 1. ANVUR: “Agenzia nazionale di valutazione del sistema universitario e della ricerca” (Italian National Agency for the Evaluation of the University and Research Systems), 2. VQR: “Valutazione della qualità della ricerca” (Evaluation of Research Quality), 3. GEV: “Gruppo esperti della valutazione” (Expert Focus Group for Evaluation), 4. AVA: “Autovalutazione—valutazione periodica—accreditamento” (Self-evaluation—periodical evaluation⁴—accreditation/certification); in France, AERES: “Agence d’évaluation de

⁴These concepts are also commonly translated as “self-assessment” and “periodical assessment”.

la recherche et de l'enseignement supérieur"; in Spain, ANECA: "Agencia Nacional de Evaluación de la Calidad y Acreditación"; in England: "Research Excellence Framework".

In the four Italian acronyms, the word "evaluation" recurs five times, and is accompanied, as in the case of the Spanish system, by the term "accreditation", so that verity—which is the grounding-trait of the free motion of science—is reduced to being an object of "esteem" and "validation", or a "product" of "validation", to the effect of reviling "ratifying".

What could all of this consist in if not the realization of a (public and, in itself, "impolitic") plan of surrounding and encirclement, a siege and blockade of the world of σχολή by άσכולία, to wit, by urgency and pressure? Undisturbed, άσכולία may now cause its own hidden damage and burden with its infinite oppressions.

If we listen once more to the imperative order, which is always repeated in messianic tones, to "spread the culture of evaluation throughout the world of science", we will finally hear its true meaning, which goes like this: cultivate the virus of άσכולία within the very heart of σχολή; inflict the capital punishment (the unculture, bruteness, and brutality) of business on σχολή.

Tell me how you think of time, and I'll tell you who you are.

Addendum

Judging is neither subjective nor objective. Rather, it aims at the verity of that which it considers, and therefore, insofar as it is a "verdict" (*vere dictum*, "said according to the verity"), it may always be appealed as a matter of principle (which is and rests the *contentio veritatis*). Instead, the act of evaluating is subjectively objectifying, i.e., intent on reducing a certain sense to an object of computation in order to insure it as such within the self-power of a given subject; it therefore presents itself as unappealable.

If scientific judging knows time as a gift, the act of evaluating "dis-knows" that gift.

Since evaluating is a quoting—in terms of actuated and expected potency, and therefore of profit—a certain value (which is always dressing a certain meaning with “valuing clothing”), the unconditional regime of evaluating foresees that any evaluation, which is necessarily assumed as “value-(of-value)”, is itself an object of evaluation. Thus, the eternal cycle of evaluating generates itself, while its constitutive groundlessness appears.

The act of evaluating—with all of its practices and numerous contemporary articulations and applications—undermines existential time because, precisely by presupposing and covertly exploiting its gift “every time”, it makes it appear and denounces it as a mere interruption of the “check-time”, a sort of intruder to be expelled; in other words, it is a disturbing factor of “necessary” and “urgent” evaluative procedures. In such a manner, the act of evaluating always touches upon the “check-time”, enhancing it to the extreme and finally imposing it as an absolute value, or better yet, as the primary value and, in the end, as the new form of eternity.

The acts of evaluating and quoting, counting and estimating, appreciating, sifting and probing—along with their antonyms, depreciating, despising, blaming and deploring, condemning and so on—are consequences of thinking according to values. The latter has long been imposed as the most correct and sure form of judging. A judgement (which is always a verdict) will only be such if it possesses the qualities of evaluation. Proceeding by evaluations has become the primary form both of the intelligence of the meaning of things and of action on, with and for things. It dictates its own law in every field of human activity, finally self-asserting itself as a fundamental instrument with which creative genius itself measures and weighs itself, thus calculating and ensuring its own inventive and productive abilities and its own talent. What happened—what has happened to us—to allow the act of evaluating to reach this rank and this role? How has it been possible for the scientific and educational institutions that host our existence as scientists and scholars to be subjected by law to “agencies of systematic evaluation”? What is the national agency of evaluation of universities and research if not the primary operator of the unease of *ἀσυχολία* that is inflicted on science?

References

- Cummings, Edward Estlin. 1946, 2009. *Santa Claus. Un'allegoria di E.E. Cummings*. Testo originale a fronte. Ed. italiana a cura di Ivo De Gennaro, con la collaborazione di Anna Bacigalupo e Gino Zaccaria. Milano: Christian Marinotti Edizioni.
- Heidegger, Martin. 2007. *Zur Sache des Denkens (1962–1964)* (Gesamtausgabe, I. Abteilung: Veröffentlichte Schriften 1910–1976, Band 14). In , ed. Friedrich-Wilhelm von Herrmann. Frankfurt am Main: Vittorio Klostermann.
- Husserl, Edmund. 1928, 2000. *Vorlesungen zur Phänomenologie des inneren Zeitbewusstseins*. Ed. Martin Heidegger. Berlin: De Gruyter.
- Leopardi, Giacomo. 1817–1832, 1997. *Zibaldone*. Ed. Rolando Damiani. Milano: Arnoldo Mondadori Editore.
- Tommaseo, Niccolò. 1915. *Dizionario della lingua italiana*. Torino: UTET.



Abolition of Time, Alienation from Truth, and the Heteronomy of Academia

Ivo De Gennaro

Commonly, the word “timeless” refers to a state or quality that is unaffected by time, and, in this sense, “eternal”. Being unaffected by time can mean two things: (a) being outside of time, or (b) persisting through time, traversing it without experiencing it as such, namely, in its passing. On the other hand, if we are to take the word “timeless” to describe the present-day state of academia, we must accept it in its literal meaning: time-less, that is, “without time” or “deprived of time”. There is a crucial difference between what is “unaffected by time” and what is “deprived of time”. The difference is that the latter expression indicates a constitutive relation to time: namely, a relation of *privation*. The thesis which I will argue in this essay is that academic life—meaning the different forms of theoretical learning which are assembled under that name (usually referred to as “research” and “teaching”)—, while being essentially related to time, presently faces the threat of timelessness as a privative mode of

I. De Gennaro (✉)

Faculty of Economics & Management, Free University of Bozen-Bolzano,
Bolzano, Italy

e-mail: ivo.degennaro@unibz.it; idegennaro@unibz.it

that relation; and that, as a consequence of this threat, it faces the risk of forfeiting its essence.

After introducing some fundamental distinctions concerning the notions of time (Sect. 1) and free time (Sect. 2), I will introduce the concept of academic freedom and show how it implies a reference to truth and autonomy (Sect. 3). Thereupon (Sect. 4), I will discuss internal and external threats to academic freedom, all of which arguably can be retraced to the abolition of time; in this context, the notions of “the threat within the threat” and “scientific difference” will become prominent. In conclusion (Sect. 5), I will suggest that the safeguard of academic freedom can only rely on the awareness of the unabolishable gift of time that is constitutive of the scientific difference itself.

1 Two Notions of Time

A preliminary consideration must be devoted to the elucidation of the fundamental understanding of “time” (Carfora and Zaccaria 2018). In fact, this word is used for indicating two basically different circumstances, which in this essay I will call, respectively, “ethical time” and “non-ethical time”.

1.1 Ethical Time¹

This notion refers to the different concepts of time which philosophy has elaborated in the course of a tradition that ranges from Aristotle to Husserl and Heidegger. The reason for which I subsume these concepts under the title “ethical” is that, in this acceptation, time pertains to being; in other words, it is one of the fundamental notions through which philosophy attempts to establish a basis of sense upon which a human reality can be erected. In the initial wording of Greek philosophy, that basis of sense is called *ēthos*, while this human reality is called *polis*. Hence, seeing

¹ This notion is akin to that of “existential time” discussed in G. Zaccaria’s essay in this volume.

that time contributes to establishing the basis on which a *polis* can be built and thrive, but also decay, it can be called ethical.

Philosophy does not choose to attribute to time an ethical aspect or “value”. Rather, as soon as it sets out to determine what time is, it finds time itself to have the described ethical status. This has a crucial implication (which is decisive for the argument of this essay): time as such is *not independent* of the human being, namely, of the “relation of understanding” within which the human being (“man”) and that which appears to the human being as reality (“the world”) constitute themselves as such; in short: time, as perceived and interrogated by philosophy (“ethical time”), is in play only as a constitutive dimension of the man-world-relation, to which the human being is natively open—it exists solely in the form of the (human) time-relation *for* the (human) world-relation. As a consequence, the “time” that, on the other hand, is conceived as a reality that is independent of the man-world-relation—for instance, “time” in the perspective of modern cosmology—, is not ethical time.

Before we look into the implications of this first demarcation, it is necessary to formulate a working definition of ethical time. As an intermediate step towards such a definition, I shall first introduce the notion of “sense”. The etymon of “sense” has to do with “taking a direction” or “following a trail”. A direction is given by a provenance and a destination. Hence, perceiving the sense of something means being aware of it as it appears on its way between its provenance and its destination; that is, *in light of what it was expected to end up being to begin with*. In other words, a thing’s “look” as it is claimed by the future that flows from its origin—that is the thing’s “sense”. From these definitions, it is clear that there is “sense” only for the human being; to wit, the being that knows time as the interplay of origin and future. This interplay is that in which sense essentially consists. Hence, wherever the relation to time entertained by human beings is inert, senselessness obtains. Note that the above-mentioned traits of time—“provenance”, “destination”, “beginning”, “end”, “future”, “origin”—do not indicate points or segments on the so-called “line of time” that is seen subsisting independently of man. These traits, too, “are there” only in the awareness of the human being who is concerned by them—or by their privation.

1.2 Non-ethical Time

The term “non-ethical time” (as opposed to “unethical time”) does not mean a “period of time” characterized by diffused immorality, or a “quality of time” characterized by ethical corruptness. “Non-ethical” literally means: not endowed with, devoid of the ethical trait, and therefore not constitutive of sense. This notion of time is the one we find in modern physics. Gino Zaccaria (p. 12 in Carfora and Zaccaria 2018; see also this volume, p. 7) formulates this “physical” notion of time as follows:

Time is the dimension of the qualitative or quantitative computation of the duration that flows and elapses in the form of “one-after-the-other”, that is, the form consisting in the temporal succession, or, in other words (according to the customary terminology of physics), in the “arrow of time”.

The thus-characterized “physical” notion of time is derived from the philosophical definition of time given in Book IV of Aristotle’s *Physics* (Aristoteles 1987, 218b 21–220a 26). But derived how? Answer: by neglecting the originary inter-relatedness of human understanding, on the one hand, and time in its constitutive traits, on the other. Put differently: only by extracting thinking beings from the originary relation to time, in which they participate in the constitution of sense; only by thus “interrupting” the experience of reality that is based on that time-relation, do we obtain a constellation in which “we” observe “the world” as a series of events placed in an unequivocally established position (i.e., ordered according to the criterion of “before” and “after”) on the directed line, or arrow, of time.

The derivation of physical from philosophical, or of non-ethical from ethical time, consists in the said “interruption”: to wit, in the setting, or “freezing”, of the primary time relation, and the consequent alteration of our experience of reality, which, as a result, is seen to be “sitting”, in a lineup of events, on the arrow of time. As a consequence of this setting of the time relation, the things of the world appear in a givenness in which their sense is itself “set”, namely, already decided and no longer at issue: what that sense *is*, is dissimulated by a veil of obviousness that gives no cause for questioning. On the other hand, time itself appears as a flow of

elapsing “points” that follow one another, and that flow, while having nothing to do with the sense of things, can be uniformly objectivized (through a device called “clock”) in such a way as to constitute a parametric reference for the computation of the aforesaid things. Finally, the human being appears as a “temporal thing” that is both an observable reality on the time arrow, and in charge of holding up this entire constellation by virtue of its capacity to build and read a clock, while, as a consequence of the “set” time-relation, the human being’s sense-constituting capacity is, in turn, inert.

The implications of the derivation of non-ethical time from ethical time are now clear. Ethical time is the fundamental dimension, borne as such by the human being, in which the latter participates in the decision of (the) sense (of things) so that, from that decision, the entire “political” sphere obtains its time-heeding directives and sense-preserving measures. When ethical time is “forgotten”—that is, in a regime of timelessness—, the “world” is left with an uncontested, imperceptible sense, and without a measure in things, while the human being is reduced to his or her technical and computational skills.

Based on previous considerations, we assign to “ethical time” the name “time”, while “non-ethical time”, being derived from or as a “sub-product” of time (namely, as a tool for operating with things, not related to their sense), will be called “sub-time”. What in the perspective of cosmology appears, for instance, as the “time” that elapsed between the Big Bang and the formation of the planet earth, is not time, but sub-time; that elapsing is an actual representation of a measurable duration based on the oblivion of time, or on time itself not being in play. However, the same holds true for what is seen as having elapsed ever since, as presently elapsing, and as yet to elapse. On the other hand, time itself is a rare and fleeting gift. It is or is not; yet, it does not elapse.

2 Two Notions of Free Time

The distinction between ethical and non-ethical time has a direct implication for our understanding of “free time”, a crucial notion when we think in a fundamental way about academic freedom.

The non-ethical notion of time produces an understanding of “free time” that can be framed as follows: free time is the portion of any given duration, or interval, on the time arrow, which is not occupied by activities that we carry out because we are required to do so; for the sake of simplicity, we call these required activities “work”. “Free time” (or “leisure”) is the time not occupied by “work”, the portion of elapsing time that we are free to occupy as we see fit; put differently: it is the length of time that is left after we subtract work time from a given duration of time (a day, a week, a year, a lifespan), and which we occupy with non-necessary, “leisurely” activities. Note that in this definition the leisurely character is seen as pertaining to the nature of the activities in which we engage: the time in which they are carried out is qualitatively identical to worktime and has its status of “quality time” only by metonymy.

The original notion of “free time”, which was coined by the Greeks, is radically different. The Greek word for what we call “leisure”, or “spare time”, is *scholē*.² Our words “school” and “scholar” are derived from it. In fact, next to “free time”, “leisure”, “rest” and “idleness”, dictionaries list as meanings of *scholē* “learned discussion, disputation, lecture” (i.e., that in which free time is notably employed) and “school” (i.e., those to whom lectures are given) (Liddell and Scott 1940, ad loc.). Both Plato in the *Critias* (1991, 109c–110a) and Aristotle in the *Metaphysics* (1982, 981b) speak of *scholē* as a presupposition for philosophy; Aristotle specifically indicates it as a necessary condition for “theoretical life” in Book 10, Chapter 7, of the *Nicomachean Ethics* (Aristotle 1894). This latter notion seems quite obvious, for it is evident that, as long as we are busy with necessary, life-sustaining occupations, we lack the freedom to engage in philosophizing or other non-necessary activities. Yet, the assumption that Plato and Aristotle, when they speak of *scholē* as a presupposition of theorizing, are referring to “non-ethical free time”—that is, to “the length of time that is left after we subtract work time from a given duration of time”—does not resist closer scrutiny. In fact, rather than indicating a segment on the line of time, *scholē* is a *mode of the originary time-relation*. In order to see this point, we need to understand the scope of two key notions of Greek thinking: “theory” and “end”.

²This notion is discussed in a related perspective in G. Zaccaria’s essay in this volume.

2.1 Theory

In Greek, and particularly in Aristotelian thinking, “theory” is the insight into the inconspicuous sense of all things material and immaterial, and this (i.e., that insight) right down to the ultimate origin and ground that informs that sense. Hence, when Aristotle says that “theoretical life” (i.e., a scientific form of existence) requires *scholē*, this statement does not refer to the availability of an unoccupied portion of sub-time, but to the necessity of an “active” or “alert” mode of the original time-relation. In this mode, we are engaged in liberating the sense-constituting coming of time itself; *hence* we have explicit access to the granted sense; *hence* we are capable of interrogating that sense and offering a knowledge of it towards the construction of the *polis*. On the other hand, the mere availability of an unoccupied segment of sub-time has no bearing on theoretical life and its conditions, as sub-time, by definition, is a parametrical measure of duration that cannot receive a (decision of) sense, nor involve an awareness or knowledge of sense. Should we one day reach a state in which no one needs to “work” ever again, so that virtually all of our “time” is unoccupied (an objective winkingly promised by modern economists; see, e.g., Keynes 1932), this will have no implication whatsoever with regard to our capacity for theorizing, and, hence, our freedom.

“Awakening” to the time-relation, and making of this “waking state” a habit, is what constitutes theoretical life. The Greeks have the verb *scholazein* for the habitual wakefulness in relation to (sense-constituting) time. The words for the privation of *scholē* and the corresponding manner of being, are, respectively, *ascholia* (commonly rendered as “occupation”, or “busyness”) and *ascholazesthai* (usually understood as “being occupied”, or “being busy”). *Scholazein* is not a factual condition that occurs whenever we enter a “free” segment of the line of time; just as *ascholazesthai* is not a condition into which we fall whenever we reenter an “occupied” segment. *Scholē* and *ascholia*, *scholazein* and *ascholazesthai*, are not mutually superseding states on the given line of time, but modes of the ordinary time-relation. Neither of them has succession (in the sense of the “one-after-the-other” on the line of time) as an essential feature, although both do of course know the notions of “before” and “after”.

In fact, one can meaningfully speak of “before” and “after” without in any way having to assume time as “a duration elapsing in the form of temporal succession”.

The relation of *scholē* and *ascholia* is such that *scholē* is always expectable where there is a humanity, even if that humanity is at first and mostly in a condition of *ascholia*. In other words, *scholē* is “at all times” “waiting” at the ground of man’s being as such: when man “has himself” in his constitutive relation to time, this is called *scholazein*, and the resulting temporal configuration is *scholē*.³ On the other hand, when man fails to have himself in that relation, he “freezes” or “is set” into *ascholazesthai*, and the resulting temporal configuration is *ascholia*, i.e., timelessness. Ordinary language already knows these temporal relations; it holds in itself a “sciency” of time, which we, under the influence of the notion of sub-time, are led to ignore. For instance, when we feel that “time is slipping away”; or when we seem to “never find the time for anything”, this implies that in some way we are failing to have ourselves in (“being had” by) time, with the consequence that, in fact, “there is no time” (i.e., time is not generated and sustained), and—in spite of considerable activity—“nothing gets done” (i.e., no sense is constituted and “had”). On the other hand, as we let ourselves in for the play of time, there is “all the time in the world”, with the consequence that, “in no time” (i.e., without any sensation of duration being involved), a great richness of sense accrues and is perceived.

Now, we can always, as it were, stand on the sideline of the occurrence of sense with a clock in our hand, and measure the duration of what, from that vantage point, we make out as different “events” taking place “as time elapses”. As a result, we might be able to prove that, while “subjectively” one of them seemed to involve “a short” and the other one “a long” time, “objectively” both of them took place in the exact same amount of time; that is, they had the same duration. However, the distinction between “objective” and “subjective” time, which common sense has from physics, dissimulates the difference between time and sub-time.

³To “have oneself” is the same as “to be”. *Scholē* is presumably formed on the verb *echein* “have, hold; have/hold oneself; be”; hence, being in *scholē* is “having oneself” (“being”) in that which “has itself”, and thus “has us”, in the first place. The “having itself” of time is the simultaneousness, in the “now”, of the (with)holding of “what has been” and the (with)holding of “what is to come”.

In fact, in the perspective of sub-time, or clock-time, there exists an independent flow of time that we can either measure accurately through an appropriate device or (under the influence of “psychological” factors) “live” in distortive impressions. On the other hand, in the perspective of ethical time, time as such, free of “succession” and “duration”, comes forth and retreats—and with it our own selves and the (sense-)richness of a world.

2.2 End

Time and its subproduct do not exclude each other in principle; in fact, they can coexist in harmony. Nobody will negate the usefulness of a clock, and this usefulness remains intact even after we have unburdened the clock itself of the unlikely task of “measuring time”. However, entirely different humanities and worlds will result depending on whether the prevailing understanding of time is an ethical or a non-ethical one.

According to Aristotle’s *Nicomachean Ethics*, all activities within the *polis* have the character of *ascholia* (Aristotle 1894, 1177b). However, there is a decisive difference between a *polis* that maintains, at its heart, a reference to *scholē*—which is precisely the task of theory and of those who engage in it—, and a *polis* that, trapped in the ignorance and neglect of *scholē*, bases itself and its world on non-ethical time, and is therefore irrecoverably absorbed in *ascholia*. Greek philosophy presents us the “strife over *scholē*” as a contention that decides between two different humanities, with philosophy itself, so to speak, taking the side of *scholē*, and sophism that of *ascholia* (De Gennaro 2020).

In this context, Aristotle, in his *Nicomachean Ethics*, provides us with a dictum that sounds like a common place, but is in fact an ontological determination of the human being, and, as such, has far-reaching ethical and political implications. He writes (Aristotle 1894, 1177b 4–5):

ascholoumetha gar hina scholazōmen

Based on the ordinary understanding of time, this translates as follows:

For we engage in occupations so that (*hina*) we have leisure.

What is this, if not a statement of the obvious? Common sense knows that we engage in necessary occupations because we are forced to do so in order to create the presuppositions for having some time to occupy at will. Popular wisdom reminds us that we need to do our daily labor first, and only then are we allowed to enjoy whatever we like to do in the spare time we will thus have created for ourselves. For modern economics, “the amount of work supplied is determined by workers’ preference for leisure over earning a higher amount of money” (p. 7 in Mazzucato 2019). Today’s global economy is still based on the consensus that it is first necessary to solve the problem of securing the means for the satisfaction of our absolute needs, so as finally to command the “free time” in which we can turn to the “higher purposes” that define us as humans. However, what Aristotle intends to say has nothing to do with all this—as an explicative translation based on the notion of ethical time can begin to make clear:

While we fail to have ourselves in time,
 the ever-awaiting end of that remains:
 having ourselves in time
 (i.e., in the free-time whose “having itself” “has us” in the first place).

The Greek-philosophical notion of “end” (*telos*) does not indicate what “comes in the end”, or what “comes last”; rather, it means what is there from the outset as a constitutive reference, namely as the “sake” for which anything is what it is.⁴ Aristotle’s dictum allows us to redefine our understanding of the relation between *ascholia* and *scholē*: it reminds us that, for any instance of “work” in the space of the *polis*, the extent to which it is actually *for the polis*, thus fulfilling its ethical task and simultaneously freeing our own self, depends on the nature and degree of its reference to the ever-waiting “having oneself in time”; the latter being the manner of existence—intrinsic in the being of man, but explicitly and habitually realized only in “theoretical life”—, whence arise the understanding of sense and the recognition of the right measure. Theory requires *scholē*;

⁴ Cf. Aristotle (1957 [Politics]) 1334a 14–15, where *scholē* is indicated as the *telos* of *ascholia* in the same way in which peace is the *telos* of war (a notion not to be conflated with the Roman maxim *si vis pacem, para bellum*).

scholē needs theory: both hold each other in a relation that holds open the afflux (and suffers the fading) of sense. The task of theory is to enroot the life of the *polis* in *scholē*, so that, while everything comes to pass in *ascholia*, the awareness of the end of all dwelling and building does not go extinct.

Finally, the distinction between ethical and non-ethical time allows us to differentiate between two notions of “free time”: one, which we find in the originary Greek notion of *scholē*, is the end in which man’s being comes into its own. We call this: free-time. This end is explicitly and habitually taken on in theoretical (“scholastic”) existence, in the form of “having-oneself-in-time” or “being-in-time” or simply: in the form of (pure) “be-having”. Being-in-time implies an openness to and involvement in the sphere of the decisions of sense; its privative mode is “un-be-having”, namely, the manner of being in which our time-relation is inert and, consequently, we are neglectful of sense. Aristotle says: in one way or another, the ultimate reference of all un-be-having is be-having.

The other notion of “free time”, which results from the replacement of time by sub-time, is given by the segment of clock-time that is not filled with necessary occupations; it is a timeless “free time”, which, as such, is indifferent to sense. As long as we base ourselves on this notion, we remain enclosed in an “un-be-having” that cannot expect a modal turn into “be-having”, nor draw from the “promise” of “be-having” an awareness of sense or a recognition of (the right) measure. We are stuck in a world of chronic “busyness”.

3 Freeness, Truth, and Autonomy

The notion of ethical time implies concepts of freeness, truth, and autonomy, which are strictly related to “scholastic” existence and the conditions under which it unfolds.

We define as freeness the manner of being in which man does not merely execute a sense that, being already decided, is never at issue in the first place; in positive terms, freeness is the manner of being in which man is knowingly involved in the decision concerning the sense of things. This definition of freeness is intimately related to *scholē* and *scholazein*; in

fact, being-in-time and being free imply each other: freeness is attained through being-in-time, which, in its turn, as such belongs to freeness. Thus, the translation of *scholē* with free-time finally obtains its full sense: *scholē* is the “time of being-in-time”, the time for being-free, the time of freeness—free-time proper. By implication, theorizing, the explicit and habitual being-in-time—pure “be-having”—, is (the way to) the highest freeness. Theorizing is either letting oneself learn (so-called “research”); or letting others learn through one’s learning (so-called “teaching”). Such theorizing is either free, namely free in the expectancy of freeness, or else it is not theorizing. Where the sense of things “is already decided and no longer at issue”, while at the same time “what that sense *is*, is dissimulated by a veil of obviousness”, there is no expectancy of freeness, hence no research and no teaching in the now-established sense.

The meaning of truth, too, is already implied in the notion of ethical time. Truth, here, is not “the truth” concerning this or that subject matter. Rather, it is the contention of clearing and absconding, of overtness and dissimulation, in which the yet-undecided sense of something is at issue. The engagement with the in-itself contentious truth involves us in the struggle for letting what is true come to fruition: discriminating the vigor of the well-founded from the inertia of the arbitrary; helping the firmness of the rigorous prevail over the temptation of the loose; establishing the productive at the expense of the sterile; saving the soothingness of the wholesome from the rage of the destructive; keeping the measure of the fair clear of the arrogance of the biased; contending for the genuine against the attack of the factitious; gathering the meaningful while foregoing the vacuous; bringing to bear the finality of the simple over the tenacity of the devious; wresting the promise of the sound from the threat of the fallacious; pursuing the sufficiency of the essential rather than settling for the insufficiency of the obvious. Engaging with the truth requires persisting in the interrogation of the unknowable instead of snatching the quick result of the demonstrably known (see pp. 38–39, 116–117 in De Gennaro and Zaccaria 2011).

Being-in-time implies standing forth in the contentious element of truth, wherein the sense of things can come to shine while keeping to itself its origin—or can slip away while leaving behind a cue for further interrogation. Hence, theorizing implies a twofold “being-in”:

being-in-time, namely, letting time itself (i.e., the sense-constitutive dimension) come into play; and being-in-truth; that is, bearing the element that lets a sense obtain its clear configuration. The “collusion” of this twofold being-in builds a path of interrogation, which remains exposed to the groundlessness of the undecided.

Building a similar path requires providing the time and the space, following the suitable ways, acquiring the necessary skills, and exercising the needed endurance, for that interrogation. Now, only the master-learners and the student-learners themselves, as those who attempt such interrogation, can know the conditions, the means, and the measures, that their learning-path demands. If freeness is what keeps open a learning-space in the first place, autonomy—namely, the free determination of the circumstances and conditions, rules and instruments of learning, based solely on the demands of learning itself—is what is needed for inhabiting and preserving it.

The triad of free-time, truth and autonomy defines the “academic space”—the space of habitual theorizing, which, placed at the heart of the *polis*, safeguards the essence of the *polis* itself as a house of freedom and a human abode, its rootedness in the fundamental freeness in which the sense that defines all “political ends” is interrogated and *held open for decision*. In order to fulfill its “political” task, in order to be *for* the polis, the academic space must keep clear of and remain extraneous to the political space (the space of *ascholia*), in which there is “no time and space” for theoretical learning, so that things—no matter how disputed and argued over—appear in an already decided, unquestioned sense. Academia must be free and (therefore) autonomous. “Academic freedom” is but a name for the freedom of the *polis*, insofar as that freedom has in the freeness of academic life its extra-political stronghold.

4 Threats to Academic Freedom

On the basis of foregoing considerations, and having clarified what is at stake when we speak of academic freedom, we can now provide a preliminary characterization of the threats this freedom must face. *Academic freedom is threatened insofar as theoretical learning is uprooted from free-time.*

Being-uprooted from free-time implies that “theoretical work” begins where a sense is already decided, thus falling short of its extra-(*pro*-)political scope at the heart of the *polis*. In other words, where academic freedom fails, theorizing no longer lives up to its task of enrooting a human community in a knowledge of the end (the *telos*) of humanity. Which is why a threat to the freeness of theory is a threat to humanity itself. For the purpose of further inquiry, we differentiate two kinds of threat: “internal” and “external”.

4.1 The Internal Threat

The “internal” threat refers to the circumstance that theoretical learning loses *in itself* its constitution of being-in-time. This has nothing to do with the allocation of quanta of sub-time to “research” or “teaching”, as no amount of such time can in any way warrant that a “having-oneself-in-time” is realized, or even attempted.⁵ The implication of losing the constitution of being-in-time is that there is no academic space in the first place, since such a space can only be built through the exercise of theoretical learning itself. As a consequence, the habit formed within what is now only nominally an academic framework, produces a knowledge of a reality deprived of the openness of its sense-element and reduced to mere fact or “brute effectivity”.

The same notion can be formulated thus: the now-envisaged—scientifically modeled, researched, investigated, monitored, acted upon, enhanced, taught, learned—reality is not a distinctly *human* reality. “Human reality” indicates reality, insofar as the sense-element in which it consists is somehow in play and, as such, borne within the different human practices, be they “theoretical” or “practical”. On the other hand, “brute effectivity”—or, as we can also say, “the effectivity of brute life”—is a reality deprived of its constitutive time-dimension, and, therefore, of its sense-element.⁶ When reality, when the *polis* itself, is reduced to brute effectivity, and theorizing is absorbed by and aligned with what now counts as the

⁵ Contractual terms fixing such quanta attest to a lack of academic freedom.

⁶ Hence, a circumstance such as “the earth before man appeared” is also a human reality, which however *can appear*—and consequently be “studied”—as “brute effectivity”.

political, the academic world (“research” and “teaching”) loses its ethical, extra-political trait and instead becomes a “factor” of empowerment of political effectivity: academia becomes “super-political”.

Structure of the Internal Threat

Before we go on to consider the implications of this absorption and alignment, we need to address a question that must arise in this context: How is it even conceivable that theorizing loses its constitution of being-in-time, and thus its ownmost character? This is not a “theoretical” question. For my contention is that, not only is it conceivable that this loss could occur, but that it actually has occurred and is presently occurring, leaving academia hollowed-out as to its extra-political essence. Tracing back the origin of this occurrence requires introducing a perspective on the unfolding of the metaphysical tradition, and the consequent evolution of science, which is beyond the scope of this essay (cf. De Gennaro 2019). Here, an indication of the intertwined structural moments of the reduction of theorizing to a “timeless” technique applied to brute effectivity will do.

The *first* and initial moment in the generation of this shift in the nature of theory resides in the very constitution of reality. As reality itself assumes the consistency of brute effectivity—a circumstance that, in the tradition of thinking, was first diagnosed by Nietzsche as “the devaluation of the highest values”, and subsequently, in a different manner, by Heidegger as “the forsakenness of beings by being”—⁷ a knowledge is prompted which bases itself on, and envisages, this same effectivity (with no care for the implicit sense-element): only this knowledge will satisfy what under these circumstances counts as the exclusive criterion of scientificity: namely, the effective “theorization” of the effective (in terms of its operative availability, steerability, makeability, etc.).

Where common sense could be content with stating that, if this is what reality is like, then theory should be consistent with it, in a philosophical perspective this circumstance contains an instruction for

⁷ See, i.a., p. 350 in Nietzsche (1999), and p. 377 in Heidegger (1997).

interrogation. Given that reality presents itself as brute effectivity—that is, in a form that incorporates “brute effectivity” as an already decided sense element, without this element being at issue and, so to speak, “up for decision”; given that reality appears, in the first place, as a *timeless* reality (such as the reality of physics), as mentioned before, a “theory” that caters to that reality is prompted; at the same time, however, the need for an entirely new form of theory arises: one whose insights, by virtue of a new time-relation (hence in a new truth-element), diagnose that reality to the point at which the already decided (“set”) sense becomes perceivable as such; to wit, *at the level of its decidability*. This amounts to the following: while the *prompted* theory is confined to executory tasks, in which that set sense is progressively played out, the *needed* theory must experience the timelessness of brute effectivity *as the announcement of an unprecedented freedom*.

The *second*, correlated, moment of the aforementioned shift looks at the inner constitution of theory itself. The way in which a theory constitutes itself is through its basic assumptions. These assumptions define the scope of the reality that, on this basis, can be investigated in its as-yet unknown details according to certain methods. For instance, physics, through its basic assumptions, defines what appears as a physical reality in the first place—the reality which is now available to be investigated with the methods of physics itself. When the scope of assumption-making not only falls short of the level of decision (which is a structural feature of scientific knowledge), but, in the oblivion of that level, aligns itself with the decisionlessness and unquestionableness of brute effectivity, its executory trait will blindly serve the latter’s “truth”, namely: *more* brute effectivity. In fact, where the truth of time—the element in which a sense is contestable—fails, the “demand for more” (in terms of the set sense) functions as a “surrogate (of) truth”. But what does “more brute effectivity” mean? Not, in the first place, a quantitative increase, but “more” *in terms of the degree of bruteness*. The inner trait of bruteness, by virtue of which it wills to outdo itself, we call brutality. Brute effectivity is characterized by the will to and the capacity for brutality. Hence, as a consequence of its being shaped by the said “surrogate truth”, theory-building will itself be distinguished by its capacity for catering to that brutality (pp. 253–254 in Heidegger 2014).

In concrete terms, this circumstance will result in basic assumptions that assume a merely functional, “brutality-fostering” character, in support of “research” and “teaching” that aim at establishing and consolidating functional theories of reality. Functional theories are theories interested in the functioning of the particular domain of brute effectivity that constitutes their field of investigation, in the perspective of “liberating”, or unleashing, as much effectivity as possible; or rather, of unleashing it in the brutest (thus the most sense-deaf) possible manner. These theories will want their assumptions to be as functional (as “brutally constructive”) as possible in this sense. The more an assumption is capable of molding a certain domain of brute effectivity in such a way as to make it available in a convenient manner for the brutal “extraction of effectivity” implemented by actual research and teaching, the better said assumption will function. The assumptions that define, for instance, “physical reality”, will be chosen not according to the scope of the contestable sense and the expectable truth they offer for theorizing, but instrumentally, based on their effectiveness in terms of producing effective functional theories—theories that shape reality itself as a “platform” for “pushing” the enhancement of brute effectivity. The very notions of “scientificity” and of “scientific progress” will be defined in terms of the command of (the brutal enhancement of) effectivity that a theory can secure.

The most “progressive” functional assumption in the now-established sense is that of parametrical time, or sub-time. This (explicit or implicit) assumption is common to what today counts as scientific knowledge. Independent of whether a particular science operates with a notion of “objective time”, or with its correlate, “subjective time”, sub-time is instrumentally assumed as an underlying parameter that has the function of fixing reality in its constitution of brute effectivity, so that, on this basis, a functional (“physical”, “biological”, “historical”, “psychological”) theory can be elaborated.

In general, we can designate the conception and the devising of tools with the name “technics”. Hence, we call a form of theorizing, or a science, which—using, in the first instance, time in the form of (subjective or objective) sub-time as a tool—assumes the character of a matrix of functional theories, “technicized science”; the becoming of this form of theorizing can consequently be referred to as the technicization of the

sciences. Technicized sciences are “timeless”, in that they know time only as a parameter; and they are “truthless”, or “alienated from the truth”, in that—independent of the specific epistemological “truth criteria” by which they operate and establish acceptable propositions—not only do they not participate in the element in which the sense of the reality they investigate needs to be interrogated and contested in the first place, but they reduce to an operative tool what is constitutive of that element in the first place.

As we have seen, within the *polis*—i.e., in the sphere characterized by *ascholia*—a certain sense is always given, and as such forms the basis of debates or controversies over operative notions and ends; on the other hand, the sphere where sense is decided, is extra-political. However, as technicized science “systematically” falls short of the extra-political level, it is structurally prone to more or less explicit “politicization”. In other words, as a consequence of its technicization, science, and academic life in general, become a “factor” of political life. Their “otherness”, or “extra-neousness”, with respect to the latter is not only ignored, but lost in the first place. In other words, technicized science has forfeited its (extra-*pro*-political) freeness. This *internal* loss of freeness, tied to the technicization of science, is a threat to academic freedom which for a long time has been shaping academia for the benefit of that threat’s intrinsic, “brutalizing” drive. It seems that the most earnest discussion concerning those threats to academic freedom which, on the other hand, originate from outside the academic sphere itself, must remain insufficient as long as it ignores the structural unfreedom that affects present-day science.

Scientific Difference and the “Threat within the Threat”

The fact that technicized science loses its “scholastic” nature has momentous implications. In order to fully appreciate these implications, we need to highlight the specific form in which reality qua brute effectivity—a reality whose only “truth”, as we recall, is brutality—appears and is captured. This specific form can be grasped as follows: reality is *information*, and its sense is *value*. In fact, technicized science deals with different configurations of information, which are perceived as (quantitative or

qualitative) values in the perspective of enhancement. Since technicized science consists in the ever-more-specialized elaboration of ever-more-valuable theories of the informational value of ever-narrower scopes of effectivity (a process known as “specialization of the sciences”), it also appears to itself, and relates to itself, as a “progressive” system of informational values. In other words, science perceives and assesses itself in an evaluative manner, meaning that its self-awareness increasingly consists in a thinking that, being based on brute effectivity qua information, is limited to the computation of values, or evaluating, under the banner of brutality. Such evaluation is to be distinguished fundamentally from the judgements of sense that are proper to extra-(*pro*-)political theory.⁸

The fact that theory today assumes this constitution, while dismaying, is not to be criticized as such; it needs to be acknowledged critically, and, more notably, diagnosed with regard to the here-contended loss of inner freeness, and the implications which this has for the freedom of the *polis* as a whole. Technicized theory thinks through values just like the rest of the *polis*. It is no longer the stronghold of freeness that it once was, or at least strove to be, but rather an integral part, and indeed a driving force, of the increasingly brutal *polis* itself: a productive sector, closely inter-linked with other productive sectors through informational control circuits, and devoted to the never decided, and yet universally assumed and implicitly accepted, goal of securing the enhancement of brute effectivity (“enhanced life”, “augmented reality”, etc.). This circumstance, which is itself a threat to (the freeness of) science, implies a further threat in terms of the relation of science to itself, which we must therefore designate as a “threat within the threat” (De Gennaro and Zaccaria 2011). This “threat within the threat” appears to be one of the most critical aspects, if not *the* most critical, of the problem of academic freedom today.

In what, then, does this further threat consist? We have seen how technicized science is an integral part of the *polis*; it shares with the *polis* the understanding of effectivity as the capacity for brutality, and specifically as a totality of informational values that wills its own enhancement in terms of steerability; it shares with other “(intra-)political practices” the basic constitution of thinking: namely, thinking in terms of values, or

⁸On the difference between judging and evaluating see G. Zaccaria’s article in this volume.

evaluating; having lost its inner freeness, hence its “scholastic” nature, it is as unfree as other forms of being-in-the-*polis*. However, this is not the whole story. For there remains a decisive difference between unfree, technicized theory and other forms of unfree “politizing”; this difference can be indicated as follows: technicized theory is *still theory*, albeit in a *privative* mode (which is not true of other forms of “politizing”). Put differently: no matter how forgetful of its originary extra-*pro*-political responsibility, no matter how estranged from free theorizing, no matter how alienated from the truth, theoretical learning *still* holds in itself the claim of freeness and the expectability of its truth, and therefore the likelihood of turning to (a yet-unknown form of) habitual being-in-time—a turning that, however, is unthinkable without a prior realization of its present, “terminal” status. This is to say: in spite of the absorption of academia into the *polis*, there still persists what, for the lack of a better word, I shall call “the scientific difference”, the awakening of which is decisive in view of an ethical recovery of scientific teaching and research.

Now, the “threat within the threat” consists precisely in this: that technicized science definitively loses sight of this “scientific difference”, and therefore neglects said difference in its practices, thus accepting or adopting, with regard to itself, fundamentally a-scientific procedures and directives. In other words, the “threat within the threat” is realized when criteria that are “exogenous” with respect to science, and blind to its difference, form the prevailing definition of scientificity that is accepted in the very domain of science, accordingly shaping the practices of evaluation and government set and implemented by academia itself and for itself; hence, effectively eroding scientific self-awareness and academic autonomy from within. This threat is particularly malicious, in that it unfolds its noxious consequences under the guise of the utmost respect for the prerogative of science to generate from out of itself the laws that rule its procedures and the design of the framework in which it operates. After all, are those (hard or soft) laws not conceived, is that design not created, are all procedures not decided and implemented, primarily by (or at least with the collaboration of) scholars and “scientific communities” themselves? What better guarantee can there be of the fact that these procedures will respect the scientific spirit and therefore, despite their admitted “flaws” and “imperfections”, ultimately contribute to the

advancement of science? However, having a scholar devise and implement an a-scientific, “anti-scholastic” measure does not make of that measure one that favors academic freedom. On the other hand, if the “threat within the threat” is the means through which brute effectivity recruits the human mind for the purpose of securing the unimpeded progress of its capacity for brutality, the shock with regard to this threat can be the most acute wake-up call for a turn to time-bearing theorization.

A few examples can help to identify more accurately this threat. All of them imply an attempt on academic freedom in the sense that they not only undermine, but actively repress the awakening of a scientific self-awareness that could mark the beginning of an ethical restoration of academia.

1. Commonly, we distinguish between “pure” and “applied” science. While this distinction has its justification, it is not useful when it comes to differentiating between a “sense-deciding” theory and a theory based on an already decided sense. In fact, we could say that the latter, be it “pure” or “applied”, is *essentially* applied. How so? Insofar as it presupposes and envisages (and thus is always already “attached” to) brute effectivity—independent of whether it is “abstract” and far away from generating a tangible utility, or “concrete” and immediately occupied with solving a “real-life problem”. Given that modern-day theory as such is, in the now specified sense, applied (and thus “structurally prone to ‘politicization’”), it is not surprising that the delimitation between academia and other industrially organized sub-systems of the *polis* is vanishing, with the result that “research” and “teaching” become suppliers or sub-contractors of these systems. While this development towards politicized science threatens, or rather reflects the already suffered loss of, academic freedom, and should be diagnosed as such, there is no scope for condemning or even attempting to fight it. *On the other hand*, the systematic and uniform conditioning of the progress of an academic career, or the survival of a scientific department, on “evaluation criteria” such as, for instance, the amount of funds raised through mission-oriented research, or the quantity of

contributions to the mass media, realizes a “threat within the threat” to academic freedom.

2. The modern notion of “scientific progress” is based on an understanding of science as a knowledge that is subservient to the “will to enhancement” of brute effectivity. Hence, a functional theory or an explanatory model will be the more “scientific” and “advanced”, the higher is its capacity for making the world available in the shape of informational values within a system of control circuits, through which it can be ever more thoroughly planned and steered towards ever higher capacities for catering to a will to life that only wills itself. The ultimate horizon of modern-day science is the total machinal makeability of life (i.e., all that is effective, be it organic or inorganic), and therefore—given that the “machine of life” functions as a cybernetic clockwork—the definitive suppression, or abolition, of time. In this context, theory (qua “applied” theory) has an essentially performative character, meaning that it *is* insofar as it impacts brute effectivity. This development towards performance-driven science, too, threatens—or rather reflects the already suffered loss of—academic freedom; it ought to be diagnosed as such, yet there is no point in condemning or attempting to fight it. *On the other hand*, to base systematically and uniformly the value (and indeed the very scientificity) of a “scientific output”, and the related process of “quality assurance”, on “performance indicators” such as the “impact factor” of a scientific journal, or related metrics (even when those who are recruited to supply the data for computing these metrics are “peers”), is to subject science to a-scientific, scientifically “agnostic” evaluation criteria; in other words: it wantonly subjects science to ignorance, and in this sense realizes a “threat within the threat” to academic freedom. For such metrics are ignorant of the scientific difference, and what is ignorant can neither know the truth (be it the strictly performative truth of today’s science), nor in any way serve as an approximation of that truth.
3. Academic teaching today is not conceived as an education towards the capacity for habitual “be-having”. It aims at training effective social animals that devise, and function within, performance-oriented control circuits; social animals that, therefore, do not expect a “sense”

beyond that of giving space to the systematic enhancement of brute effectivity, or “freedom” beyond that of the—at times coarse, at times subtle, always arbitrary—brutality this requires. “Innovation”, “creativity”, “thinking outside the box”, etc., are names of functions within such control circuits. This development towards function-focused training must, in turn, be diagnosed as a threat to academic freedom, while there is no scope for condemning or attempting to counter it. *On the other hand*, the systematic and uniform evaluation of the “quality” of teaching by means of opinion polls that are neither directly, nor inversely, but squarely un-related even to the formation of the strictly methodical regard (i.e., the peculiar “theory”) of the brute will to life, implies a “threat within the threat” to academic freedom. For the only impact of so-called student evaluations—a tool of “quality assessment” no less misguided for it being universally employed—is to annihilate any pedagogical tension capable of generating a behavior that lives up to a reality turned into brute effectivity. Evaluations dissolve both the tension of rigorously free theorizing, which encourages and instructs the native capacity for learning wherever it manifests itself; *and* the tension of rigorously unfree theorizing, which shapes a self-contained technical attitude that, drawing its strength from its pertinence to the effective, can accept its limits and does not need to impose itself as the exclusive form of theorizing.

4. The “logical” horizon of the trajectory of academic life over the coming decades is its complete technicization, and its consequent complete dissolution in the *polis*. In the unfolding of the inner logic that is eroding the extra-(*pro*-)political constitution of theory, “scholastic” existence and practice lose their meaning; having-oneself-in-time disappears in the routinely, increasingly automatized execution of “timeless” technical drills. This development towards the complete erosion of “scientific difference” is yet another trait of the threat to academic freedom, which—as necessary as is its diagnosis—is not to be criticized or counteracted. *On the other hand*, the untimely rhetorical (“narrative”) make-up of technicized science, aimed at framing what consists in playing out an already decided and unquestionable trajectory of brutalization, as capable of creating a sense (thus providing “spiritual leadership” and “orientation” to drifting societies, or finally

answering the “Big Questions” of humanity), realizes a “threat within the threat” to academic freedom. For that make-up will merely “disturb” the completion of the aforesaid trajectory, while at the same time curbing the emergence of the need for a fundamentally renewed interrogation of sense, and a newly conceived scope of theorizing. Because it lacks a “scholastic” nature, this “storying” discourse (found across all disciplines, from the natural sciences to the humanities) cannibalizes and “updates” concepts coined for genuine interrogation in order to produce an “interesting” and “culturally relevant” narration. In other words, it exacerbates the way in which research and teaching are locked into a present as shallow and sterile as the “line of time” and excluded from both a productive dialogue with the past and an openness to the future.

When the above-described violations of academic freedom are not imposed from the outside but become part of the ordinary self-regulation of an “academic system”, they amount to a self-inflicted heteronomy, which enforces the rule of arbitrary, non-ethical theorizing, and is committed to nipping in the bud any regeneration of academic freedom. Disguised behind a smokescreen of “readapted” notions of classical ethics (“excellence”, “virtuosity”, etc.), the “threat within the threat” stifles an awakening to the fundamental threat that is intrinsic in theorizing as such, thus crippling the capacity of academia to govern itself in the interest of what remains of the “scientific difference”, and to hold its ground vis-à-vis the external threats it must face.

4.2 External Threats

Threats from the *polis*

“External” threats are most often what is considered a threat to academic freedom in the first place. An example of such a threat are the actions of a totalitarian regime aimed at controlling academic research and teaching while molding them to its own purposes: the very scientificity of science, hence also the scope of education, will be defined according to their

respective contribution towards the pre-set goals of the regime itself and its pre-decided, ideological objectives. Academic institutions, and the individuals who pursue scholarly and pedagogical work within them, will be pressured to conform to those goals and objectives and to produce the desired results; if they fail to do so, they will be either replaced by institutions and individuals prepared to toe the line, or simply eliminated. This amounts to the *polis*—or rather the regime that has taken control of it—wantonly ripping out its (extra-political) heart, so as to produce the context of arbitrariness in which the sheer empowerment of power (which is the aim of the setting and discretionary application of all-pervasive rules and policies) can thrive.

No matter how we frame such attacks on academic freedom—including if we understand them as a violation of freedom of speech in the Millian sense (Mill (1859) 2010)—, we will find that, ultimately, they come down to, and indeed consist in, an abolition of *scholē*, and the consequent annihilation of truth as the element in which the sense of things—their temporal(-spatial) constitution—is brought to light. In fact, “conformist”, “aligned” research and teaching can be granted the longest time, and be implemented with the greatest sternness, skill, and effort; yet, given that the results are already decided, no having-oneself-in-time is involved. In this manner, effects might be obtained, but in a growing alienation from truth, while heteronomy will rule in the form of direct external command or by being interiorized in practices of formally autonomous governance. Through the total politicization of academia, the *polis*, in an act of self-destruction, uproots itself from its ground of freedom.

Retracing such overt and often criminal attempts on academic freedom to their temporal structure alerts us to ways in which an essentially related uprooting, and imposition of heteronomy, can take place without involving the overt exercise of brute political power. In fact, a curtailment of freedom that we typically associate with autocratic regimes and their overt violence, can occur with full “democratic” legitimization, and indeed—as a consequence of the implications of what has been described as the technicization of science—with the unsuspecting complicity of institutions and individuals whose defining task is the practice and safeguard of “scholastic” learning.

This more inconspicuous erosion of academic freedom insinuates itself through an unquestioned notion of usefulness. The political (public or private) demand for useful results of academic teaching and research, as revealed by set measures of effectivity, reaches into the temporality of learning through the control interface of “funding” or other measures of value. The disruptive consequences of such political “incentives” find ready acceptance—or only feeble resistance—where the self-awareness of learning (be it that of “teaching” or “research”) is increasingly surrogated by evaluative practices which consist in the computation of a-scientific “proxies” of learning itself (a patent as ultimate validation of research; a certain performance in terms of “Dublin indicators” as a proof of educational success, etc.). Where science itself is technicized, demonstrable usefulness becomes a criterion of scientific dignity. As a consequence, any learning, or instruction to learning, that is not capable of exhibiting direct or indirect proof of what counts as usefulness, loses its acceptability and is marked for being winnowed.

Some scientific disciplines (in the first place the natural and technological ones) are predisposed by their theoretical structure to give “hard proof” of usefulness: for instance, in terms of their contribution towards the solution of real-life problems (health, mobility, safety, etc.). Others, if they intend to live up to political expectations, will have to shape their scope and methods so as to produce results that can be measurably tied to such problems, or at least come up with “narratives” that suggest the semblance of some kind of value. In each case, the control interface will give some leeway to “basic”, “pure”, or “curiosity-driven” research as a matrix for ensuing tangible applications, or so as to corroborate the dependence of academia on the *polis* in its public and private articulations.

However, to what extent is politically-defined usefulness erosive of the time and freedom of learning, and, as a consequence, is the imposition of such usefulness a violation of academic freedom? Answer: to the extent that usefulness is a notion that, in and of itself, bears no implications in terms of sense: its reference to sense is mediated by the end that it serves. However, the ends that we find within the *polis*, in turn, do not, in and of themselves, carry or imply a sense. Their sense (or lack thereof) derives from an extra-political principle. For instance, it is legitimate that a *polis*

decides to pursue the end of solving the problem of the impending climate catastrophe, and therefore to adopt measures that appear useful in terms of this end. Yet, the latter's sense, hence also the sense of what is useful in relation to it, is nowhere to be found in that end as such, which pertains to sheer survival and will be defined, at the political level, in terms of a certain state of effectivity (such as the level of carbon dioxide emissions).

On the other hand, the role of "scholastic" knowledge is the unceasing interrogation of the decidability of sense, which (that interrogation) gives rise to a measured relation to the effective. For any theoretically decided sense is thus offered to the *polis* as a gift (that is, with the imprint of the freeness, and the need for truth, from which it stems), in order for the *polis* itself to become the "house" of that sense, and a hospitable abode for a human community, through its useful practices. "Research" and "teaching" that are subservient to an understanding of usefulness which has its origin in the "ascholiastic" preoccupations of the *polis*, thus in an already set sense, are cut off from freeness and incapable of accomplishing their ownmost task. Simply put, since the *polis* is occupied with the useful, but not with the sense of the useful, the politically useful cannot be a sufficient criterion of soundness for what is by its nature the care for the source of that sense, and, based on this, the education of the wardens of the knowledge in which consists the *polis's* freedom.

One might find this perspective too sharp-cut, or related to a rather fanciful and, at best, out-of-time idea of academia. Images spring up of elitist "academic islands" and secluded "ivory towers", aloof from the *polis* and its problems, occupied with pursuing "*la science pour la science*", while refusing any accountability to the *polis* itself, whose money after all pays for the functioning of academic institutions. And yet, unless one takes the position for which the meaning of "sense" is satisfied by the pursuit of any politically accepted understanding of effectivity, the question of the (temporal) conditions for the ever-again-regenerated access to and preservation of the source of sense remains.

If we turn to the present reality of academic life at a global level, there seems to be no trace of the above discussed issue. Indeed, a knowledge whose task is to safeguard and reinvigorate the rootedness of the *polis* in the freeness that is the source of all sense, has no place within the

politicized system of teaching and research. Yet, the issue has all but disappeared. It has simply receded to the tenuous, invisible, yet clear divide that I have called “scientific difference”. From there, it silently unfolds its consequences in the daily practices of academia, and, though hardly diagnosable as such, can be felt by any true learner—scholar or student—who frequents an academic institution.

If today scientific difference is arguably the actual frontier of academic freedom, what does the safeguard of this difference vis-à-vis the external threats to academic freedom imply?

In order to visualize this thought, we need, once again, to identify a threat within the threat. It remains essential that the extra-political origin of the technicization and politicization of science be diagnosed; this diagnosis can only be carried out by a form of knowledge that is itself extra-political. However, the threat posed to scientific freedom by political demands, and the respective tools of steering and control, cannot be reversed, nor, as such, opposed, in that they are carried by the authority of a self-imposing and exclusive notion of usefulness that obtains when reality has the form of brute effectivity. As a consequence, what is not demonstrably useful appears as unjustifiable and untenable. *And yet*, this does not imply that what does not conform with that notion of usefulness must necessarily be abolished: the threat within the threat is to take that which shows itself as an *exclusive* criterion of validity as an *absolute* criterion—which, given its dependence on a certain (but, as art and literature remind us, not the only) form of reality, it is not. (Zaccaria 2021)

From an institutional perspective, the idea that, as a rule, individual scholars or institutions must give proof of usefulness, and consequently (directly or indirectly) “attract funds” or provide another form of value in order to legitimize themselves, cannot be reversed nor opposed; however, there is no necessity that this demand be systematically and uniformly applied as a criterion for the subsistence of those individuals or institutions. The same is true for the external demands of usefulness: the threat within the threat is the misguided inference that the useless (i.e., any instance of free study) must be actively suppressed or, at any rate, dried up. Even though the threat posed by the regime of blind usefulness cannot be thwarted, there are ways of mitigating the threat within the threat.

Indeed, any instance in which the (by its nature “absolutist”) threat within the threat is eased, is a seed for the return of freedom.

Technology

An external threat of a different kind is posed by modern technology. The diagnosis of this threat has nothing to do with assessments that, depending on the values on which they are based, result in attitudes of acceptance or refusal, praise or damnation, hopefulness or despair with regard to the use of technological implements. Such assessments understand technology as a *means*, developed by *man*, which man himself, in the best case, uses in the best interest of humanity; they are, in other words, led by an “anthropological” and “instrumental” understanding of technology (Heidegger 1989).

At a more essential diagnostic level, we can focus on the technics implicit in modern technology and its techniques, namely, the characteristic “conception and devising of tools” insofar as it involves a conceptualization of time qua non-ethical time or sub-time. If, in compliance with the brutalization of reality, time itself is technically conceived as an operative tool for the management and enhancement of that reality, and technical implements, based on that concept of time, are devised in order for that brutalization to put itself into effect, then the notion of man-made technological means for human ends—albeit correct at a superficial level—falls short of a sufficient insight into the sense-decisions involved.

The progress of modern, technicized science is driven by, and in its turn drives, the development of technical apparatuses that are based on the same “technics of time” as technicized science itself. Hence, scientific and technological progress not only sustain each other but are increasingly the same. While technology, in this perspective, cannot be seen as external to science, we can, however, identify a peculiar threat to theory posed by the reliance on technological devices in research. This threat is realized when the object of study is produced *as such* by a sub-time-implementing, “sense-insensitive” apparatus: more specifically, an apparatus that implements “control-time”, i.e., the “time” that sets up for control the very same which it measures. Because such an apparatus

generates nothing but computable, timeless quanta, the study of these quanta is itself necessarily control driven and computational, hence not such as to bring to light a sense: theorizing thus turns into a computative exercise supplemented by an imputation of sense intended to establish its meaning.

As far as teaching is concerned, the implications of the reliance on technology become manifest in so-called online teaching. In this modality of teaching, technology does not merely play a mediating or facilitating role: as an implementation of control-time, it controls the temporal (therefore also spatial) setting of the encounter of teachers and students, hence the encounter itself. The latter is thus deprived of the condition for the “physical” co-generation of the temporal dimension in which a sense can be decided and originally learned, and is denied the opportunity for the “physical” co-creation of a learning-space. Consequently, an actual learning encounter cannot take place.

Any genuine attempt at creating the conditions for an instance of common learning will know the experience of frustration as it clashes against the denial opposed by the privation of time. Not that learning as such becomes unlikely—for anyone can at any time learn for him- or herself even during an online class; what is impeded—independent of the length of the allocated “time slots”—is teaching as an exercise of freeness in the form of the participation in a sense-decision while being-in-time-with-others—teaching qua learning *together* in a *shared* time.

Technicized science is likely to be less alert to the threat that it faces due to the circumstance that its object of research is constituted as such by the control-time of technology; politicized, usefulness-driven science is likely to be less aware of the threat constituted by the circumstance that the control-time of technology denies a shared learning-space. Yet, insofar as science remains true to the “scientific difference” that is its birth-right, it will remain clairaudient to the “threat within the threat”, which consists in forgetting the threat itself and letting self-imposed technological standards definitively seal the sense-detached character of technicized research and the lore-less character of technicized teaching.

5 Responsibility and the Unabolishable

The diagnosis of the preceding paragraphs aims at defining the peculiar responsibility of those who, today, are involved in academia as scholars and students. As the dissolution of technicized science into the *polis* progresses, this responsibility consists, in the first place, in heeding what in this essay has been called the scientific difference. This alone can nourish the awareness of the threat within the threat, which disguises the implications of that dissolution, and thus can warrant the capacity of academic institutions and single learners to preserve a scope of freeness vis-à-vis the forces and temptations that are blind to that difference. In short, the responsibility consists in preserving the awareness that it is presently science itself—to wit, the learning of sense in the space of pure be-having—which is turning into a specialized routine that drives the brutalization of the *polis*. Seeing that nothing and nobody, in today's systems of institutional "teaching" and "research", call for, or even support, the assumption of this responsibility, the question is to what source of validation the attempt to awaken and preserve that awareness should resort. If science as such is being uprooted from its ground, which is freeness itself, how can a scholar or student remain free for learning?

The answer to this question may lie in the following: no matter the extent to which advances the abolition of ethical time, via the regimentation of teaching and research under the rule of procedures informed by non-ethical timelines—as long as there are human beings, i.e., learners by birth, that which *gives time is irrevocable*, and hence can always reach those who "have themselves" in a theoretical attempt. In other words, the abolition of time, the alienation from truth, and the consequent regime of heteronomy in academia, do not leave the "theoretical being" with nothing at all, but precisely with this: the positive phenomenon of the deprivation of time. The experience of this deprivation is itself an experience of freeness, for even the refusal of time is a free gift. Letting the unstoppable unfolding of the technicization of science happen, while at the same time keeping clear from the insidiousness of the threat within the threat in the heightened awareness of the irrevocable gift of time—this would seem to be a stance that remains true to the scientific

difference, and thus can safeguard the expectability of a regenerated freedom of learning.

References

- Aristotle. 1894. *Aristotelis Ethica Nicomachea*. Edited by Ingram Bywater (Scriptorum Classicorum Bibliotheca Oxoniensis). Oxford: Oxford University Press.
- . 1957. *Aristotelis Politica*. Edited by William David Ross (Scriptorum Classicorum Bibliotheca Oxoniensis). Oxford: Clarendon Press.
- Aristoteles. 1982. *Metaphysik. Erster Halbband: Bücher I–VI*. Translated by Hermann Bonitz, 2. Auflage (Philosophische Bibliothek 307). Hamburg: Felix Meiner Verlag.
- . 1987. *Physik. Erster Halbband: Bücher I–IV*. Translated by Hans Günter Zekl (Philosophische Bibliothek 380). Hamburg: Felix Meiner Verlag.
- Carfora, Mauro, and Gino Zaccaria. 2018. Sul tempo (tra fisica e filosofia). *eudia. Yearbook for Philosophy, Poetry and Art* 12 (September 11). <http://www.eudia.org/wp/download.php?id=2308>. Accessed 10 March 2021.
- De Gennaro, Ivo. 2019. *Principles of Philosophy. A Phenomenological Approach*. Freiburg–München: Verlag Karl Alber.
- . 2020. Despotism and Truthless Science. *European Review of History: Revue européenne d'histoire* 27 (5): 582–597.
- De Gennaro, Ivo, and Gino Zaccaria. 2011. *La dittatura del valore. L'insegnamento e la ricerca nell'università planetaria. / The Dictatorship of Value. Teaching and Research in the Planetary University*. Milano: McGraw-Hill.
- Heidegger, Martin. 1989. *Überlieferte Sprache und technische Sprache*. St. Gallen: Erker.
- . 1997. *Besinnung* (Gesamtausgabe, III. Abteilung: Unveröffentlichte Abhandlungen, Band 66). Edited by Friedrich-Wilhelm von Herrmann. Frankfurt am Main: Vittorio Klostermann.
- . 2014. *Überlegungen XII–XV (Schwarze Hefte 1939–1941)* (Gesamtausgabe, IV. Abteilung: Hinweise und Aufzeichnungen, Band 96). Edited by Peter Trawny. Frankfurt am Main: Vittorio Klostermann.
- Keynes, John Maynard. 1932. Economic Possibilities for Our Grandchildren (1930). In *Essays in Persuasion*, 358–373. New York: Harcourt Brace.

- Liddell, Henry George, and Robert Scott. 1940. *A Greek-English Lexicon. Revised and Augmented Throughout by Sir Henry Stuart Jones with the Assistance of Roderick McKenzie*. Oxford: Clarendon Press.
- Mazzucato, Mariana. 2019. *The Value of Everything. Making and Taking in the Global Economy*. London: Penguin Books.
- Mill, John Stuart. (1859) 2010. *On Liberty*. London: Penguin Books.
- Nietzsche, Friedrich. 1999. *Sämtliche Werke. Kritische Studienausgabe in 15 Bänden. Band 12: Nachgelassene Fragmente 1885–1887*. Edited by Giorgio Colli and Mazzino Montinari. München: Deutscher Taschenbuch Verlag.
- Plato. 1991. *Sämtliche Werke in zehn Bänden. Band 8: Philebos, Timaios, Kritias*. Translated by Friedrich Schleiermacher. Frankfurt am Main–Leipzig: Insel Verlag.
- Zaccaria, Gino. 2021. *The Enigma of Art. On the Provenance of Artistic Creation*. Leiden: Brill.



Academic Freedom: To what End? Notes on the Ethical Dimension of Scholarship

Ralf Lüfter

*Zur Blindheit überredete Augen.
To blindness persuaded eyes.*

1 Preliminary Remarks¹

It is anything but obvious what it means to think something through to the end, which is why the question raised in the title of this contribution remains ambiguous, and its ethical dimension may seem opaque. All the more so, as within the context of this contribution, the notion of “end”

¹ Paul Celan, *Tübingen, Jänner* (p. 226 in Celan 1983). All translations are mine, unless otherwise indicated.

R. Lüfter (✉)

Faculty of Economics & Management, Free University of Bozen-Bolzano,
Bolzano, Italy

e-mail: rluefter@unibz.it

is not related to the sense of “desirable outcome” or, following the same line,² a “valuable result.” To be precise, the “end” is not intended here as something that can be achieved by means of something else. In turn, “academic freedom” is not assumed as a means to an end: it is neither introduced against the backdrop of the means-end rationality, nor in view of some preferable final end that requires the institution of the pursuit of research and education in the most efficient way possible. In other words, within the context of this contribution, “academic freedom” is not considered to be a condition for “the long-term interests of [...] society” (see respective entry in the Encyclopaedia Britannica³) and thus confronted with, if not opposed to, other interests such as those of a political, religious, economic, social, or ideological nature, or the interests of donors, etc. Although renowned contributions on academic freedom focus on the weighing of competing interests (see Fuchs 1963;⁴ Doumani

² Both, “desirable outcome” and “valuable result,” “follow the same line” inasmuch as they presuppose a certain kind of possibility. With regard to the form of this possibility, it can be said that the “desirable outcome” as well as the “valuable result” allude to what is actual, inasmuch as it is pre-disposed to be brought into act by means of something else, whereby the latter functions as the condition of the former, i.e., as its condition of possibility. Analogously, it seems that the question raised in the title of this contribution follows an understanding in the light of which “academic freedom” appears as the condition of the “end” (“outcome,” “result”) in question, whose actualisation would not only be possible, but, beyond that, even “desirable” or “valuable”. On the other hand, the “end” appears as something that justifies the function of “academic freedom” in an operative context, i.e., in the context of institutions dedicated to the pursuit of research and education. One of many examples for the adoption of this kind of understanding is given by Matthew Finkin and Robert Post, when they define academic freedom as “the freedom of mind, inquiry, and expression necessary for proper performance of professional obligations” (p. 38 in Finkin and Post 2009). As the first paragraph shows, the present contribution does not adopt this line of reasoning.

³ “According to its proponents, the justification for academic freedom [...] lies not in the comfort or convenience of teachers and students but in the benefits to society; i.e., the long-term interests of a society are best served when the educational process leads to the advancement of knowledge, and knowledge is best advanced when inquiry is free from restraints by the state, by the church or other institutions, or by special-interest groups.” (Encyclopaedia Britannica n.d.).

⁴ “Academic freedom is that freedom of members of the academic community, assembled in colleges and universities, which underlies the effective performance of their functions of teaching, learning, practice of the arts, and research. The right to academic freedom is recognized in order to enable faculty members and students to carry on their roles.” (p. 431 in Fuchs 1963).

2006;⁵ Finkin and Post 2009;⁶ Nelson 2010⁷)—either by underlining the incompatibility of divergent interests and by calculating their respective social value in order to rank them accordingly, or by looking for compromises and by integrating divergent interests in order to turn their complementary social impact to optimal account—, in the context of this contribution we follow the assumption that such a process of weighing remains blind in terms of the issue of academic freedom in the first place. However, this blindness is not considered to be the result of a fallacy or shortcoming, but rather what belongs to the way in which the pursuit of research and education is instituted in our epoch. This way, as is sustained here, led to the quiescence of the original source of academic freedom and thus to the establishment of academic freedom not as constitutive trait of the pursuit of research and education, but as factor for the

⁵“Knowledge production driven by market forces that reflects the hierarchy of power slowly restructures institutions of higher learning by promoting certain lines of inquiry and quietly burying others. Over time, the process becomes hegemonic, in the sense that unwritten rules about what is fundable and what is not are bureaucratically internalized and modalities of self-censorship act as a filter for condoning or shunning proposed research, teaching, and extramural utterance.” (p. 38 in Doumani 2006).

⁶“Whereas in the early twentieth century debate turned on the question whether academic freedom should exist, contemporary controversies assume the desirability of academic freedom and attempt to spell out its implications. [...] The draftsmen of the 1915 *Declaration* sought to establish principles of academic freedom capable of ensuring that colleges and universities would remain accountable to professional standards rather than politically or financially beholden to public opinion. They hoped to construct institutions of higher education as instruments of the common good rather than as organizations promoting the private views of wealthy donors or the passionate commitments of transient political majorities.” (pp. 3ff. in Finkin and Post 2009).

⁷“The need for the concept grew out of the long history of universities and their struggle for freedom from church and state. [...] Transplanting the concept to the United States, however, required significant adjustment. Although German professors were effectively state employees, German universities were essentially self-governing. [...] American universities on the other hand were governed not by faculty but by nineteenth-century versions of boards of trustees. As denominational institutions in the United States began to be replaced by secular ones, religious boards became less common. Secular institutions had governing boards often composed of members of the business community. By the late nineteenth and early twentieth centuries some of the conflicts between faculty and commercial interests that we know today were already in place in the United States. American universities faced interventions in their affairs quite unlike anything the German prototypes had experienced. When conflicts with their masters arose, American faculty discovered they were employees who could be dismissed at will. In response to arbitrary dismissals and the threat they posed to the faculty’s capacity to teach and pursue research in an unhindered fashion and to serve the broader needs of society, the founders of the American Association of University Professors (AAUP) (1940) articulated guarantees of academic freedom and job security.” (pp. 1f. in Nelson 2010).

planning, organisation, control, and optimisation of their pursuit.⁸ This quiescence led to a point where ethical questions unrelated to operative functionality are ignored. In the context of this contribution, we content ourselves with marginal notes on the original source of academic freedom, in the hope that this reflection may shed some light on what it could mean to think academic freedom through to the end.

2 To Think Something Through to the End

In order to understand the question raised in the title of the contribution, let us consider what it means “to think something through to the end.” Tentatively, it can be asserted that, within this phrase, the notion of “end” suggests the likelihood⁹ of a finitude that allows for an entirety (whole) which is achievable in its accomplishment and its integrity in the very

⁸As a consequence of the quiescence of the original source of academic freedom, the evaluation of the performative power of research and education, as it is commonly practiced today (see De Gennaro and Zaccaria 2011), appears as an exclusive criterion on the basis of which the free pursuit of research and education seems justified and thus is granted to whomever meets pre-established threshold-values. Accordingly, academic freedom is often defined as a personal right reserved for the members of institutions dedicated to research and education (see Fuchs 1963), or as a general right of these institutions (see Nelson 2010), and not related to the exercise of research and education in the first place. In fact, the latter is specified in Article 5 of the Constitution of the Federal Republic of Germany: “Kunst und Wissenschaft, Forschung und Lehre sind frei” (art and science, research and teaching are free). Analogously, Article 33 of the Constitution of the Italian Republic states: “L’arte e la scienza sono libere e libero ne è l’insegnamento” (art and science are free, as is their teaching).

⁹In order to gain a sufficient understanding of the notions of “likelihood” and “likely,” Ivo De Gennaro’s comment leads the way: “Today the most common meaning of likelihood is probability [...]; in this meaning, the word is also used in the science of statistics. However, this is only *one* meaning, and more specifically one that applies to contingency. On the other hand, in our use of the term, likelihood is a word of being: it indicates what is likely, where ‘likely’ means: apt, fair, (and therefore) expectable, acceptable, credible, promising, thinkable, true. [...] [L]ikelihood—and this is the decisive trait—is *unaffected by contingency*; that is, by mere (or ‘brute’) facts. On the other hand, probability and possibility *are* affected by contingency, for they are themselves measures of contingency.” (pp. 143f. in De Gennaro 2019). On the other hand, the notion of “contingency” characterises “what is always in the foreground in a pressing manner, what is due before anything else, insisting that something be done with it or in response to it. The peculiar contact with such ‘things’ tends to fill up all time and all space; in fact, it has its own time and space, which is a time and space of ‘doing’ [effecting]; that is, an *operative* time and space [...]. [W]e take [the word contingency]—which commonly means an accident or an unforeseen and unforeseeable event—to indicate the character of immediate (viz. unmediated) impact of things, namely the direct impact on our (inert) life-sphere or ‘lived experience.’” (p. 65, *ibid.*).

instant in which what is in question is wholly thought through, and not simply with regard to some of its particular aspects or according to some particular point of view.¹⁰ This is to say that, with regard to the above-mentioned phrase, the notion of “end” may be understood in the sense of “horizon,” inasmuch as, on the one hand, it encompasses what is in and of itself likely to be thought through and thus orients thinking from the outset, and, on the other hand, it defines the scope of thinking itself. Accordingly, the notion of “end” would neither refer to a point where what is thought through reaches its utmost extension or duration, nor would it signify the conclusion of a thinking process or the effect of an action of thinking. Rather, it indicates the horizon within which what is thought through manifests itself as such and in the whole, all the while as thinking gathers itself in keeping with this manifestation.

Thus, as tentatively asserted, by thinking something through to the end, we refer to a kind of entirety (whole) that is constitutive of what may be assumed as the horizon of thinking. Even though the horizontal character of the notion of “end” remains enigmatic, inasmuch as it withdraws each time it is itself thought through, the following emerges from an awareness of this withdrawal: as soon as the horizon comes into view through thinking, it becomes clear that this horizon not only encompasses and defines (by sustaining the likelihood of an entirety that is achievable as a whole), but at the same time it frees towards an openness (by affording the outlook on what is yet unthought and thus likely to imply a transformation of thinking itself). This is to say that, while encompassing and defining, the horizon frees toward an openness, not only by releasing the exercise of thinking from what has been thought so far, but first and foremost by being itself the permission for a different, renewed thinking.

Thus, it can be said that the encompassing and defining horizon of thinking—namely the above-mentioned “end”—involves a kind of freedom which is constitutive of thinking itself and neither an outcome or result of thinking, nor a condition for thinking. This is to say that, in the end, the horizontal character involves a kind of freedom which is not

¹⁰What is “particular” belongs to or affects a “part” of something that is assumed to be in itself “entire.”

achievable in terms of the means-end rationality and thus, in the first place, neither the actualisation of a presupposed possibility of thinking, nor a mere means to an end of enacting this possibility (in the sense of a prerequisite to the granting and the performance of an effective action). Rather, it is itself a trait of thinking as such.¹¹ Therefore, the kind of freedom which emerges in the horizon of thinking and along with it cannot be defined as independent from external constraints, cannot be defined as exempt from internal interferences. It cannot be grasped in negative terms—in other words, of “being free from ...”, “not depending on ...”, “not being subjected to ...”. Rather, this freedom has to be considered as an instant of true autonomy in which thinking bestows to itself the law of thinking and accordingly institutes itself as free thinking.¹² Constraints and interferences may disturb and repress this autonomy or even threaten it to the point of total collapse and annihilation; but, on the other hand, the mere independence from constraints and interferences is not what allows for thinking something through to the end and thus achieving the horizon constitutive of thinking: to wit, the horizon where this freedom, which emerges within the horizon and along with it, manifests itself through thinking. In other words, thinking is itself the institution of freedom in and along with the horizon of thinking.¹³

¹¹ Here, at last, we become aware of the fact that we do not possess a sufficient understanding of the notion of “thinking.” In the context of this contribution, we cannot elaborate on such an understanding, but we must instead content ourselves with pointing out that “thinking,” as it has been introduced here, is not considered to be a mere competence of men in the sense of an accidental property that applies to him or her, but it is considered to be a fundamental trait of the being of men, i.e. a fundamental trait of being human, of becoming a human being in the first place.

¹² With respect to this notion of freedom, we may learn a great deal from Immanuel Kant, most notably (but not only) from his concept of practical freedom. It would be an important lesson to understand to what extent Kant’s concept of practical freedom could widen the scope of our understanding of academic freedom beyond the limits that define it in terms of negative freedom.

¹³ As long as academic freedom is understood as a condition for the pursuit of research and education—i.e. against the backdrop of the means-end rationality as a prerequisite for the granting of research and education as a pursued end—freedom itself is considered in negative terms. The following passages may serve as examples for this kind of understanding: “Academic freedom, the freedom of teachers and students to teach, study, and pursue knowledge and research without unreasonable interference or restriction from law, institutional regulations, or public pressure.” (Encyclopaedia Britannica n.d.). “The need for the concept grew out of the long history of universities and their struggle for freedom from church and state.” (p. 1 in Nelson 2010). “Notwithstanding the increasingly broad reach of academic freedom and the current emphasis on the essentiality of autonomy [understood in negative terms as “independence from ...”; note is mine] for academic

In the tradition of philosophical thinking, this horizon assumes its semblance in light of a distinct question, which, according to what has been said so far, frees towards that undisclosed openness which welcomes, preserves, and shelters all attempts of philosophising and constitutes, from the onset, their end. Thus, the horizon of philosophical thinking is determined by this question inasmuch as it achieves the point indicating the end that orients, from the onset, all attempts to think something through to the end in a philosophical way. For this reason, the interrogative is assumed as the guiding question of philosophy. Before we turn to this question, we shall read two passages from a lecture held by Martin Heidegger in Paris, 1960:

Die alte Bedeutung unseres Wortes 'Ende' bedeutet dasselbe wie Ort: 'von einem Ende zum anderen' heißt: von einem Ort zum anderen. Das Ende der Philosophie ist der Ort, wo dasjenige, worin sich das Ganze ihrer Geschichte in seine äußerste Möglichkeit versammelt. Ende als Vollendung meint diese Versammlung. (p. 63 in Heidegger 2000)

The old meaning of our German word *Ende* [end; *fine*] is the same as that of *Ort* [place, spot, site, point; *luogo*]: *von einem Ende zum anderen* [from one end to another] is the same as saying: *von einem Ort zum anderen* [from one point, or place, to another]. Thus, *das Ende*, the end, of philosophy is *der Ort*, the point wherein the whole of its tradition is gathered in its ultimate likelihood. End in the sense of achievement means this gathering. (translation, p. 360 in De Gennaro 2019)

Ende ist als Vollendung die Versammlung in die äußersten Möglichkeiten. Wir denken diese zu eng, solange wir nur eine Entfaltung neuer Philosophien des bisherigen Stils erwarten. Wir vergessen, daß schon im Zeitalter der griechischen Philosophie ein entscheidender Zug der Philosophie zum Vorschein kommt: es ist die Ausbildung von Wissenschaften innerhalb des Gesichtskreises, den die Philosophie eröff-

institutions, the freedom of individual faculty members against control of thought or utterance from either within or without the employing institutions remains the core of the matter." (p. 433 in Fuchs 1963). "College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations." (p. 14 in 1940 Statement of Principles on Academic Freedom and Tenure).

nete. Die Ausbildung der Wissenschaften ist zugleich ihre Loslösung von der Philosophie und die Einrichtung ihrer Eigenständigkeit. Dieser Vorgang gehört zur Vollendung der Philosophie. Seine Entfaltung ist heute auf allen Gebieten des Seienden in vollem Gang. Sie sieht aus wie die bloße Auflösung der Philosophie und ist in Wahrheit gerade ihre Vollendung. [...] Die Ausfaltung der Philosophie in die eigenständigen, unter sich jedoch immer entschiedener kommunizierenden Wissenschaften ist die legitime Vollendung der Philosophie. (pp. 63f. in Heidegger 2000)

The end, intended as achievement, is the gathering in the ultimate forms of likelihood. We think the latter too narrowly as long as we merely expect <them to show as> an unfolding of new philosophies of the previous style. We forget that already in the age of Greek philosophy a decisive trait of philosophy comes to light, namely the forming of sciences within the horizon opened up by philosophy itself. The forming of sciences is at the same time their detachment from philosophy and the establishment of their self-standing character. This occurrence belongs to the achievement of philosophy. Its unfolding is today in full swing in all fields of the being. That unfolding looks like the mere dissolution of philosophy, when in truth it is precisely its achievement. [...] The unfolding of philosophy into the self-standing sciences—which, however, communicate among themselves in an ever more decided manner—is the legitimate achievement of philosophy. (translation, pp. 360–362 in De Gennaro 2019)

Both passages refer to the notion of “end” and complement what has been said thus far. To begin with, in both passages the notion of “end” is neither addressed as a “condition for ...” nor as an “outcome of ...”. Beyond that, following the correspondence in meaning between the German words “Ende” and “Ort”, the notion of “end” refers to the sense of “place,” “spot,” “site,” “point.” This reference is not obvious, all the more so as it is not seen in light of the linear structure of the means-end rationality that nurtures the common understanding of what is meant when one addresses “the end of an action” or “the end of a process” in the sense of a more or less desirable “outcome” or valuable “result.” Thus, it is justified to follow up by asking: What kind of “place” could the notion of “end” mean, if this “place” cannot be reached by means of an action and cannot be established by means of a process? What kind of “point” could

the notion of “end” indicate if this “point” cannot be reached by an action or achieved through a process? To what “spot” could it refer? What “site” would it offer?

The quoted passages from Heidegger’s lecture suggest the following answer: the notion of “end” refers to a “place” (point/spot/site) “wherein” the entirety (whole) of what is thought through is “gathered in its ultimate likelihood.” The entirety (whole) is neither the sum of all aspects of what is thought through, nor is this entirety (whole) attained by adding all particular perspectives one can assume with regard to what is thought through. Provisionally, it can be understood as the entirety (whole) of sense-relations constitutive of what is thought through—of what is likely (beings) to be thought through, of what is (beings) “gathered in its ultimate likelihood” (being), of beings in their being. Inasmuch as the quoted passages stem from a lecture entitled *The End of Philosophy and the Task of Thinking* and address the “end of philosophy,” a more precise answer to the above-raised questions reads as follows: the notion of “end” refers to a “place” (point/spot/site) “wherein” the entirety (whole) of what is thought through in a philosophical way—which is to say, in a way constitutive of the philosophical tradition,¹⁴ i.e. in a way that also implies the sciences formed “within the horizon opened up by philosophy itself”—is “gathered in its ultimate likelihood.”

These answers suggest that the “wherein” cannot be located within a presupposed space-time-continuum and thus cannot exist in absolute terms independently of the human being.¹⁵ This is to say that this

¹⁴It should be noted that the “tradition of philosophical thinking” must not be confused with the “history of philosophy.” One has little to do with the other. Tradition does not refer to a mere chronological sequence of theoretical positions that are distinguishable from and comparable to each other according to their occurrence in history. Neither is it the subject of reconstructions that describe the above-mentioned sequence by merely installing theoretical positions in an explicable order. Tradition, literally speaking, refers to “being handed down,” “being handed over,” “being transmitted.” Since philosophy’s rootedness in the question of being is fundamental to its tradition, and since this tradition is generated by asking this question, it can be said that the interrogative requiring the question of being is the constant source of philosophy. It is precisely this interrogative that, through ever-renewed responses to the question of being, is “handed down,” is “handed over,” and thereby is “transmitted” (see p. 19 in Lüfter 2021).

¹⁵This as opposed to the conceptualisation of time and space within the modern natural sciences, in the tradition of Isaac Newton and Galileo Galilei. In light of this conceptualisation, the appearance of the human being seems to occur within an already given—and therefore prior to the appearance of the human being—absolute space-time-continuum. Even though, within the con-

“wherein” is neither “here and now,” nor “there and then,” nor “somewhere sometimes.” In order to be (a “place” that offers “site”), this “wherein” must be sustained in the being of men and through the being of men. In order to be (a “place” that offers “site”), this “wherein” must be thought through. In other words, it renders the claiming need of what must be thought through (by the human being) so as to be “gathered in its ultimate likelihood” (as a place for the being of men which offers site to the being of men); it renders the arising of this claiming need, inasmuch as it needs to be founded in thinking as the likely (free) “place” of thinking which offers “site” for a likely (free) thinking.

This circumstance implies, as a consequence, that inasmuch as the human being is, according to tradition, the thinking being, it may be assumed that the above-mentioned “end”—while it is the free place of thinking which offers site for free thinking, and while it needs to be sustained in and through the being of men—allows for the becoming of a human being. This is to say that the “end”—“gathered in its ultimate likelihood”—is the promise of a “place” for being a human being, which offers the “site” for becoming a human being. Considering that “allowing for” means “receiving with favour,” “admitting,” “enabling,” “conceding,” “crediting” (see Oxford English Dictionary), it can be assumed that the “end” indicates the “place” where the human being is “gathered in its ultimate likelihood” and thus eventually freed to become the unique and incomparable human being she or he is, and thus freed to be a human being in the first “place.”¹⁶ The “end” offers “site” for being a human being; it offers “site” for human dwelling and thus is itself constitutive of what may be considered to be the ethical dimension. In fact, within the tradition of philosophy, the question of ethics is born out of a sense of being which needs to be sustained in and through the human being, in

text of this contribution, we cannot elaborate on this question, it can be shown how the conceptualisation of space and time within the modern natural sciences, on the one hand, is rooted in the tradition of philosophical thinking, while, on the other hand, it must ignore the implications of this rootedness in order to establish itself as a modern science (see Carfora and Zaccaria 2018; Zaccaria 2018).

¹⁶ Within the tradition of philosophy, thinking in a philosophical way (i.e. philosophising) is considered as a path of liberation, i.e. a path of becoming free and thus of being a free human being, i.e. of becoming (being) a human being in the first place. Consider, for example, Plato’s *Myth of the Cave*, Descartes’ *Meditations on First Philosophy*, etc.

view of the foundation of his abode: to wit, his ἦθος (p. 766 in Liddell and Scott 1996). Ethics, in turn, originates as knowledge of “the [original] dwelling of the human being, [as knowledge of] his abode in the midst of beings in the whole” (“das Wohnen des Menschen, sein Aufenthalt inmitten des Seienden im Ganzen”, p. 214 in Heidegger 1994). In the so understood “end,” and along with it, emerges the ethical dimension in question within the title of this contribution. This is to say that the pursuit of research and education is ethical inasmuch as it contributes to the founding of the abode of human beings and thus to the building of knowledge about human dwelling.¹⁷

In other words, the “end” indicates the horizon of philosophical thinking which, as asserted previously, encompasses and defines (by sustaining the likelihood of an entirety that is achievable as a whole), and at the same time frees towards an undisclosed openness (by affording the outlook on what is yet unthought and thus likely to imply a transformation of thinking itself)—and thus defines a “place” that offers “site” in the here indicated sense. This is to say that the “end” is in itself and of itself the achievement of an “ultimate likelihood” that offers “site” for thinking, while it needs to be founded as the “place” of thinking. As far as thinking is “gathered in its ultimate likelihood,” it shows itself not to be a mere competence of the human being, in the sense of an accidental property that applies to him or her, but rather to be a fundamental trait of becoming a human being and thus of being a human being (see note 11).

Accordingly, the question raised in the title of this contribution is not incidentally, but mainly, an ethical question. It allows for opening up a way of philosophical thinking which, as we will see, is concerned with the abode of men in the midst of beings in the whole (see p. 214 in Heidegger 1994), while men sustain, in its being, the claiming need of beings to be founded as such and in the whole through the pursuit of research and education: through scholarship.

There is a further remark in the quoted passages, which is relevant for the understanding of the question raised in the title of this contribution. This remark recalls the circumstance that a trait of philosophical thinking

¹⁷The suggested ethics is elaborated in more detail in *The Ethics of Economic Responsibility* (Lüfter 2021).

is “the forming of sciences.” According to Heidegger, this “forming” takes place “within the horizon opened up by philosophy itself.” This is to say that the development of sciences, and with them the establishment of scientific ways to pursue research and education, takes place within the horizon of philosophical thinking and thus remains related to the “end” that defines this horizon. Even though the limits of this contribution do not permit a deeper examination of this remark, it nevertheless implies the circumstance that the freedom which emerges through and along with philosophical thinking includes science as we have known it up to this day¹⁸ (see Heidegger 2001¹⁹), namely, the science which is rooted in the philosophical tradition. Accordingly, within the context of this contribution, philosophy is not conceived as an academic discipline, and all considerations on academic freedom are not confined to one scientific discipline in particular. Instead, academic freedom refers to an “end” that is, in itself and of itself, a free place of thinking which offers a site for free thinking “wherein” the pursuit of research and education is “gathered in its ultimate likelihood” and thus appears in its relatedness to the human being and to his or her becoming.²⁰

Now we turn to the question that determines the horizon of philosophical thinking. Through this question emerges the point which, from the onset, orients all attempts of philosophical thinking and thus determines the philosophical tradition in the first place. This question is, so to speak, the point of orientation for thinking something through to the end in a philosophical way. Accordingly, it is considered to be the guiding

¹⁸ In this regard, the ongoing efforts carried out in the context of the platform *ScienzaNuova* (see www.scienzaNuova.org) are groundbreaking.

¹⁹ An important part of Heidegger’s lecture course, *Einleitung in die Philosophie*, is dedicated to the relation between philosophy and sciences. Here a fundamental hint is given when Heidegger sustains the following: “Philosophie ist zwar Ursprung der Wissenschaft, aber gerade deshalb nicht Wissenschaft,—auch nicht Ur-Wissenschaft.” (“Philosophy is the origin of science, and therefore precisely not science—not even ur-science”; p. 18 in Heidegger 2001). In the conference *Was heißt Denken?* Heidegger asserts: “Alle Wissenschaften gründen in der Philosophie, aber nicht umgekehrt.” (“All sciences derive their origin from philosophy, but this does not apply the other way round”; p. 90 in Heidegger 1984).

²⁰ In the context of this contribution, the notion of academic freedom is decided by the horizon of philosophical thinking. However, the title of the quoted lecture—*The End of Philosophy and the Task of Thinking*—suggests that Heidegger looks beyond the horizon opened up by philosophy itself and addresses a way of thinking (and thus an understanding of philosophy as well as of the sciences) which no longer has a philosophical character.

question of philosophy, and thus also the question wherein the arising of academic freedom is gathered in the likelihood that ultimately allows for the pursuit of research and education as the foundation of a place offering a site for becoming a human being. The foundation is originally carried out through the reciprocal coalescence of scholars, through the reciprocal coalescence of those who dedicate themselves to this question (or to questions that emerge in the horizon of this question and which are, therefore, oriented towards its claiming need for a response).

3 Offering a Site for Reciprocal Coalescence²¹

The guiding question of philosophy arises, once the awareness of the following awakens:²² the tree in front of the window is a being, just as is the mountain: both are natural beings. The painting on the wall is a being, just as is the sculpture in the park: both are artistic beings. The calculation in the notebook is a being, just as is the formula on the blackboard: both are mathematical beings. What soars to a height and descends to a depth is a being: a spatial being. What is periodically and has continuity is a being: a temporal being. This awareness leads to the plain insight that only “what is” can “be natural,” can “be artistic,” can “be mathematical,” can “be spatial,” can “be temporal.” The supposedly unassuming circumstance that there are distinct beings that, in being distinct, appear as such and in the whole, necessitates an understanding of what “to be” means. It necessitates this understanding regardless of whether the understanding itself is each time sufficient or not. Each time that beings are addressed with regard to some particular aspects or according to a particular point of view, an understanding of what “to be” means is necessarily required and thus, either implicitly or explicitly, involved. The philosophical tradition is born in and as the awakening awareness of this necessity, whereas

²¹ In the context of this contribution, the notion of “men” is supposed to mean: “human beings,” “mortals.” It is not intended to specify the gender of human beings.

²² The question raised in the title of this contribution appears when the eye for the above-mentioned horizon of thinking is attenuated. Whereas, on the other hand, raising this question in the right way means that the awareness of this attenuation awakens in and along with the question itself.

sciences, as we have known them until now, stand within this tradition. Sciences define themselves through the study of particular aspects of beings, assuming particular points of view with regard to these aspects, whereas philosophy considers beings as such and in the whole by thinking them through to the end and thus questioning what they are, and how they are, while considering the horizon within which they are. This horizon is determined by the guiding question of the philosophical tradition: What is being? It is in the wake of this question, there arises the kind of freedom which characterises philosophical studies as well as scientific studies—namely: academic freedom.²³

Indeed, the “freedom” addressed in this collected volume is determined by its reference to the eponymous grove on the outskirts of the polis (πόλις) of Athens (Ἀθῆναι), sacred to the hero Academus (Ἀκάδημος), from which, to this day, the world of research and education, the world of study and scholarship, derives its name: “Academia” (Ἀκαδημία, Ἀκαδημία). Since antiquity, the adjective “academic” qualifies phenomena that are concerned with the pursuit of research and education, whereas the noun “academy” refers to a location where this pursuit takes place in terms of study and scholarship: schools, colleges, universities, societies for the cultivation of arts and science, centres for research and study. However, the reference to the Attic grove is neither merely a geographical nor an historical one, if we consider that its fame²⁴ originates

²³ In the context of this contribution, we must content ourselves with mentioning the guiding question of the philosophical tradition without further developing its richness. However, it should be noted that this question is not just an accessory when it comes to achieving a more sufficient understanding of academic freedom. This is to say that in the wake of the above-stated question, academic freedom could become thematic beyond its conceptualisation in terms of “negative freedom,” in the sense of “independence from...” (e.g., the subjection of political power, religious intrusion, or economic influences). However, it must also be acknowledged that the conceptualisation of academic freedom in terms of “negative freedom” is by far the prevailing one (see, for example, 1940 Statement of Principles on Academic Freedom and Tenure, published by the American Association of University Professors). In light of this prevalence, the reference to the above-mentioned Attic grove appears to be merely geographical or historical and, therefore, a negligible side issue. As a consequence, the inherent richness of the above-mentioned guiding question of the philosophical tradition is hardly ever noticed and lies idle with regard to the conceptualisation of academic freedom. Academic freedom is then considered to be a mere condition for an end (the pursuit of research and education, the pursuit of true thinking) which is, in and of itself, not freedom.

²⁴ Here the word “fame” is not meant to indicate that the above-mentioned grove is somehow “famous,” “well known,” or “prominent” due to the historical fact that “academy” (meaning the

from the circumstance that it defines the “place” that offered “site” for the reciprocal coalescence²⁵ of those who dedicated themselves to questions that emerge in the horizon of the guiding question of the philosophical tradition: what is being?

Reciprocal coalescence originates from this question and grows in the light of this question. The question itself requires those who dedicate themselves to it and thus take care of what is in question with it: in other words, scholars. Through their dedication and care, the question is founded as a free place of thinking which offers a site for free thinking—or, in other words, according to what was said above, as the “point” where the human being is “gathered in its ultimate likelihood” and thus eventually freed towards its own being. The foundation of this “place” occurs through the pursuit of research and education, which, in turn, builds on the “site” offered through this question. This is to say that the name “academia” must be reserved for this kind of “place,” for this kind of “site,”

Platonic Academy) reputedly derives from the name of the hero to whom the grove is sacred, and, since then, is generally applied to institutions dedicated to scholarship. “Fame” rather refers to what is brought to light by means of the grove: the offering of a site for the reciprocal coalescence of men who dedicate themselves to the warding of what concerns thinking in the first place and thus, in turn, needs to be held in ward through thinking. So, for the first time, thinking (in terms of philosophical thinking) appears as the original institution of this offering. Thus, the name “academy” refers to the offering of a site that may be instituted through the ward of what originally requires thinking and, in turn, what is said to be “academic” (academic freedom, academic responsibility, academic teaching as well as academic courses, academic education as well as academic positions, academic titles as well as academic honours).

²⁵ Plato speaks about this reciprocal coalescence in the *Seventh Letter*: ῥητὸν γὰρ οὐδαμῶς ἐστὶν ὡς ἄλλα μαθήματα, ἀλλ’ ἐκ πολλῆς συνουσίας γιγνομένης περὶ τὸ πρᾶγμα αὐτὸ καὶ τοῦ συζῆν ἐξαιφνης, οἷον ἀπὸ πυρὸς πηδήσαντος ἐξαφθὲν φῶς, ἐν τῇ ψυχῇ γενόμενον αὐτὸ ἑαυτὸ ἦδη τρέφει. (Plat. epist. 341 c). Following the translation of this passage given by Martin Heidegger in a lecture course during the 1928/1929 winter term at the University of Freiburg, it can be understood in the following way: “What philosophy questions, cannot be said, cannot be recounted, but is something that is generated and was generated in the soul thanks to a genuine being together, a being in coalescence with the abiding of what is in question, something that arises and grows from this taking care of what is in question, in a reciprocal coalescence.” There, and only there, according to Plato, philosophising takes place, “in the same way as when the spark of a fire leaps over from one to the other, kindling the clear sphere and the discerning light in which being makes itself visible” (see p. 220 in Heidegger 2001. The Italian translation of Heidegger’s lecture course—provided by Maurizio Borghi in collaboration with Ivo De Gennaro and Gino Zaccaria—is particularly helpful for the understanding of what is said in Plato’s *Seventh Letter*. See Heidegger 2007). This is to say that the aforementioned warding of what concerns thinking in the first place, according to Plato, is carried out through philosophising which, in turn, requires the reciprocal coalescence of those who dedicate themselves to what philosophy questions in the first place, and thus concerns philosophical thinking throughout its tradition: what is (the) being(ness) of beings)?

and not for a geographically determinable location nor for a historically verifiable fact. This applies also to the “freedom” that originates from this “place,” from this “site”—that originates from what emerges through the guiding question of the tradition of philosophy: what is being?²⁶

Alles Seiende ist im Sein. Solches zu hören, klingt für unser Ohr trivial, wenn nicht gar beleidigend. Denn darum, daß das Seiende in das Sein gehört, braucht sich niemand zu kümmern. Alle Welt weiß: Seiendes ist solches, was ist. Was steht dem Seienden anderes frei als dies: zu sein? Und dennoch: gerade dies, daß das Seiende im Sein versammelt bleibt, daß im Scheinen von Sein das Seiende erscheint, dies setzte die Griechen, und sie zuerst und sie allein, in das Erstaunen. Seiendes im Sein: dies wurde für die Griechen das Erstaunlichste.

Indessen mußstensogar die Griechen die Erstaunlichkeit dieses Erstaunlichsten retten und schützen—gegen den Zugriff des sophistischen Verstandes, der für alles eine für jedermann sogleich verständliche Erklärung bereit hatte und sie auf den Markt brachte. Die Rettung des Erstaunlichsten—Seiendes im Sein—geschah dadurch, daß sich einige auf den Weg machten in der Richtung auf dieses Erstaunlichste, d.h. das σοφόν. Sie wurden dadurch zu solchen, die nach dem σοφόν *strebten* und durch ihr eigenes Streben bei anderen Menschen die Sehnsucht nach dem σοφόν erweckten und wachhielten. Das φιλεῖν τὸ σοφόν [...] wurde [...] zu einer ὄρεξις, zu einem *Streben* nach dem σοφόν. Das σοφόν—das Seiende im Sein—wird jetzt eigens gesucht. Weil das φιλεῖν nicht mehr ein ursprünglicher Einklang mit dem σοφόν ist, sondern ein besonderes Streben *nach* dem σοφόν, wird das φιλεῖν τὸ σοφόν zur ‘φιλοσοφία’. (pp. 13 et seq. in Heidegger 2003)

²⁶ This question is referred to as the guiding question of the entire philosophical tradition. It unites the four questions that are assumed to be characteristic of all philosophical endeavours from Plato to Nietzsche: What is the being of beings? (What is their essence?); What is truth? (Not in the sense of “what is true?” but in the sense of: what is the sense of truth? What does “to be true” mean?); What is man? (What is the essence of men?); What is the right measure? (What gives measure to men, and how can man assume that measure so that man’s existence is a dignified one?). In other words: each fundamental endeavour within the philosophical tradition can be traced back to those four questions, and eventually to the guiding question: “What is being?” (See pp. 251 et seq. in Heidegger 1998; Zaccaria 2017).

All beings are in being. To hear something like this sounds trivial to our ear, if not, indeed, offensive, for no one has to bother about <the fact> that beings <entirely> belong to being. All the world knows: beings are that which is. What else are beings free to do, but this: to be? And yet: just this, the idea that beings remain gathered in being, that in the light of being, beings appear, astonished the Greeks, them first and them alone. Beings in being: this became, for the Greeks, most astonishing.

However, even the Greeks had to rescue and preserve the astonishingness of what is most astonishing—from and against the seizure of sophistic reasoning, which always had ready-made explanations for everything, immediately comprehensible for everyone <alike>, which was brought on the market. The rescue of what is most astonishing—beings in being—was accomplished because a few stepped onto the path towards what is most astonishing, i.e. the σοφόν. There, they became those who strove for the σοφόν and who, through their own striving, awakened and kept awake among others the yearning for the σοφόν. The φιλεῖν τὸ σοφόν [...] became an ὄρεξις, became a striving for the σοφόν. The σοφόν—beings in being—is now sought as such. Because the φιλεῖν is no longer in tune with the σοφόν but is a particular striving towards the σοφόν, the φιλεῖν τὸ σοφόν becomes ‘φιλοσοφία’.

The passage stems from a lecture which Heidegger gave in Cerisy-la-Salle in 1955, entitled *What is this—Philosophy?* Heidegger here indicates the moment in which the awareness for the question of being as the guiding question of the tradition of philosophy awakens, and with it the awareness for a sense of being which requires to be sustained in and through the human being, in view of an in-itself necessary foundation of the human abode: to wit, ἦθος (p. 766 in Liddell and Scott 1996). The sense of being, to which Heidegger refers, awakens as the awareness that “all beings are in being” and that all beings “remain gathered in being.” This awareness is constitutive of the horizon of philosophical thinking and of the forming of sciences within this horizon. For the Greeks, this idea—that all beings are in being—became the “most astonishing” and, as such, the source of their πόλις. However, according to Heidegger, the “astonishingness” of what is “most astonishing” has been threatened from the onset and had to be rescued and preserved by those who “stepped

onto the path towards what is most astonishing” and “who, through their own striving, awakened and kept awake among others” the indicated sense of being. Up to this day, the pursuit of research and education echoes this “striving for”—what is achieved through philosophising as philosophising—what is achieved by the reciprocal coalescence of those who dedicated themselves to the above-mentioned guiding question as true scholarship.²⁷ The “striving towards” opens up a path of liberation and thus lightens a kind of human freedom that cannot be conceived as a condition for thinking and thus cannot be conceived in negative terms as the mere independence of thinking from external constraints. This is to say that the freedom of becoming a human being can never be attained in terms of mere independence, which by no means detracts from the importance of independence. Freedom and independence are simply different—different in kind. The freedom that is lightened by the “striving for” emerges as the claiming need for a free “place” of thinking which offers a “site” for free thinking wherein the tradition of philosophy, originated by what emerges through the guiding question of philosophical thinking, is “gathered in its ultimate likelihood” and thus allows for beings to be thought through to their end, i.e., to be thought in their being. The “striving for” establishes and builds a kind of knowledge which is itself philosophical, knowledge of the abode of men amidst beings in the whole—to wit: ethics.

Inasmuch as true scholarship is determined by this “striving for”—by this pursuit of research and education—the ethical dimension of scholarship emerges with the awakening of the above-mentioned awareness for the guiding question, which includes the end of academic freedom as the source of a true reciprocal coalescence. This is why it is insufficient to define academic freedom in negative terms as the mere condition for the pursuit of research and education. Where freedom is understood as a condition for the pursuit of research and education, the ethical

²⁷ In fact, scholarship can never be assigned by means of an institutional act. For this reason, in light of what has been said in the context of this contribution, Fuchs’ definition of academic freedom as the “freedom of members of the academic community, assembled in colleges and universities, which underlies the effective performance of their functions of teaching, learning, practice of the arts, and research” (p. 431 in Fuchs 1963) could be misleading, especially if it is considered exclusively as a personal right that is only justified “in order to enable faculty members and students to carry on their roles” (ibid.).

dimension of scholarship is neither rescued nor preserved, and ethics becomes the vapid title for a kind of knowledge which is merely juxtaposed or complementary to an already established praxis, in itself un-academic and thus un-free.

References

- American Association of University Professors. 1940. Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments. <https://www.aaup.org/file/1940%20Statement.pdf>. Accessed 13 January 2021.
- Carfora, Mauro, and Gino Zaccaria. 2018. Sul tempo (tra fisica e filosofia). *Eudia. Yearbook of Philosophy, Poetry, and Art* 12. <http://www.eudia.org/wp/download.php?id=2308>. Accessed 8 March 2021.
- Celan, Paul. 1983. *Gesammelte Werke in fünf Bänden. Band 1: Gedichte I* (Ed. Beda Allemann, and Stefan Reichert, with the collaboration of Rolf Bücher). Frankfurt am Main: Suhrkamp.
- De Gennaro, Ivo. 2019. *Principles of Philosophy. A Phenomenological Approach*. Freiburg–München: Verlag Karl Alber.
- De Gennaro, Ivo, and Gino Zaccaria. 2011. *La dittatura del valore. L'insegnamento e la ricerca nell'università planetaria. / The Dictatorship of Value. Teaching and Research in the Planetary University*. Milano: McGraw-Hill.
- Doumani, Beshara. 2006. Between Coercion and Privatization: Academic Freedom in the Twenty-First Century. In *Academic Freedom after September 11*, ed. Beshara Doumani, 11–57. Brooklyn, NY: Zone Books.
- Encyclopaedia Britannica. n.d. *Academic Freedom*. <https://www.britannica.com/topic/academic-freedom>. Accessed 4 January 2021.
- Finkin, Matthew W., and Robert C. Post. 2009. *For the Common Good: Principles of American Academic Freedom*. New Haven: Yale University Press.
- Fuchs, Ralph F. 1963. Academic Freedom—Its Basic Philosophy, Function, and History. *Law and Contemporary Problems* 28: 431–446.
- Heidegger, Martin. 1984. *Was heißt denken?* 4th ed. Tübingen: Max Niemeyer Verlag.
- . 1994. *Heraklit. Der Anfang des abendländischen Denkens / Logik. Heraklits Lehre vom Logos (Freiburger Vorlesungen Sommersemester 1943 und Sommersemester 1944)* (Gesamtausgabe, II. Abteilung: Vorlesungen 1919–1944, Band 55). 3rd ed. Ed. Manfred S. Frings. Frankfurt am Main: Vittorio Klostermann.

- . 1998. *Nietzsche. 2 Bände*. 6th ed. Stuttgart: Neske.
- . 2000. *Zur Sache des Denkens*. 4th ed. Tübingen: Max Niemeyer Verlag.
- . 2001. *Einleitung in die Philosophie (Freiburger Vorlesung Wintersemester 1928/29)* (Gesamtausgabe, II. Abteilung: Vorlesungen 1919–1944, Band 27). 2nd ed. Ed. Otto Saame, and Ina Saame-Speidel. Frankfurt am Main: Vittorio Klostermann.
- . 2003. *Was ist das – die Philosophie?* 11th ed. Stuttgart: Klett-Cotta.
- . 2007. *Avviamento alla filosofia*. Trans. Maurizio Borghi, with the collaboration of Ivo De Gennaro and Gino Zaccaria (Heideggeriana 3). Milano: Christian Marinotti Edizioni.
- Liddell, Henry George, and Robert Scott. 1996. *A Greek-English Lexicon. Revised and augmented throughout by Sir Henry Stuart Jones*. Oxford: Clarendon Press.
- Lüfter, Ralf. 2021. *The Ethics of Economic Responsibility (Economics and Humanities)*. London/New York: Routledge.
- Nelson, Cary. 2010. *No University is an Island. Saving Academic Freedom*. New York: New York University Press.
- Zaccaria, Gino. 2017. Le questioni fondamentali della filosofia I. <http://www.scienzanuova.org/it/>. Accessed 4 January 2021.
- . 2018. Gli inizi del tempo (Sofocle, Aristotele). <http://www.scienzanuova.org/it/>. Accessed 28 January 2021.



A Knowledge-Based Conception of Academic Freedom

Pascal Engel

1 Introduction

We observe violations of academic freedom on many occasions. Speakers at university meetings are “de-platformed”, professors are victims of campaigns on campuses, in the media, and in social networks, “trigger warnings” and various forms of silencing are issued about certain courses, some academics are censored, ostracized, not promoted, or denied access to funding or publishing because of their views. Hate speech is everywhere. Political agitation in universities is by no means new, but it has become more visible since the advent, during the twentieth century, of mass universities: since the “campus wars” of the 1960s, universities have awakened from the dream of the ivory tower. Interrupting a lecture, bullying certain professors in the name of various causes having to do with race, gender, or religion, firing a rector who is suspected of harboring politically dangerous opinions: these are clear cases, but there are also a

P. Engel (✉)

École des hautes études en sciences sociales,
Paris, France

e-mail: pascal.engel@ehess.fr

number of borderline cases. Moreover, there are huge differences in the historical, geographical, and institutional contexts of such threats to academic freedom. How to deal with such a diversity of cases? Is it possible to apply a unique definition? The most common conception of academic freedom is that it is a subspecies of the freedom of speech, applied to academic life, just as freedom of the press is a subspecies of the freedom of expression applied to the media. I wish to argue here that this conception is misguided, and that academic freedom involves a specific kind of freedom, relative to knowledge. In this cognitivist or knowledge-based conception, what is distinctive in terms of academia is that it is a space devoted to knowledge, and that this objective involves specific rights and duties.

2 Academic Freedom as Freedom of Speech

The idea that academic freedom is but a subcase of the freedom of speech is a historically recent development. In the Middle Ages, academic freedom was a special entitlement, granted by the Church authorities and by the State to the members of universities. Later, this right was granted by the state, often under the name of “academic exemptions”, the idea being that academics have, as a collective body, certain privileges specific to their status and to the organization of their institution (Beaud 2010, 2021). In this sense, academic freedom is a freedom of speech within the university, which holds between academic peers and which regulates their capacities of learning and of teaching. From this perspective, academic freedom is a professional privilege, comparable to those of lawyers or of merchants in their own sphere. In the contemporary world, this freedom belongs to a much larger sphere: it is commonly understood as the freedom of speech of academics as citizens within a democratic society, since universities are democratic institutions open to all and subject to the same rights and duties as the rest of the public space. Academic freedom, in this sense, is but an extension of the freedom of expression. In the United States, it is a simple consequence of the First Amendment; in

many other countries, it is part of the declaration of human rights.¹ Within this broad view, academics have as much right to express themselves in public settings outside universities as they have to express themselves within the universities, and should not be prevented from doing so in their role as academics. The professor is not a special case. The student and the community member who attends a university meeting open to the general public enjoy the same freedom. Their right to expression is one and the same, because all participants, academics or not, are citizens alike. The only difference between the university and a political forum, and between an academic book and a popular book, is that the former are directed toward different audiences, one specialized, the other general, and they coexist in contemporary universities. Everyone on a campus has a right to his opinions, whether true or false, and an equal right to express them in public.²

It is not difficult to see that this conception of academic freedom as freedom of opinion and expression runs into difficulties. Freedom of expression holds for opinions, whether true or not. But universities are not just spaces where one can express any opinion one likes. They are not forums, even if they can occasionally become platforms for forum-like events. Neither are academics free to engage in any kind of research whatsoever. They are not like the members of the *Academy of Lagado*, ridiculed by Swift in *Gulliver's Travels*, where lunatics are allowed to inquire on any topic they like, from attempts to reconvert excrement into the food from which it comes, to extracting light from cucumbers. On the classical liberal model of liberty, freedom of speech is part of the "market of ideas", where false opinions should not be banned, since they might, after a process of filtering and discussion, eventually lead to true ones. Unfortunately, it seems abundantly clear that, if an excess of false opinions are allowed to flood the market without due discipline, truth might

¹ See the Report of the 75th Session of the UN, 28 July 2012, the Declaration of the European Constitutional Court, and the UNESCO Universal Declaration of Human Rights.

² See, for instance, the Statement of Academic Freedom of McGill University, where it is stated that the scholarly members of the university "retain the right of free expression, including the freedom to criticize one another, university policies and administration". If they retain this right, it means that they have it, like any other person in the public space.

not emerge in the end. Therefore, academic freedom cannot be *just* freedom of opinion.

Twentieth century defenders of the democratic conception of academic freedom attempted to formulate a tighter connection between the expression of opinion and the search for truth. In the United States, this initiative was led by philosophers belonging to the pragmatist tradition, like John Dewey, Arthur Lovejoy, later by Sydney Hook (Stone 2015). They were Darwinists, free thinkers, and democrats. Dewey is the author of one of the most quoted definitions of academic freedom:

In discussing the questions summed up in the phrase academic freedom, it is necessary to make a distinction between the university proper and those teaching bodies, called by whatever name, whose primary business is to inculcate a fixed set of ideas and facts. The former aims to discover and communicate truth and to make its recipients better judges of truth and more effective in applying it to the affairs of life. The latter have as their aim the perpetuation of a certain way of looking at things current among a given body of persons. Their purpose is to disciple rather than to discipline. [...] The problem of freedom of inquiry and instruction clearly assumes different forms in these two types of institutions. (p. 1 in Dewey 1902)

Dewey insists on the fact that academic freedom is at the service of a specific goal—truth—and that this goal implies a certain kind of activity—inquiry—which is very different from the mere expression of opinion: it is, so to say, organized belief. So, in Dewey's view, academic freedom is a controlled and systematic search for truth, according to rules and standards which are those of science and learning. This sets universities apart from institutions whose only purpose is teaching and which are at the service of other ends, be they religious, political, or economic. However, this noble aim has always been difficult to maintain within American universities, which are often private or religious institutions, and depend upon the endowments of rich alumni. In addition, Dewey has never conceived the university as separate from the public sphere. He conceives of it as a fundamentally democratic institution, not as a cloister removed from the debates of the society as a whole. Even though Dewey

distinguishes academic freedom from the exercise of free speech, he still leaves open the question of the exact nature of their relations.

The democratic conception of academic freedom is in line with the liberal conception of freedom inspired by John Stuart Mill (Mill 2008). In this conception, (i) individuals are free to associate with one another, provided that no one else's rights are violated, and, (ii) provided that there is no imminent danger of harm, individuals are free to express or criticize opinions as they like, whatever the nature of these opinions; finally, (iii) rights should be protected only to the extent that their protection does not violate other people's freedom. Liberal freedom, as Isaiah Berlin and many others have insisted, is mostly negative: it prevents people from hindering others' freedom (Berlin 1969; Pettit 1997). Its positive aspect rests upon the formula which Dewey took up from the founder of pragmatism, Charles Sanders Peirce: "Do not block the way of inquiry" (see Haack 2014). However, if this formula is taken to be the epitome of academic freedom, it nevertheless leaves a number of things unclear. First, is there room for a positive account of the freedom of research? The market-place of ideas is wide, but how do those ideas arise which are supposed to be generated and discussed within universities? How are they supposed to be assessed and validated? Second, how is the expression of these ideas supposed to protect their defenders against potential harm, and is it enough that they do no harm? How do we define harm done by ideas? Is it different from the harm done by speech? Should we distinguish potential harm in the long term from immediate danger in the short term? And for what kind of groups? It is clear that the wider the academic communities, the harder it will be to define the conditions of potential harm (Simpson and Srinivasan 2018; Couto 2020; Levy 2019). The no-harm requirement is vague, but also weak and potentially adverse to the very idea of leaving open the way of inquiry: if only harmless opinions or those which do not run the risk of offense are allowed to emerge and to stay, academic learning has little chance of progress. Freedom of speech is very demanding: it is supposed to allow any view, however wrong, to reach the public space. Understood in the strictest sense, freedom to express one's opinion in the public sphere, of which universities are just a part, leads to the view that no attempt to prevent the expression of any opinion can be legitimate. However, the liberal conception of

freedom can accept the idea that there are limits to this freedom in specific circumstances. This conception is not hostile to distinctions between influence, persuasion, and direct incitement, but it has little or nothing to say on the positive side of the sphere of freedom (Pettit 2018). Where does this freedom come from?

Moreover, the simple identification of academic freedom with freedom of speech may lead very quickly to conflicts, particularly in specific cases of inviting a speaker to give a university lecture, such as the following. We have, on the one hand, a lecturer who is a well-known holocaust denier and has been invited to give a talk, which may or may not bear on this topic, and, on the other hand, students who interrupt his lecture because he is well known for his views. Both parties are violating academic freedom: the one by professing an opinion which is, in most countries, banned from the public space; the other by preventing him from expressing his opinion.³ Thus, within the perspective that academic freedom amounts to nothing more than freedom of expression, both are entitled to act as they do: the lecturer can claim that his academic freedom is violated, and the students can claim that they have a right to prevent him from delivering a speech on this issue. We understand that there is something wrong here, and indeed, what is wrong in the first place is that to deny the existence of the holocaust is to enunciate a falsehood, and moreover a proven one. But if one identifies academic freedom with freedom of expression, this consideration is inconsequential. Nevertheless, it ought to matter deeply within a university. If, in our definition of academic freedom, we want to give a space to truth, and not just to opinion, we must make this definition more precise: what are we to exclude and to allow, and who is entitled to exclude and to allow?

³This was more or less the case when, in 1980, Noam Chomsky defended the right of French holocaust denier, Robert Faurisson, to speak (see Chomsky 1980).

3 Academic Freedom as Freedom to Know

The basic difficulty created by the assimilation of academic freedom with freedom of expression emerges in those familiar situations when, during a university meeting or an academic encounter, a controversy arises, where a group of people express their opposition to a presented view, and when the moderator of the debate, or an academic administrator, asks the respective parties to have a “balanced” view on the topic (Bilgrami 2015). This is not intended only as a suggestion for respecting the time limits of the discussion or for being polite, nor even as a reminder that everyone has a right to speak. It is a recommendation for speakers to have “moderate” positions, and to adjust their views in order to make them compatible with those of their opponents. In other words, the requirement of balance bears not on the form or style of the debate, but on the content of the opinions expressed, so that each of them be equally considered as *true*. Therefore, “balancing” entails that one must find some middle ground between the two opinions, or that each be considered as equally entitled to be true. This is the perfect recipe for relativism: all opinions are equal because they are, in a sense, all true from their own perspective.

The mistake in this incitement to balance is obvious: it involves a confusion between the *expression* of conflicting views, which indeed implies that each of them has a right to be voiced, and the *truth* of these views, which implies that if one is true, the opposing one cannot be true. But, if universities are institutions devoted to the search for truth and the transmission of knowledge, they cannot treat all truths as equal. In this respect, the metaphor of the “market-place of ideas” is very misleading. It presupposes that all ideas, good or bad, weak or strong, true or false, are allowed to enter the market and to compete with others, and possibly to win. Although this process may hold (within well-known limits) in the field of politics, where all citizens have a right to free expression, the same process does not hold for scientific research and teaching, where only truths which have a certain pedigree have a right of entrance, and where false or weak views are ruled out from the start. Erroneous or strange views are indeed accepted, and they can persist, but the rule of the game is that

they are not allowed to persist for long, because they must be backed by arguments, and must survive critical inquiry.

Academic freedom is very different from freedom of expression or speech. It is not, to take up Robert Post's words, based on a "democratic competence", but on a professional competence, which involves the production, promotion, and transmission of knowledge to various audiences belonging only *in part* to the public sphere (Post 2012). The professional competence that is required of academics is quite unlike the professional competence of physicians, of dentists, of architects, or even of journalists, who indeed need a certain kind of knowledge in order to perform their activities, but who are not, in general, required to improve knowledge in their respective fields (unless they also engage in scientific research). One expects from academics not only to exercise knowledge within a specific type of practice, and to transfer that knowledge, but also to *produce* and to *create* new knowledge. The model of knowledge which is in place within the academic sphere is not only that of the schools, including religious or theological schools, but is *scientific* knowledge. Scientific knowledge is not just any kind of knowledge. It is supposed to conform to certain standards: to be based on empirical evidence or proofs, to be objective and public, testable, and possibly falsifiable. Not all academics, professors, and students engaged in scientific work need actually to possess the relevant scientific knowledge, but they need to accept and promote its standards. They are supposed to acquire certain kinds of practices, rules, and habits. Their knowledge is controlled, through the degrees that they acquire and confer. Certainly doctors, dentists, architects, or policemen must also acquire professional competences, including through academic degrees, but they are not required to produce it, but rather to put it into practice. They must agree to certain deontological rules, just like academics, but these rules do not pertain to the production and enhancement of knowledge, unlike members of academia. Through their officers and administrations, academic institutions, too, are supposed to be devoted to these ideals and to rest upon a tradition that promotes said ideals. An important corollary is that academic freedom, so understood, is not only an individual, but a collective right and competence, which has to be implemented by members of the academic institution. The specific character of academic freedom comes from the fact that faculty and

students are supposed to be preserved from the intrusion of external authorities and pressures, political or private. They are the gate-keepers of their knowledge.

Academic freedom in this sense is *knowledge-based*, and not opinion based. In public speech and expression of opinion, anyone, if they so choose, can express their opinions, including false or weird ones, and their freedom is supposed to be preserved from interference, in the sense of negative freedom. In contrast, knowledge-based academic freedom is primarily a positive freedom: it entitles academics to launch new research and to pursue it without external influences. It also entitles them to non-interference, insofar as they aim at furthering their research. The basis of the distinction between knowledge-based academic freedom and the freedom of opinion is the very difference between knowledge and opinion. Knowledge is not belief, and not even true belief. It is, in most views, justified true belief, or true belief with reason. A knowledge-based view of academic freedom rests on two tenets: the first is that knowledge is different in kind, and not only in degree, from opinion; the second that knowledge is the foundation of this freedom. The first tenet, which I cannot develop here, but which is central to recent epistemological theories (Williamson 2000), implies that knowledge is not just a species of true belief, but a distinctive epistemic status: to know is not to have better beliefs, but to be warranted and reliable in one's beliefs. One may object that scientific beliefs can be overturned, contradicted, and are indeed often proved false. The point is not that science gives us absolute certainty or infallibility, but that it is at least *safe* and *objective*, in the sense that it cannot easily be proved wrong. It secures objective standards and regulates the very idea of a scientific enquiry. A knowledge-based view is in direct conflict with relativistic and post-modernist views of scientific knowledge, according to which there is no such thing as scientific *knowledge* or *truth*. In such views, which have dominated a number of recent discussions of academic freedom, the standards of truth and knowledge cannot serve as a basis for academic freedom: rather, the only foundation can be the democratic freedom of opinion and of expression (see in particular Rorty 1996; Fish 2014; and, for counterarguments, Boghossian 2006). This is wrong, and rests on a distorted conception of knowledge. Knowledge is not free, but constrained by the nature of things that we

discover. Contrary to what the usual metaphor says, knowledge is not a construction. The second tenet of the cognitive conception of academic freedom is that the standards of knowledge guarantee a *positive* form of freedom as autonomy: research ought to be free in its aims, but also must be protected from competition with other, irrelevant, goals. This implies that the search for truth ought to be disinterested and not at the service of further objectives—those economic, political, or religious objectives in particular.⁴ Academic research is incompatible with the intrusion of external aims, either through the funding of programs or through submission to specific authorities; or, at the very least, it ought to be protected against such intrusions.⁵

The intrusions are, in fact, not only external. They come, most often, from within the universities, through their administrations. The expansion of universities has led, during the last part of the twentieth century, to a considerable rise of their administrative bodies, and to a progressive loss of their academic body's decision-making capacity (Ginsberg 2011). Administrators—who are less and less often academics themselves—control not only the resources and financing of today's universities, but also the orientation of learning and teaching. In many ways, their political and economic objectives clash with those of academics, whose elbow room for free inquiry is continually reduced. The capacity to protect a knowledge-based freedom for academic research and teaching is also constrained by the financial resources granted to higher education and research institutes, which vary considerably from one country and one institution to another. Threats to this freedom can come from many angles, including from academics themselves, and its protection is all the more necessary in today's academic world. However, we need to understand what this sort of protection entails. It begins not only from the affirmation that scientific knowledge is possible, but also that it is intrinsically valuable: it is not produced for the sake of other aims. This does not mean that what universities produce is always and everywhere genuine knowledge—this is obviously not the case, and universities do

⁴It is somewhat ironic that even a religious writer like Newman (1852) defends this ideal.

⁵In Engel (2020) I have argued that the influence of foundations with a specific “spiritual mission”, such as the Templeton foundation, ought to be resisted in this respect.

not have the monopoly on the production of genuine knowledge—but at the very least they must assume knowledge as the standard and norm for their research.

4 Objections Answered and the Relation between the Two Kinds of Freedom

The knowledge-based conception of academic freedom is, in a sense, a traditional notion. It was asserted strongly, for instance, by academics who had endured the Nazi period in Germany. Thus, Karl Jaspers said famously: “The university is the corporate realization of man’s basic determination to know. Its most immediate aim is to discover what there is to be known and what becomes of us through knowledge.” (p. 2 in Jaspers (1946) 1959).⁶ It is easy to foresee the objections which one might raise against this cognitivist conception of academic freedom. A first likely objection is the following: one of its consequences seems to be that there ought to exist a protected sphere, within which academics, and academics only, are free to inquire. Isn’t this a return to the Ivory Tower? Universities are not select clubs, attended and maintained by elite scientists, forming a kind of chivalric order. The name persists in Italian, where they were called *baroni*, and in Germany, where Jaspers talks of a “*Geistesaristokratie*”. This model may survive in various contemporary academies, but it cannot be the model of contemporary universities. A university is not only a place for research, but also for teaching and learning. Academic freedom is a privilege not only of the faculty, but also of students and of all those who aspire to a university degree. But this kind of objection is easily countered by the knowledge-based conception: there is no such thing as academic research if universities are not also centers for learning, which welcome students from all origins, provided they have the talents and merits that will allow them to participate in this common task. For this reason, in particular, research centers that host permanent researchers, such as institutes of advanced studies, centers of national scientific research, and other preserved spaces, are not good models for the

⁶On Jaspers’ conception of academic freedom, see Richter (2021).

knowledge-based conception defended here, because they sever pure research from teaching. Such a separation neglects the fact that these two actions cross-fertilize one another, as the founders of the Humboldtian model of universities saw quite well: *Lehre und Forschung*.

A second objection is that the sphere of knowledge can never be fully protected against the spheres of politics and economy; not only in its conditions, but also in its consequences. In order to lead academic research, one needs resources, in the form of university jobs, funding, and work space. And, we are told, knowledge is never neutral, including in the higher spheres of mathematics and physics, and even more so in the humanities and social sciences. Not only is knowledge rarely disinterested and pure, but it is also owned by some social groups and not accessible to others. This objection is a variant of the pragmatist critique of academic freedom: even if we could secure a proper sphere for knowledge, it would compete with the social values of democracy, such as justice, equality, and solidarity. The answer to this objection is that academic research and learning is, indeed, not a safe space preserved from the influences of the public and political world; nevertheless, this fact does not mean that one cannot distinguish scientific judgments from value judgments and political judgments, and try to act, in one's academic decision, so as to prioritize the first over the second, and respect their differences, as Max Weber urged long ago (Weber (1919) 1958).

Indeed, as Robert Simpson has remarked (Simpson 2020), many defenders of academic freedom who do not want to erase completely its boundaries with free speech—which very often represents the voice of public and social values—accept a sort of compromise between the two: on the one hand, universities are protected spaces for knowledge reserved for academics, but on the other hand, they perform a public role, in organizing events and lectures for a wider public, where academics, as well as the public at large, are free to speak as citizens. So, there can be a protected zone in which universities are constrained by the professional requirements of knowledge, and another “free” zone in which they are not, and where free speech operates in the typical way. This is consistent with the practice of organizing a number of events and lectures on campuses, to which are invited political speakers who do not have particular university degrees. Another example is the tradition of awarding

doctorates *honori causa* to political or literary figures: they are precisely intended to illustrate the coexistence of academic ideals and cultural or political ideals. However, this compromise solution is bound to meet its limits very soon, for the requirements of a knowledge-based academic freedom imply that speakers from the “free speech zone”⁷ be criticizable from a scientific point of view, and in some cases not be allowed to speak if their claims do not meet some minimal standards of rigour. This would be the case, for instance, if a famous artist came to a campus to defend the view of creationism, or if a medical doctor known to be an impostor were allowed to give a talk in front of a large academic public. In such cases, representatives of the university would be allowed to disinvite these speakers. But this would violate, *prima facie*, their right to free speech, in the view that it can coexist or overlap with academic freedom. Alternatively, if the “free speech zone” were allowed to overlap with the “unfree” zone, political groups who want to oppose loudly or “disinvite” academic speakers who present views to which they are hostile, they would have a right to do so. And, indeed, this interpretation and application of free speech has been prevalent in many recent cases of “de-platforming” and other oppositions to speakers, works, or symbolic figures in the name of anti-racism, anti-sexism, or anti-colonialism. If free speech and academic freedom are coextensive, these actions are legal, and can be sanctioned only insofar as they fall within the range of circumstances which, according to the liberal view of academic freedom, either directly harm the freedom of others or may constitute a danger. However, as I remarked above, the boundaries of “harmful” actions are unclear: some speeches are harmless, others are genuinely harmful. What are the limits of no harm? If a physicist is leading research which is considered by some groups to lead to the creation of nuclear weapons, why can’t these groups prevent him from doing his research? If a group believes that an historian who leads research on decolonization can do harm to others, why can’t these groups prevent him from doing his research? Where to stop? In the end, only politically correct research will be left unhindered. The result might look very much like “Marxist” science in the former Soviet Union. Potentially, any group can claim that a certain kind of view is dangerous

⁷The phrase originates in p. 77 in Chemerinsky and Gillman (2017), quoted in Simpson (2020).

for some social group or other. What is the difference between direct and indirect impact? How to avoid the invasion of ideology into science?

Based on the above findings, it follows that the free-speech-based conception and the knowledge-based conception of academic freedom are not compatible: one or the other must prevail. If, on the one hand, the former has priority, the university is considered a part of the public space, and academic institutions are regulated by exactly the same rules as those of communication and expression within this wider space: even a protected zone of academic freedom is not protected at all, except by the rules of freedom of speech. This conception is the dominant one today in public universities: citizens have a right to know how public money is spent on research, and if, for instance, a laboratory leads research on chemicals which might have dangerous effects on the health of the population, citizens must be allowed to interfere and to prevent this kind of research from being done. Academics have no greater rights when speaking in an academic setting than do ordinary citizens, and their special expertise weighs no more, in their right to speak and to publish, than the rights which define freedom of expression and communication. If, on the other hand, freedom of speech is regulated by a knowledge-based academic freedom, speakers at university events are not allowed to speak or to communicate unless they have received the invitation to do so by members of academia, and the latter have a right to be protected in their activities of teaching and research. Academics not only have a right to protection, but they also have a duty to oppose attempts to undermine or to oppose explicitly the kind of competence that they represent. Indeed, much of what passes for knowledge is not knowledge, and much of what is presented as argument is not proper argument. Academic freedom in such cases does not mean that an elite group of experts must act as custodians of the Temple of Knowledge, but only that a set of individuals must be able to try to *live up to its standards*.

Difficulties, however, will inevitably arise when such a knowledge-based conception is applied. Areas of competence—and indeed of power—often conflict within the academic sphere. Conflict of disciplines and cases of what Kant called “the conflict of faculties” (Kant (1798) 1996) are permanent: the Faculty of Law can conflict with the Faculty of Letters and Humanities, and the Faculty of Sciences can conflict with

Social Sciences Faculty. Academics often experience these conflicts very vividly, for instance when they are asked by their administration to move out from their offices and to occupy smaller ones, in order to make room for colleagues from an expanding rival discipline. Moreover, the boundaries of disciplines change, and what is recognized as a legitimate academic field evolves: one century ago, there were no departments of Political Science within universities, much less fields such as Gender Studies or Post-Colonial Studies, and for long some universities have included faculties of Theology. The agenda of each of these disciplines may vary, and it is to be expected that a department of Gender Studies is more attentive to issues about equality between sexes than, say, a department of Physics. Another important source of conflict of standards is the increased competition, in the fields of humanities and social sciences, between the intellectual production of universities and the ever-growing production of what has often been called the “second market” (Boudon 1990), a grey zone where the standards of academic writing often overlap, and sometimes conflict, with those of popular writing and journalism. In many cases, academics are asked to adjust their publications to the looser criteria of popular science. Even in the ever-growing system of evaluation of academic research, an important role is devoted to the “communication of the results of research” and to the “impact factor”. With so much at stake, is it possible to resist the pressures of the market?

For all these reasons, it seems impossible to give exact limits to the exercise of academic freedom. The boundaries of its application are perpetually moving, and subject to social and political pressures. But does it follow that we cannot specify the rights and duties which go along with it, and base these on the requirement of knowledge? The main problem is that academic freedom, unlike freedom of speech, has no legal grounds. Both are subject to limits, but it seems much easier to defend the limits of the latter than those of the former. In particular, in cases of deplatforming speakers on a campus, it is hard to send invitations for formal review to committees composed of academic experts who would be able to accept or to reject such invitations. But why would this practice be any harder than the evaluation of a paper for publication or a research project? Tolerance to bad science must have its limits. Another example of pressure on academic standards comes from the fact that the funding

of research is today distributed by large agencies (such as ERC in Europe or, in the US, the National Endowment for Humanities), which impose their criteria—in particular that of “interdisciplinarity”—and favour certain topics over others. Such a redrawing of disciplinary boundaries and of styles of work changes the shape of research, and thus can be a threat to academic research. But it does not follow that academics should immediately yield when they find that their discipline is threatened.

Although the circumstances in which academic freedom as freedom to know need to be defended against numerous attempts to diminish or cancel this freedom, it is doubtful that the defense could take the form of specific sanctions or legal actions. When speakers are censored, when professors are fired, statues destroyed, conferences interrupted in the names of various causes by groups with a political agenda, these symbolic actions can be resisted, and rectors or presidents are allowed to call the police. But none of these actions can be opposed in the name of *knowledge*. It is impossible to oppose these actions when they happen, but they can be prevented in the long run, when a culture of learning is present in an institution. Unlike the freedom of expression, knowledge is not a measurable quantity (including by means of bibliometry). It requires much more than the freedom of expression. It requires a whole set of habits, of entrenched practices acquired during a long process of learning and exchanges. The only way to resist violations of academic freedom is through the forming of communities in which a set of standards of discussion and styles of learning are implemented.

This is by no means a plea in favour of a reduction of the freedom of speech in universities. It is indeed a necessary part of a university education that students learn the rules of democratic deliberation, and that all kind of subjects be openly discussed. But the point of giving priority to knowledge is to take freedom of speech as a *consequence*, and not as a prerequisite to academic freedom. Those who believe that, by guaranteeing freedom of speech and democratic institutions, academic freedom will follow—they put the cart before the horse.

5 Conclusion

Academic freedom, properly understood, requires in most cases what freedom of expression prohibits: it requires control of what one advances and publishes, and readiness to accept criticism. So, both freedoms stand in opposition to one another. Academic freedom is, in fact, not free at all. Its constraints are those of the requirements of knowledge and understanding. Freedom of speech does not entail academic freedom: the fact that one has a democratic right to express one's opinion in no way involves a claim to exercise one's freedom to know, in the sense of launching research and teaching one's results. But academic freedom, in the knowledge-based sense, does entail freedom of speech. It does not entail it in the "democratic" sense that academics can express their views, however wrong or weak, but rather in the sense that free speech in an academic setting must be controlled by argument, proof, and inquiry.

References

- Beaud, Olivier. 2010. *Les libertés universitaires à l'abandon? Pour une reconnaissance pleine et entière de la liberté académique*. Paris: Dalloz.
- . 2021. *Le savoir en danger, menaces sur la liberté académique*, Paris, Presses universitaires de France.
- Berlin, Isaiah. 1969. *Four Essays on Liberty* (Oxford Paperbacks 116). Oxford: Oxford University Press.
- Bilgrami, Akeel. 2015. Truth, Balance, and Freedom. In *Who's Afraid of Academic Freedom?* ed. Akeel Bilgrami and Jonathan R. Cole, 10–27. New York: Columbia University Press.
- Boghossian, Paul A. 2006. *Fear of Knowledge: Against Relativism and Constructivism*. Oxford: Oxford University Press.
- Boudon, Raymond. 1990. Les intellectuels et le second marché. *Revue européenne des sciences sociales* 28 (87): 89–103.
- Chemerinsky, Erwin, and Howard Gillman. 2017. *Free Speech on Campus*. New Haven, CT: Yale University Press.
- Chomsky, Noam. 1980. Some Elementary Comments on The Rights of Freedom of Expression. <https://chomsky.info/19801011/>. Accessed 23 March 2021.

- Couto, Aluizio. 2020. Rescuing Liberalism from Silencing. *Journal of Academic Ethics*. <https://doi.org/10.1007/s10805-020-09383-0>.
- Dewey, John. 1902. Academic Freedom. *Educational Review* 23: 1–14. Reprint 1976 in *The Middle Works of John Dewey, 1899–1924, Vol. 2: 1902–1903*, ed. Jo Ann Boydston, 53–66. Carbondale: Southern Illinois University Press.
- Engel, Pascal. 2020. L'idée d'une université et la liberté académique. *European Review of History: Revue européenne d'histoire* 27 (5): 598–610. <https://doi.org/10.1080/13507486.2020.1827612>.
- Fish, Stanley. 2014. *Versions of Academic Freedom: From Professionalism to Revolution*. Chicago and London: The University of Chicago Press.
- Ginsberg, Benjamin. 2011. *The Fall of the Faculty: The Rise of the All-Administrative University and Why It Matters*. Oxford: Oxford University Press.
- Haack, Susan. 2014. Do Not Block the Way of Inquiry. *Transactions of the Charles S. Peirce Society* 50 (3): 319–339.
- Jaspers, Karl. (1946) 1959. *The Idea of the University*. Edited by Karl W. Deutsch, Preface by Robert Ulich, translated by H.A.T. Reiche and H.F. Vanderschmidt. Boston: Beacon Press.
- Kant, Immanuel. (1798) 1996. The Conflict of the Faculties. Translated by Mary J. Gregor and Robert Anchor. In *Religion and Rational Theology* (The Cambridge Edition of the Works of Immanuel Kant), ed. Allen W. Wood and George di Giovanni, 233–328. Cambridge: Cambridge University Press.
- Levy, Neil. 2019. No-Platforming and Higher-Order Evidence, or Anti-Anti-No-Platforming. *Journal of the American Philosophical Association* 5 (4): 487–502. <https://doi.org/10.1017/apa.2019.29>.
- Mill, John Stuart. 2008. *On Liberty and Other Essays*. Edited by John Gray. Oxford: Oxford University Press.
- Newman, John Henry. (1852) 1907. *The Idea of a University. Defined and Illustrated. I. In Nine Discourses Delivered to the Catholics of Dublin. II. In Occasional Lectures and Essays Addressed to the Members of the Catholic University*. London: Longmans, Green, and Co.
- Pettit, Philip. 1997. *Republicanism. A Theory of Freedom and Government*. Oxford: Oxford University Press.
- . 2018. Two Concepts of Free Speech. In *Academic Freedom*, ed. Jennifer Lackey, 61–81. Oxford: Oxford University Press.
- Post, Robert C. 2012. *Democracy, Expertise, Academic Freedom. A First Amendment Jurisprudence for the Modern State*. New Haven, CT and London: Yale University Press.

- Richter, Sandra. 2021. What Kind of Academic Freedom and for Whom? Karl Jaspers' Idea of the University. TRAF0 Series, Academic Freedom. <https://trafo.hypotheses.org/27075>. Accessed 23 March 2021.
- Rorty, Richard. 1996. Does Academic Freedom Have Philosophical Presuppositions? In *The Future of Academic Freedom*, ed. Louis Menand, 21–42. Chicago and London: The University of Chicago Press.
- Simpson, Robert Mark. 2020. The Relation between Academic Freedom and Free Speech. *Ethics* 130 (3): 287–319.
- Simpson, Robert Mark, and Amia Srinivasan. 2018. No Platforming. In *Academic Freedom*, ed. Jennifer Lackey, 186–209. Oxford: Oxford University Press.
- Statement of Academic Freedom of McGill University. <https://www.mcgill.ca/secretariat/statement-academic-freedom>. Accessed 29 March 2021.
- Stone, Geoffrey R. 2015. A Brief History of Academic Freedom. In *Who's Afraid of Academic Freedom?* ed. Akeel Bilgrami and Jonathan R. Cole, 1–9. New York: Columbia University Press.
- Weber, Max. (1919) 1958. Politics as a Vocation. In *From Max Weber. Essays in Sociology*, ed. and trans. Hans Heinrich Gerth and Charles Wright Mills, 77–128. New York: Oxford University Press.
- Williamson, Timothy. 2000. *Knowledge and Its Limits*. Oxford: Oxford University Press.



Anonymity as a Threat to Academic Freedom

Maurizio Borghi

1 Introduction

The practice of requesting and expressing anonymous judgments has gained immense traction in today's academic existence. Procedures involving anonymity as an essential component abound. Anonymous is the student who expresses their views in course questionnaires. Anonymous is the "peer" who provides an opinion on the better part of the academic's so-called "scientific production", from articles submitted to scientific journals to book proposals presented to scientific publishers. In turn, the journals in which (and the publishers with whom) scholarly work is being published are classified and ranked also on the basis of judgments issued by anonymous evaluators.¹ Anonymous as well is the

¹ This is at least the practice in Italy. See the example discussed below, Sect. 4.

M. Borghi (✉)
University of Turin, Turin, Italy
e-mail: maurizio.borghi@unito.it

evaluator who decides whether a research project should be granted funding or not. Furthermore, anonymous is the colleague who, on the instructions of the university, formulates an appraisal of another colleague's scholarly "profile" in the case of a recruitment, or a promotion, or a request for sabbatical leave, or simply as part of an "evaluation exercise" for their department (see Bloom 2008).

In each of these crucial contexts of university and scientific life, academics find themselves on the receiving end of anonymous judgments on their own work as researchers, teachers, and academic citizens in a broad sense. Whether to accept or reject an article, to maintain or cancel a course, to promote or not promote a career, to fund a research project or let it perish in an absence of resources—in essence, every time that an important decision must be made in the academic setting, it has become the norm to rely on the verdict (binding or not, but almost always final) of some anonymous evaluator. The latter has transformed from an occasional presence in the scientific discourse, mainly confined to external peer-review in the context of "hard sciences" journals, into an almost ubiquitous protagonist in the life of the academy.

Certainly, the expression "anonymous evaluator" is in itself ambiguous, since—and objections will be raised—"behind" this term there is, or there should be, a flesh and blood person who thinks, deliberates, and finally issues a judgment, being presumably qualified to do so. But this is precisely the point that I would like to address: what does it mean to think, to judge, and to deliberate behind the cloak of anonymity? Namely: what does it mean for academic existence as such?² The question is not merely speculative, but has clear practical implications: is it conceivable to have a university *entirely* entrusted, in both of its essential branches (research and teaching), to decisions taken on the basis of verdicts, for the most part unappealable, that are issued from behind the cloak of anonymity? What is the trajectory that unfolds from here?

Anonymity imposes itself in today's academic life with the typical non-chalance and obviousness of things considered innocuous and of little importance; in other words, things that exist "for a reason". To be sure, a

²By "academic existence" I mean simply a form of human existence devoted to knowledge and education.

number of reasons can be (and typically are) put forward to justify its adoption. The first that comes to everyone's mind is the following: in a context in which evaluation procedures are "necessary", anonymity guarantees freedom of thought to the evaluator and objectivity of judgment to the evaluatee. Both points deserve careful examination, and I shall return to them later in this chapter (Sect. 6). In the following pages, I will question the pervasiveness of this phenomenon and its consequences for today's university and scientific research. I will begin my discussion by contextualizing this phenomenon against a more fundamental backdrop, namely the nature and purpose of scientific dialogue.

2 The Case of Anonymous Peer-review and the Purpose of Scientific Publishing

While a history of anonymity in academia is still to be written, its origins likely can be traced back to the practice of external refereeing by scientific journals. As convincingly shown by science historian Mario Biagioli (Biagioli 2002), the system now known as "peer review" was originally developed during the eighteenth century by state-controlled scientific academies (like the French Académie des Sciences and the British Royal Society), before being adopted by university publishers much later on in the following centuries. Peer review systems by scientific academies are a direct spin-off of state and Church censorship methods, namely systems for restricting the written text and ensuring conformity to disciplinary standards (see p. 14 in Biagioli 2002). In this context, both censors and academic reviewers were occasionally anonymous, in particular when they concluded their examination with the rejection of the book or the article. "It is almost funny", writes Biagioli, "to see how closely the relationship between early modern censors and authors maps on that of academic and referees today: censors who try to gain the authors' favors by writing positive, book-review-style censorship reports to be published with the book (and with the censor's name attached to them), and, alternatively, censors who try to keep their anonymity when they turned

down manuscripts” (p. 39 at n. 19 in Biagioli 2002). It is only in the last decades, however, that anonymity became the standard practice in peer review, first in journals of physics and the hard sciences, and later extended to the whole of scientific publishing including the so-called “humanities” (Suls and Martin 2009).

It is not my purpose to revisit the genealogy of peer review, which is still enlightening in many respects. I would rather discuss the place and purpose of anonymity in light of a simpler and more preliminary question about the very purpose of scientific publication. Setting aside sociological considerations about the various functions of scientific publications, for example as “markers of value” within the academic job market, publication is essentially a means to submit one’s own research to the judgment of others.

The importance of publication for the progress of science is almost self-evident: every scholar knows that publication is a powerful way in which the results of research, often conducted in solitude or within a restricted circle of persons, can be examined by other scholars, including those who are not part of one’s own sphere of acquaintance or even those who belong to different areas of expertise. In this respect, scientific publication is never an end in itself, but rather a means to an end: that of testing the content for the truth of its suppositions, hypotheses, and judgments. The point is expressed clearly by a philosopher who was not unfamiliar with the distinction of means and ends: Immanuel Kant. For Kant, the freedom to share one’s thoughts with others through publication is an indispensable condition for the exercise of scientific knowledge, and of thought in general. In his essay *What does it mean to orient oneself in thinking?*, Kant writes:

It is often said that a superior power can deprive us of the freedom to *speak* or to *write*, but not of the freedom to *think*. But how much and how correctly would we think, if we didn’t think, so to say, “in common” with others, to whom we *communicate* our thoughts and who *communicate* theirs to us? Thus, one can really say that the external power that deprives men of the freedom to *communicate* their thoughts publicly, also deprives them of their freedom to *think*, that is, the only treasure left us in the midst of social impositions, the only means which can still permit us to find

remedies for the limitedness of our condition. (see p. 267 in Kant (1786) 1964; translation mine)

In Kantian terms, scientific thought, as it is properly defined, depends on “judgment”.³ While judgment is a faculty which human beings can exercise only “first-hand”, namely in person and individually (“collective thought” is an aberration and a contradiction of terms; see Weil 1952, 2013), and while a judgment’s correctness does not depend in any way on the more or less widespread consensus which it enjoys (an “unpopular” truth remains a truth, just as a falsehood that is universally accepted does not cease to be false); however, it is equally true that *confrontation* with others constitutes an essential testing ground for judgments. To deny the importance of this confrontation—which, for an academic today would result in keeping his or her research secret, or publishing only what meets with general approval—represents for Kant an insidious lack of scientific thought, an *egoism*, which he defines in *Anthropology from a Pragmatic Point of View* (Kant (1798) 1974) as “logical egoism” to distinguish it from the more common forms of “aesthetic egoism” (which consists in reducing every relationship with art to the judgment “I like it / I do not like it”) and “moral egoism” (in which personal utility is the ultimate criterion for distinguishing right from wrong):

The *logical egoist* considers it unnecessary to test his judgment by [submitting it to] the understanding of others too, as if he had no need at all for this touchstone (*criterium veritatis externum*). But we cannot dispense with this means for assuring the truth of our judgments; this is so certain that it may be the main reason why educated people clamor so urgently for *freedom of the press*. For if we are denied this freedom, we are deprived at the same time of an important means for testing the correctness of our own judgments and left open to error. (p. 10 in Kant (1798) 1974)

³ “[W]e can reduce all acts of understanding to judgments, so that understanding may be represented as the faculty of judging. For it is, according to what has been said above, a faculty of thought.” (Kant 1781 A 69, 1787 B 84; translation mine). To judge means to connect a predicate to a subject in the form “S is P.” The truth of the thought corresponds to the correctness of the judgment.

No form of scientific thought, not even pure mathematics, can disregard this “external” means of verifying its own judgments,⁴ and in this sense no science can thrive without this freedom to “publicly subject to [others’] judgment one’s thoughts, the doubts that one cannot resolve on one’s own” (see Kant 1781 A 752, 1787 B 780). Now, in order that this freedom can be exercised fully, it is necessary that the time-space within which one communicates one’s thoughts to others—that is, the time-space which Kant elsewhere calls “the public use of reason”⁵—be clear of obstacles and free from distortions, as far as possible. Freedom of the press, understood as the absence of legal impediments to publication such as preventive censorship, is just one material condition for the exercise of that more fundamental freedom which consists in communicating one’s own judgments to others—a freedom that is, in turn, the condition of possibility of being free from error. Freedom from error, and more precisely the freedom from being *at the mercy* of error (that is, constitutively unprepared with respect to the infiltration of error into judgment), is the reason for which human communities—at least those which have an interest in the truth—freely debate the individual’s judgments *in public*.

3 Friendship for Truth and Anonymity

If the public circulation of thought has and must have the purpose of freeing human communities from error, this trait should belong as well, and most notably, to the circulation of thoughts within scientific communities. The latter must then be informed by rules, such as: sincerity, willingness to listen to others, frank and honest response, openness to explanation; but also: disinterest with respect to “personal” matters,

⁴ “[...] for unless the surveyor’s judgment were first seen to be in perfect agreement with the judgment of all the other talented men who are working diligently in this field, even mathematics would not be exempt from the fear of falling into error somewhere along the line” (p. 11 in Kant (1798) 1974).

⁵ “By ‘public use of one’s reason’ I mean that use which each individual, *as a scholar*, makes of it before the *reading* public. I call ‘private use’ that which the individual can make of his reason in a *civil position* that has been entrusted to him” (see p. 55 in Kant (1784) 1964; translation mine).

preparedness to recognize the merit of another's reasoning, honesty in admitting one's own errors—in short, a basic ethics or code of conduct which can be summed up in what, since ancient times, has been called “friendship for truth” (see Aristotle, *Nicomachean Ethics*, 1096a 11–15).⁶

Now, assuming that friendship for truth is still the cornerstone of every scientific knowledge worthy of the name, the question arises as to how such a posture can be compatible with a systematic recourse of anonymity in the expression of judgments. One might object that under the present system of scholarly publication, anonymity serves only in selecting *what* should be published—in Kantian terms, in determining which judgments deserve to be subjected to the judgment of others and which do not—while it does not affect the way in which scientific judgments are circulated and discussed in the respective “public spheres” of scholarly debate. In other words, anonymity concerns only a (necessary) preliminary stage of scholarly communication. Once the judgment in question has passed preliminary scrutiny and is admitted into the public sphere, it is subject to testing according to the accepted rules of scholarly debate.

However, while this argument can be correct in principle, it completely misses the actual reality of today's scientific communication and debate. The notorious “publish or perish” syndrome (on which much ink already has been spilled, so that I will not insist further here) has inevitably created the conditions for a *profluvium* of scientific publications. Academics are publishing more and more, from the earliest years of their careers, before receiving their doctorate or even their undergraduate degree.⁷ One of the effects of this abundance of publications is that, for scholars, it has become increasingly difficult simply to stay abreast of publications in

⁶ Isaac Newton famously paraphrased Aristotle's dictum into: *Amicus Plato amicus Aristoteles magis amica veritas* (“Plato is my friend, Aristotle is my friend, but my greatest friend is truth”). The sentence appears as exergue to the set of notes known as *Questiones quaedam Philosophiae* (text available from The Newton Project by the University of Oxford, <http://www.newtonproject.ox.ac.uk>). A discussion of the transition of the meaning of “friendship” and “truth” from the Greek (Aristotelian) to the Modern (Newtonian) period is beyond the scope of this chapter. It suffices here to note the *contentious continuity* of the reference to truth among the philosophical and scientific traditions.

⁷ In the United States, it is now a widespread practice to hold “undergraduate conferences” (scholarly conferences open only to undergraduate students). In the United Kingdom, every university department must now have its own *Student Review*, with much the same apparatus of scientific journals, including peer review (anonymous, of course), open to students only.

their field of research, much less to study them in depth, to engage with the judgments expressed, and to formulate a thought-out response. The phenomenon is probably more acute in the so-called humanities, where it has become customary to cite others' contributions in long footnotes where they feature as mere general references ("On this point *see* this, and this, and this..."). Here the citation functions as a mere marker of the fact that the contribution has been "duly noted"; i.e., it has been seen and has received a deserved "credit" within the relevant scholarly community.⁸ Hardly ever does the scholar engage in a rigorous examination of the actual content of the contribution. Even the "book review" is usually a sugar-coated presentation of the book, garnished here and there with some "critical trimmings" and some summary appraisal of its content. Where and in what context, therefore, does scholarly work today receive a truly in-depth examination by other scholars and an honest, frank judgment without reservations? Answer: in the context of the anonymous judgments of peer reviewers. What the scientific community *really* thinks of a scholar's research is entrusted, *de facto*, to the unique, exclusive voice of the anonymous evaluator. Thus occurs a curious phenomenon: while in public the scholar's contribution is either ignored or only formally noted and summarily dismissed or praised; *in private*, it receives—under the critical gaze of the anonymous evaluator, on the occasion assigned official authority in the evaluative procedures of the case—a thorough examination that results in a firm and often unquestionable "final word".

The supposed "preliminary stage" of scholarly communication, namely the stage in which the judgment is subject to anonymous scrutiny, is in reality a milestone, if not the very end of the scrutiny. So, while it has become customary to refer to published articles as outcomes, i.e. ends, of a scientific research path—instead as the necessary means through which research progresses—, it is now conventional to refer to "accepted" articles as the end point, the culmination of a research effort. Academics discuss more eagerly about *where*, rather than *what* has been published or accepted for publication. This custom suggests that the real scrutiny

⁸"Credit" is easily translated into numerical and thus evaluative terms (n citations = X value = position Y in the scholarly community).

occurs *de facto* at the stage of selection, and no longer at that of circulation in the wider public sphere.

In this respect, the effect of anonymous evaluation on today's public scientific sphere is much more profound than its "function," as it is formally understood, would imply. Yet the same applies to all areas on which anonymous evaluation imposes itself within today's academic life—from research to teaching, where ever-increasing opportunities for students to express (strictly anonymous) judgments on their instructors by means of evaluation questionnaires is matched with a growing mutism on the part of the students themselves when it comes to expressing their thoughts in front of their instructors. It is as if the entire pedagogical relationship between teacher and pupil, once again, boils down to the incontestable sentence of the "anonymous evaluator".

4 Anonymous Evaluation in Action

The anonymous evaluator is an undisputed protagonist in today's academic and scholarly life. Procedures that involve the evaluator's presence are ever more numerous, and within these procedures, judgment is nearly always binding and incontestable. The emergence of the anonymous evaluator's role has occurred for the most part in a tacit and unvoiced manner, without any justification or argument invoked in support of its use. In other words, it seems that no one needs be convinced of the desirability of utilizing anonymous reviews in academic and scholarly practices. This also means that the anonymous evaluator imposes him or herself and operates within a favourable climate. In this section, an attempt will be made to illustrate this "climate" in some of its essential features. I shall begin my examination with an example.

The example is an email I received as a member of the editorial board of a journal, which was undergoing a process of evaluation by a national evaluation agency. It is a response to a request for clarification concerning the method used by the agency in their evaluation and ranking of scientific journals. With reference to the evaluation procedure as explained in the agency's website, the editorial board asked, among other things, to know the names of the experts who would be entrusted with the

evaluation of the journal, as well as the list of names from which potential anonymous reviewers would be selected. After noting that “experts have the authority to send the dossier to external anonymous referees, in order to obtain their opinion,” and that “experts will write a reasoned judgment, which will utilize all the criteria formulated” by relevant ministerial policies, the official specified that “the list of referees will not be published for *obvious reasons* of scholarly practice: since we are speaking about a small and highly specialized group, *it is necessary to ensure the referees’ anonymity*, which would be violated immediately with the publication of their names, thus revealing the connection with individual journals requesting review” (emphasis mine).

The official’s reply reiterates a basic rule that apply when personal information must be anonymized. If the population from which personal data are extracted is too small—for instance, the staff of a small-size company—the identity of the data subjects can be easily reconstructed in spite of anonymization. In this case, special precautions must be taken when dealing with personal information, and in particular “sensitive information,” i.e., that which reveals—among other things—political opinions, religious or “philosophical” convictions, trade-union membership, or information on one’s health or sex life (see General Data Protection Regulation 2016/679 (GDPR), Article 9).

Based on a general principle of data protection, promptly promoted as an *obvious reason of scholarly practice*, the official constructs a self-affirming rationale: if the list of names were to be published, it would immediately violate the anonymity of the referees; but the anonymity of the referees cannot be violated; therefore, the list of names cannot be published. Nothing is said as to why is it *necessary* in the first place *to ensure* the anonymity to referees, and why should this necessity prevail over the (equally “obvious”) need to guarantee the transparency of the evaluation procedure. Furthermore, it is anything but clear in what sense a best practice for the processing of personal data can become an *obvious reason of scholarly practice*. What does a supposedly informed and qualified judgment on the scientific merit of a journal have to do with the “personal opinions” of a private individual?

These questions do not normally find answers in ministerial policies. The use of anonymous referees is typically and ubiquitously presented as

a crucial, indisputable, and non-negotiable requirement of every decision-making process. This is at odds with the way in which anonymity is treated in other areas of our social, political, and cultural life. Indeed, the anonymity of which we are speaking here, and which finds its realm of application in today's academic evaluation procedures, has its roots in the usages and customs that precede (and are independent from) academic life. Let us focus briefly on the broader use of anonymity and the limits that are normally imposed on it.

5 Scope and Limits of Anonymity in a Civil Society

In our present legal and social order, there are circumstances that trigger a generally accepted right to conceal or disguise one's identity while expressing one's own thoughts. We can single out those circumstances in relation, for instance, to healthcare, justice, and political life. A brief examination of those contexts will provide some guidance on the scope and limits of anonymity in a civil society.

Anonymity protects individuals who are in need of receiving certain health assistance, for instance a treatment for alcohol dependence. Anyone can approach Alcoholics Anonymous and attend meetings where anyone can express themselves freely without revealing their own identity (apart from perhaps their first name). In this and similar cases, anonymity protects the person with respect to the disclosure of sensitive and embarrassing information and, precisely for this reason, it represents at the same time an incentive to approach the service (see Alcoholics Anonymous 2011).

In the administration of justice, witness anonymity orders can be made for the protection of witnesses in criminal proceedings (see, for the UK legal system, Coroners and Justice Act 2009, Part 3, Chapter 2). The effect of these orders is that the defendant is prevented from knowing the identity of a witness. Since the order may limit the defendant's ability to challenge the accuracy or credibility of the witness's evidence, ultimately

affecting the fundamental right to a fair trial,⁹ the prosecutor must carefully weight all the relevant circumstances of the case and pay particular consideration to the defendant's case before requesting such an order.¹⁰ Accordingly, the court's decision whether or not to allow a witness anonymity order is made on the basis of a judgment, on balance, of the impairment of the witness's fundamental right to security¹¹ by effect of the exercise of the defendant's right to confront the witnesses against him, vis-à-vis the reciprocal impairment suffered by the defendant's right to a fair trial by effect of the anonymous testimony. It is a judgment based on a principle of proportionality, not a unilateral assessment of pros and cons. Witness anonymity must not contradict the overarching principle of open justice.¹²

In a similar vein, parliamentary regulations allow for secret ballots in some specific circumstances. Italian parliamentary law dictates that votes for deputies and senators are normally recorded. It is only in exceptional circumstances, when a branch of parliament must express its views on the *person* of a member or senator, that the system allows for secret ballots in order to protect the member of parliament's "freedom of conscience." Once again, this is a situation that exceeds the ordinary parliamentary process.

These examples should suffice to make the point that, in societies committed to the rule of law, the use of anonymity in the expression of one's own thought is an exceptional measure that draws its legitimacy from exceptional circumstances. However, the examination would not be complete if we do not consider uses of anonymity outside the legal sphere, namely in culture. In fact, in the context of the free expression of one's

⁹ Universal Declaration of Human Rights, Article 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

¹⁰ Guidelines on the prosecutor's role in applications for Witness Anonymity Orders available at <https://www.gov.uk>.

¹¹ Universal Declaration of Human Rights, Article 3: "Everyone has the right to life, liberty and security of person".

¹² In the *History of the Common Law of England* (1793), Sir Matthew Hale contrasted the English practice of taking evidence in public to the secrecy of the Spanish Inquisition. One of the reasons why public trials serve justice better than private or secret hearings is that "if the Judge be partial, his Partiality and Injustice will be evident to all By-standers" (cited at p. 28 in Netterheim 1984).

own thoughts, a writer is at liberty to publish in anonymous or pseudonymous form when—for whatever reason—he or she wishes to dissociate his or her true self from the authorial self—without prejudice to the ability of the investigating authority to request that the publisher reveal the author’s identity in the case, for example, of a crime of libel. One can name several examples of great writers who, in particular circumstances, have had to hide their identity and therefore resort to anonymity or use of a pseudonym.¹³ To name just one example, the Italian writer and scholar Niccolò Tommaseo (1802–1874) used to write under a pseudonym for the literary journal *Antologia*, edited and published by Giampietro Vieusseux in Florence during the years preceding the Italian unification. When one of his articles landed in the firing line of censorship, due to its allegedly anti-Austrian political implications (Northern Italy was under the Austro-Hungarian Empire at that time), he asked Vieusseux to reveal the author’s identity. Vieusseux refused to disclose his name to the police, and the journal was shut down (see Tommaseo and Vieusseux 1956). For intellectuals like Tommaseo and Vieusseux, it was first and foremost a question of *honour*: a publisher would never betray his pact with an author—and, in the same vein, an author would never take advantage of his own anonymity to escape the consequences of his writings.

While anonymity is not alien to our culture as a measure to protect free expression of thought, it is by no means a norm. Indeed, it is easy to see that the circumstances in which it is resorted to (in either a legal, cultural, or simply a conventional sense) are always *exceptional* circumstances. Even in these cases, its use is subject to well-defined limits. Anonymous is the investigator who conducts an “undercover” investigation—never the prosecutor who signs the arrest warrant. Anonymous is, in exceptional cases, the witness—never the judge or the court issuing the sentence. The writer can be anonymous or operating under a pseudonym—but mainly to safeguard their freedom of expression under

¹³ Famous examples in English literature include Jonathan Swift, Lewis Carroll, and Daniel Defoe. See Griffin (2003). Use of a pseudonym is not necessarily a sign of the desire to conceal one’s identity. There is none of this intention, for example, in the writings in which Kierkegaard uses the aliases “Climacus” and “Anti-Climacus”, or in Hölderlin’s so-called “tower poems”, which the poet signed as “Scardanelli” or “Salvator Rosa”.

threatening external circumstances. In sum, anonymity—as a measure to protect a person called to express his or her own thoughts in public—is justified in situations of policing, or war, or repression, or serious danger to one’s own safety. Outside of these exceptional situations, the concealment of identity as a rule in interpersonal communication subsists only in contexts of dubious integrity—for example, in the meetings of secret societies (“hooded orders” such as the Ku Klux Klan) or in the case of blackmail (“anonymous” letters, as they are called).

There are, of course, also positive examples of anonymity, as in the case of the praiseworthy “anonymous benefactor.” This case in particular allows us to glimpse a constitutive trait of anonymity; namely the fact that it is more properly suited to *silent* interaction between human beings rather than to expressed communication. The essence of charity is that the donation should “speak” for itself, and not on behalf of the donor. Herein lies the meaning of anonymity. The anonymous benefactor or donor wants precisely this: to stay silent and allow the act of generosity to reach its destination “wordlessly”. Anonymity here is only the outward sign of a trait that itself already belongs to the essence of gift, namely its gratuity or the fact that it is not seeking “recognition”. For the donor, to remain anonymous simply means to adapt themselves to the silent language of giving.

However, when a person is called upon to express their own judgment or thought *in their own words*—either compelled or by free choice—anonymity is accepted only in exceptional situations. We can conclude this *excursus* on the scope and limits of anonymity in a civil society with the following observation: there seems to be no “healthy” human mode of expressing one’s own thoughts which provides for the concealment of personal identity as a normal condition of conduct.

6 The Functions of Anonymity in the Scientific and Educational Endeavour

If the argument developed in the previous section is correct, then the question arises as to whether evaluation procedures in academia determine “exceptional situations” that justify the concealment of the evaluator’s personal identity. Stated differently: to what extent, in today’s university, are there situations “outside the norm” which warrant the systematic use of anonymous judgments?

The email cited above (Sect. 4) can be used as a principle case in an attempt to find an answer. It suggests, without evoking outright, a scenario of this sort: the referees responsible for evaluating a journal or a scholarly work could be subjected to the pressure to “inflate” their own judgment; or, even worse, they could suffer reprisals after the fact, when their unflattering judgment becomes public. In other words, it is presumed that referees operate in a climate of *temptation* and *intimidation*: incumbent on them, on the one hand, are the temptations presented in order to acquire a favour, and, on the other hand, the unmentionable fears of possible consequences and repercussions. In this respect, anonymity serves to protect the referees, and, at the same time, ensure the objectivity of their judgment. Thus, we can distinguish two functions of anonymity implicit in this assumption: the function of *defence* and the function of *objectivity*. To these we may add a third, which is a derivative of the latter and which we shall call the “parameterizing” function. Let us proceed in this order.

6.1 Anonymity as “Defence”

Anonymity would serve to protect the subject who expresses judgment or evaluation from consequences arising from the expression of that judgment or evaluation, be it retaliation, reprisal, revenge, or spiteful acts of any sort. For example, the teacher could “seek revenge” against the student who “bashed” him or her in the evaluation questionnaire by giving

that student a bad grade on the exam; the author of a submission might be tempted to seek reprisal against a peer who has torn apart her paper by responding tit for tat, or by not inviting him or her to a conference, or by turning down their pupil in a recruitment procedure—and so on. But even before expressing judgment, the evaluator not covered by anonymity may feel pressure to approve this grant application or positively evaluate that article. One needs no great effort to imagine countless situations in which the function of evaluation can put the evaluator at risk by the mere fact of having expressed (or having to express) a negative judgment in some sort of evaluation procedure. Yet all these hypothetical situations—so easy to conceive within the imagination—reveal a scenario that should give us food for thought. They presuppose a kind of community not only divorced from the principles commonly in effect within civil society, but actually governed by the systematic denial of every possible code of conduct. How else would we consider a community in which it is conceivable that the most likely reaction towards a critical judgment is *retaliation*? It would obviously be a community at war, and, moreover, a war without rules or quarter. To imagine that the one who expresses a judgment should be *defended* vis-à-vis those who receive the judgment—be they “peers”, colleagues, or teachers—means implicitly to assume that the academic and scientific community is anything but “academic” and “scientific”. Certainly, there may be *exceptional* situations where the person who expresses a judgment should be defended: for example, one can grant that a form of protection is required when the evaluator is in a subordinate position with respect to the “evaluatee”. Once again, it seems difficult to see how anonymity in academic evaluations can be justified *as a norm*—i.e., beyond exceptional and circumscribed circumstances—on the basis of its defensive function alone.

6.2 Anonymity to Ensure Objectivity

However, anonymity is supposed to have yet another function. In protecting the evaluator from temptations and external threats, it isolates and “purifies” the evaluation from undesired interference. Accordingly, the evaluator would be more free to speak up without hesitation and

truly speak his or her mind. Only anonymous judgments can be *brutally honest*, as the saying goes: truly sincere, without scruples, and with no regard for the consequences. In actuality, the typical situation in which anonymity exerts this function is as follows: an evaluator *would like* to issue a ruthless judgment on the object of evaluation (an article, a grant application, a colleague, a teacher, etc.) but does not *feel like* doing so because the act would incur undesirable consequences. This “objectivity function”, as we may call it, coincides in many aspects with the defensive function, but it covers a wider spectrum of situations, including, most notably, where there reasonably exist no risky consequences from which the evaluator should be protected—as in most cases where the evaluator is not in a subordinate position with respect to the evaluatee. In *all* cases, anonymity liberates the evaluator from *all* consequences of their judgment, be they truly threatening or simply burdensome and annoying. For example, an evaluator may refrain from criticizing an article due to laziness in having to justify his or her own “hatched job” on the article, or worse, having to face the author’s counter-arguments, and, more generally, of having to *respond* in any way to his or her own negative judgment. By unburdening the evaluator from the consequences of their evaluation, anonymity enables trenchant judgments to emerge without impediment. Here anonymity is no longer (only) defensive, but is also (and especially) *offensive*, insofar as it abolishes every duty of “courtesy” in formulating a critical judgment on someone else’s work. A licence to attack without fear of consequences: this is what is given to the evaluator in exchange for anonymity (see De Gennaro and Zaccaria 2011).

The main point is not just that anonymity incentivizes bad behaviours (which may well be the case). It is, rather, the fact that those behaviours—be they bad or not—are the effect of a singular operation, whereby the judgment is divorced from both its source and its consequences. The judgment takes on a life on its own and is ready to be “used” for purposes that may not coincide with, or may even be contrary to, those for which it was expressed in the first place. The judgment can be literally claimed by the highest bidder. This means, among other things, that the scientific discourse ceases to be a *dialogue*—namely a mutual exchange for the sake of achieving a better understanding of truth. It becomes a unilateral

expression of value, which is worth only the measurable effects it produces within the relevant evaluation procedure.

6.3 From Objectivity to Parametrization

The objectivity function is thus linked to the third function of anonymity, which is to ensure the *parameterization* of judgments. The latter must not only be “objective” but also measurable, in the sense of being commensurable against each other *and* with respect to the objective to be achieved on each occasion. Depending on the set objective, each object of evaluation will be ranked according to how effectively it performs towards its achievement. Parametrized judgments serve the purpose of measuring the effectiveness of the object: how effectively the article meets the “quality standards” of the journal, how effectively the teacher “delivers” the course’s content, how effectively the research proposal addresses the “challenges” set forth in the call, and so forth and so on.

In the context of evaluation procedures, a judgment can be short (and even run afoul) of objectivity as long as it is parametrizable. In fact, as seen before, anonymity is functional to procedures designed to assign a value and therefore a measurable parameter to the subject of evaluation, rather than to enable the emergence of a truth. By isolating the evaluator from the evaluatee, and the judgment from its consequence, anonymity predisposes the judgment to parameterization, meaning its reduction to a parameter-value. From the point of view of the evaluation procedure, anonymity annuls from the outset all differences between evaluators. Under the veil of anonymity, the judgment informed by reasoned and reflective thinking is worth the same as the one arising from extemporaneous reaction and ignorance; the view of the scrupulous referee counts as much as that of the dishonest or lazy or biased referee; the opinion of the most negligent student carries the same weight as that of the hard-working student who has attended all classes and completed all the readings—and all this on the ground that, “on average”, the extraction of anonymized judgments will return a workable parameter. All expressions of appreciation or depreciation (*like / dislike*) become summable, subtractable,

mediatable; in short: subject to a computation of values in view of an assessment of effectiveness (see Muller 2018).

This anonymity-induced equivalence is not a fault of evaluation procedures, but their very condition of possibility. A judgment becomes an “evaluation” properly so-called, namely the attribution of a computable value to an object, only when it is divorced from both its consequences *and* the singularity of the subject that expresses it. Anonymity ensures both. Once translated into values, judgments become mutually comparable and computable. Each object of evaluation becomes potentially classifiable, and, as such, part of a classification: projects, papers, journals, scholarly publishers, departments, universities, degree courses, modules, individual lessons, individual teachers or researchers, the daily work of these latter—*every single element of university life* translates into a determined position (ranking) within the relevant classification or league. Anonymity is the cornerstone of this translation of the entire academic and scientific language into a set of parameters for decision-making, on the basis of which every act *upon* the university and *upon* science—from the advancement of a research project to the elimination of an entire department—may be undertaken.

While the functions of anonymity discussed so far—defence, objectivity, and parametrization—operate simultaneously, it is undoubtedly the last one that directs and guides the other two. Indeed, anonymity is extensively adopted by default even in contexts where the defensive function is wholly unnecessary, and when the “objectivity” of judgment is not reasonably in question (as when the evaluator is, quite simply, a serious scholar or a serious student). The need to parameterize each judgment—that is, to translate judgments into a set of parametric values, in order to meet the compulsive requirement to act *upon* the university and *upon* scientific research—determines in the last instance that climate of *permanent exceptionality* which permeates today’s university and scholarly existence. By this I mean that the “exceptional circumstances” that, in every other sphere of civil society, justify the use of anonymity in the expression of one’s own thought, are supposedly defining the “normal” status of the university today.

7 Conclusion

In these pages, an attempt has been made to elicit a trajectory which anonymity is impressing on academic and scientific life: a trajectory *away* from public communication and dialogue for the sake of truth *towards* secretive, unilateral, metrics-driven interaction subjugated to effectiveness. By establishing itself silently as the default rule in the circulation of judgments within academia, anonymity operates as a powerful mechanism for the disciplining of academic discourse: a mechanism possibly more powerful, because all-pervasive and endogenous, than externally imposed censorship and control (see above, Sect. 2). One of the observable effects of this disciplining is that evaluation, in all its forms, is about to be taken over by fully automated systems and “Artificial Intelligence” (AI). In principle, for the purpose of evaluation, there is nothing an anonymous human can do that cannot be done more accurately, efficiently, and cheaply by a self-learning algorithm.¹⁴ Indeed, the academic discourse has already incorporated the assumption that AI-assisted science is an “inevitable” development of the times, with which academia will have to come to terms—the discussion being centred primarily on the details of this capitulation, such as whether some “ethical” boundaries should and could still be imposed. However, the peculiar threat conveyed by this seemingly inevitable development does not consist in the fact that AI may at some point supplant human scientists and human teachers (who may then lose their jobs), but in the fact that academic and scientific discourse is prepared to let this happen. By allowing anonymity to be the source of every decision-making criterion, the unavoidable intermediary of every meaningful scientific dialogue and educational relationship—briefly, by allowing the unconditional *right to speak* to the anonymous evaluator, academics surrender nothing less than their freedom to think (see above, Sect. 2). What is at stake with anonymity is not just the credibility of clumsy (and possibly already outdated) evaluation procedures. It is the integrity of academia as a space of freedom and judgment for the future of science.

¹⁴For an overview of the AI systems currently used to “assist” peer-review, see Thelwall (2019). For an example of an AI system to evaluate “teaching performance” see Lieberman (2018).

References

- Alcoholics Anonymous. 2011. Understanding Anonymity. https://www.aa.org/pages/en_us/understanding-anonymity. Accessed 2 February 2021.
- Biagioli, Mario. 2002. From Book Censorship to Academic Peer Review. *Emergences. Journal for the Study of Media & Composite Cultures* 12 (1): 11–45.
- Bloom, Lynn Z. 2008. The Seven Faces of Anonymity in Academe. *symplokē* 16 (1/2): 43–50.
- Coroners and Justice Act. 2009. Part 3, Chapter 2. <https://www.legislation.gov.uk/ukpga/2009/25/part/3/chapter/2>. Accessed 2 February 2021.
- De Gennaro, Ivo, and Gino Zaccaria. 2011. *La dittatura del valore. L'insegnamento e la ricerca nell'università planetaria. / The Dictatorship of Value. Teaching and Research in the Planetary University*. Milan: McGraw-Hill.
- General Data Protection Regulation 2016/679 (GDPR). Article 9. <https://gdpr-info.eu/art-9-gdpr/>. Accessed 2 February 2021.
- Griffin, Robert J., ed. 2003. *The Faces of Anonymity: Anonymous and Pseudonymous Publication from the Sixteenth to the Twentieth Century*. New York: Palgrave Macmillan.
- Kant, Immanuel. (1784) 1964. Beantwortung der Frage: Was ist Aufklärung? In *Werkausgabe. Band XI: Schriften zur Anthropologie, Geschichtsphilosophie, Politik und Pädagogik 1*, ed. Wilhelm Weischedel, 53–61. Frankfurt am Main: Suhrkamp.
- . (1786) 1964. Was heißt: sich im Denken orientieren? In *Werkausgabe. Band V: Schriften zur Metaphysik und Logik 1*, ed. Wilhelm Weischedel, 265–283. Frankfurt am Main: Suhrkamp.
- . (1781) (A), (1787) (B), 1964. Kritik der reinen Vernunft. In *Werkausgabe. Bände III/IV*, ed. Wilhelm Weischedel. Frankfurt am Main: Suhrkamp.
- . (1798) 1974. *Anthropology from a Pragmatic Point of View*. Translated by Mary J. Gregor. The Hague: Martinus Nijhoff.
- Lieberman, Mark. 2018. AI + Student Evaluations = the Future? Inside Higher Ed. <https://www.insidehighered.com/digital-learning/article/2018/03/07/hubert-ai-helps-instructors-sort-and-process-student-evaluation>. Accessed 2 February 2021.
- Muller, Jerry Z. 2018. *The Tyranny of Metrics*. Princeton, NJ: Princeton University Press.
- Nettheim, Garth. 1984. The Principle of Open Justice. *University of Tasmania Law Review* 8: 25–41.

- Newton, Isaac. *Questiones quaedam Philosophiæ* ("Certain Philosophical Questions", MS Add. 3996, Cambridge University Library). The Newton Project. University of Oxford. <http://www.newtonproject.ox.ac.uk/view/texts/normalized/THEM00092>. Accessed 2 February 2021.
- Suls, Jerry, and René Martin. 2009. The Air We Breathe. A Critical Look at Practices and Alternatives in the Peer-Review Process. *Perspectives on Psychological Science* 4 (1): 40–50.
- Thelwall, Mike. 2019. Artificial Intelligence, Automation and Peer Review. JISC. <https://repository.jisc.ac.uk/7614>. Accessed 2 February 2021.
- Tommaseo, Niccolò, and Giovanni Pietro Viusseux. 1956. *Carteggio inedito*. Edited by Raffaele Ciampini and Petre Ciureanu (Storia e letteratura. Raccolta di studi e testi 61). Rome: Edizioni di Storia e letteratura.
- Universal Declaration of Human Rights. <https://www.un.org/en/universal-declaration-human-rights/>. Accessed 2 February 2021.
- Weil, Simone. 1952. *The Need for Roots. Prelude to a Declaration of Duties Towards Mankind*. Translated by Arthur Wills. With a Preface by T.S. Eliot. London: Routledge.
- . 2013. *On the Abolition of All Political Parties*. Translated by Simon Leys. Melbourne: Black Inc.



Autonomy for Whom? Governance of What? The Rationality of Academic Freedom

Sharon Rider

1 Introduction

“The crisis of the university” is a familiar topos in contemporary discussions about higher education. It is said that universities are facing untold threats from, inter alia, the anti-intellectualism of populist movements and authoritarian regimes, the commodification of knowledge resulting from neo-liberal ideas about utility and international competition, the politicization of teaching and learning arising out of identity movements, the fragmentation of the university in response to stakeholder demands, and so forth. These are all, one might say, different faces of a perceived incursion or even attack on some kind of “academic autonomy”. But in fact, they point to somewhat different problems, and indeed are, in part, different topics. In this paper, I will not address directly the sovereignty or independence of the institution that we call “the university”; that is, I will not discuss the complex relationship between the university and the

S. Rider (✉)
Uppsala University, Uppsala, Sweden
e-mail: sharon.rider@filosofi.uu.se

state, economic forces, and actors, or civil society, nor will I focus on student demands, expectations, or performance. To the extent that these connections will be examined in this paper, it will be through the prism of the inner and outer conditions for academic freedom for the *faculty*, i.e. university scholars, scientists, and teachers. As the reference to inner and outer conditions suggests, this essay is inspired by Max Weber, in particular his famous lecture “Science as a Vocation”—*Wissenschaft als Beruf*. I am concerned, as it were, with the “subjective conditions” of autonomy as well as the objective conditions for its exercise.

As David Owen and Tracy Strong note, the latter corresponds to *Beruf* in the everyday sense of “profession”, while the former is connected with the theological idea of a “calling”, evoked by the word *rufen* (to call), which is why the word is conventionally translated as “vocation” (from the Latin *vocare*, to call). Weber appears to have had this double sense in mind. In *The Protestant Ethic and the Spirit of Capitalism*, he makes note of the religious origins and timber of the word: “a task given by God” (pp. xii–xiii in Owen and Strong 2004). In particular, he stresses the Calvinist notion of a vocation as “a command of God to an individual to work to His glory” (p. xiii *ibid.*). In the “Science as a Vocation” lecture, Weber uses the word *hingeben* with respect to someone who devotes his life, “gives it over”, to science and scholarship. To have a vocation is to exercise autonomy, insofar it is a matter of the free act of submitting oneself to the demands of a higher purpose. At the same time, the conditions to which one commits oneself are not of one’s own choosing or within one’s own power to determine. It is this reciprocal relation between the individual’s vocation and the collective profession that is the topic of this essay. Like Weber’s lecture on this internal relation between agency and the conditions for its exercise, the content will be reflected in the organizational form of the paper. I will begin by stating a number of germane points regarding the external conditions for academic work today. In the section after, I turn to what it means for the individual’s exercise of reason, or the use of his mind, in such a historical setting.

My approach will be one of “cultural epistemology”. In this holist conception, a walk, for instance, is a mental phenomenon if it is carried out with an objective and a goal; the movements of the walker can be studied as mental phenomena in the intentionalist sense that they are what he has

to do to carry out the intention of walking. To understand someone's intentions, the meaning or content of his actions, is to locate it within the broad network of concepts used by people to explain themselves, to communicate with others, and do things together. These concepts, in turn, are subject to a certain systematization and institutionalization in a number of practices. To understand a mentality, then, is to understand a certain way of thinking and the conditions that must hold for an idea, act, artefact, or goal to make sense at all, which means that the study of the mental, on this account, is less dependent on neuroscience and cognitive psychology than it is on the study of jurisprudence, rhetoric, history, sociology, anthropology, and philosophy: in other words, the humanities, and social sciences (Descombes 2001, 2014). For this reason, the status of these disciplines tells us a great deal about a culture. The very fact that they are especially threatened by student attrition, administrative indifference, and, in some quarters, direct political antipathy, makes them a particularly perspicuous illustration of a fundamental change in the conditions for academic autonomy (again, of the faculty) that both expresses and reinforces the reconfiguration of the university as an institution, since the university as a whole, including its research and educational programs, its organization, funding mechanisms etc., constitutes a certain systematization and institutionalization of what a society valorises as knowledge and understanding worth maintaining, propagating, and advancing. In that sense, it constitutes a microcosm of the activities of mind, or a mentality. And my interest here is precisely in the present-day academic mentality, in this anthropological sense, arising in and out of these conditions.

2 The Objective Conditions of Autonomous Reason

What is characteristic of the modern university, such that the institution and those in its service might require and deserve to be self-legislating? The answer would depend upon the context in which the question is framed. The suggestion proposed below admittedly emerges out of a

distinctly European history which cannot be adequately addressed here. With that proviso in mind, one plausible formulation might be that, with respect to the institution as such:

- 1) The defining purpose of a university is to provide *higher* education in the specific sense that this education is conditioned on the student already having sufficient prior preparation such that she is in a position to refine and develop these basic capacities (literacy and numeracy, for instance), which is the reason for her attendance.
- 2) A university consists of a faculty with sufficient competence such that they can be relied upon as a source of knowledge for the student for the purposes of improved understanding. Because science and scholarship “progress” in the sense that their aim is to supersede, surpass, or reinvent what is already known and understood, in order to maintain this competence, the faculty have to devote a certain amount of time to study that is not directly tied to a given immediate pedagogical task such as a specific course to be taught (i.e. all faculty should be involved to some degree in both instruction and research, although the time allotted need not be evenly distributed, and can be adjusted to individual and institutional needs and capacities).
- 3) A university is accountable to its backers and constituents for ensuring that these first two requirements are met in accordance with state and institutional regulations.
- 4) A university exists because a state or society judges that there is a need for and a value in the application of principles 1–3.

Everything else that a university does is secondary with respect to 1–4, and can be arranged by other actors with other agendas.¹ Thus the modern European university exists to provide the society of which it is a part with knowledgeable, skilled, discerning, and “employable” young people, “professionals”, to fill vital, social, and economic functions that require a specific kind of intellectual training.

¹ It will surely be noticed that the emphasis here is on education, rather than research. Universities existed long before they conducted research, which, in many countries, have continued to be conducted primarily by separate institutes and learned societies even after Humboldtian reforms.

In light of this preliminary characterization, what are we to make then of the current “crisis of academic autonomy”? Is there a crisis at all? Or should we see current demands on and criticism of the academy as a sign that, at very least, industry, the political sphere, the media, and the general public deem what we do so important that they admit openly that they have a vested interest in it? What is the meaning of academic activity in the twenty-first century? If it presupposes autonomy, whose and with respect to what? Perhaps we need to re-think our notions of academic freedom, the relationship between the university and the State, the faculty, and the institution, the legitimate use and self-interested abuse of disciplinary boundaries, the organizational structure of our seats of higher learning, the relationship between the university and the school system, the functionality of credentialization in offering opportunity or supporting and maintaining privilege, and so forth. These issues, in turn, have implications for how we understand the nature of knowledge and expertise, the role of higher education in a society, and the connection between politics and science.

There is ample evidence that the general trend in public administration since the 1980s has been increasingly managerial through the introduction of different types of New Public Management reforms, i.e. governance by objectives and results, recurrent external evaluation and monitoring schemes, and so forth (Ahlbäck Öberg and Wockelberg 2016; Hood and Dixon 2015; Neave 2012; Pollitt and Bouckaert 2011). That the effects of these reforms have had both direct and indirect effects on higher education and research is also well established (Deem 1998; Neave 2012; Rowlands and Wright 2019; Shore and Wright 2015). Against the backdrop of recent assaults, or at least severe external pressure, on university autonomy in Hungary, Poland, Brazil, and Turkey, as well as the ingrained dirigisme of China and Russia, the question of academic freedom, what it is and why it is needed, has returned to liberal democracies with full force, after many years of negligible public interest. The current wave of skepticism toward elites and what is perceived as the abuse of notions of meritocracy to veil how universities have functioned to ensure and enhance inherited social, cultural, professional, and even financial capital makes the challenge all the more critical (Ignatieff 2018).

On one view, the professoriate themselves have been complicit in undermining the esteem in which universities were formerly held. Their reliance upon judgment devices such as citation indices and journal impact factors, for instance, as a proxy for arguments and reasons in evaluating academic work shows that the academic article is no more or less than the coin of the realm, that is, academic status can be understood in market terms. Thus, for instance, as full-time permanent or tenure-track positions have become ever more scarce, and as PhD production has increased, we have seen an overall heating up of the market place for research funding, publications, rankings etc. Faculty are not directly responsible for this situation, but elite universities and their faculty, including those in the social sciences and humanities, tend not to consider to the function of their position within this social space, or the effects of what Steve Fuller has called their academic “rent-seeking” (Fuller 2018). This issue has repercussions beyond the role of universities within liberal democracies themselves, and it plays a role in the alleged domination of the global South by the academic global North (Naidoo 2007, 2011).

Regardless of regime, the phenomenon of the commodification of research is thought by some to have created an unhealthy inclination among university management and national educational agencies everywhere to accommodate the form and content of academic activity to the demands of the marketplace through financialized techniques of governance, without any concern for long-term comprehensive effects on learning or knowledge (Mirowski 2011; Shore and Wright 2015), and without much resistance from faculty. At the same time, to the extent that universities enjoy institutional autonomy with regard to *how* they meet the goals set for them in terms of productivity (degrees awarded, employability of graduates, patents and joint ventures with industry, for instance), there has also been a marked tendency to steer teaching and research toward the realization of particular political goals and ambitions using similar audit systems. In short, it is not clear that universities in liberal democracies are the bastions of the uninhibited pursuit of knowledge and understanding that they like to take themselves to be. (Those with an historical bent might be inclined to add, “and they never were”, but that discussion would take us beyond the purview of this paper.) My

aim here, however, is not to describe empirically what actually occurs at most universities most of the time. Nor is it to make an appeal for or against the status quo. Instead, I hope to make clear what a commitment to collegial principles and calls for academic autonomy entail and presuppose conceptually, and, as a matter of fact, historically, insofar as these institutions were part and parcel of a specific set of ideas and ideals. If we find the latter all too “idealistic” or woolly-headed, then we are not entitled to demand the practical instantiations of the ideals that we reject. In Weberian terms, we cannot make demands on objective conditions for the realization of ideals that we cannot actualize subjectively (Weber 1949).

The core of the problem is this. Insofar as the organization of teaching and research nudges them in a certain direction, the activity of the faculty, both individually and as a collective, is directed by external forces and considerations. Quite simply, there is no getting around the fact that what the faculty do and how they think cannot be separated from the issue of what the university *is*, what academic research and higher education are *for* (Boulton and Lucas 2011; Collini 2012; Donoghue 2008; Rider 2016; Rider et al. 2013; Rider et al. 2021). In what follows, I will discuss the professional identity of the professoriate in terms of the assumptions undergirding what one might call ‘the very idea’ of a professor within the contemporary university. These presuppositions are naturally tied to historical factors that cannot be adequately addressed here. But there is good reason to believe that the modern research university, and the attendant assumptions about the professional character of its denizens, have evolved largely in response to market forces and bureaucracy (Clark 2006). If this is accurate, that is, if the faculty themselves early on deemed it necessary to re-organize their labor to mimic leading industries in terms of research teams, emphasis on production etc., then by reminding ourselves of what considerations have been pertinent to analyses of those developments at the time they were occurring, we might learn something of consequence for how to think about the rapidly and radically changing environment for our present institutions of education and research. In other words, just as the modern research university evolved out of a negotiation between traditions and ideals and new forces challenging those, we too have to start to rethink modernization and rationalization once again, since the pressures that gave rise to the changes

associated with the name of Humboldt resemble to a high degree our own (Rider 2016; Östling 2018).

Historically, the justification of the novel idea of the university as an institution for generating new knowledge, as opposed to preserving and perpetuating a canon of what is known, for instance, was in part a response to the challenge posed by mass production of, and easy access to, relatively inexpensive books, the invention and widespread use of the printing press, for instance, itself a result of industrial developments having little direct connection with the activities of the universities as such (teaching, scholarship, and, in some cases, research). One could reasonably ask then, as people do today, if the knowledge that the professor professes is readily available without enrolling at a university, what purpose does a university serve? The answer, conventionally associated with the name of Humboldt, was the unity of research and teaching, and its promise of the intellectual atmosphere of innovation and vigor offered by the seminar: spirited young men engaged in studying, interpreting, advancing, and applying difficult subject matter together with the guidance of the professor. Thus the lecture lost its central position to the seminar, the seedbed from which new knowledge would grow in the fertile soil of the university setting (see pp. 50–53 in Josephson 2013).

At the same time, this history is complicated. Already in the early nineteenth century, industry and commerce followed basic research, and took advantage of the unintended potential for product development from that research. Industries in the early twentieth century wanted either to have research done at the university or to create spaces like Bell labs which mimicked the university. These spaces were free of the management of time and thought that existed in the corporation, and allowed for the uninhibited development of new ideas for research that had potential for a re-configuration of life through new technologies (Noble 1977). In this regard, it is something of an irony that universities today, intent on attracting corporate investment, are increasingly viewed as managed spaces where time and thought are constrained and controlled and

audited, in contrast to the reputation of companies like Microsoft, Google, Intel, and Apple as zones for free play.²

How are we to understand this complex connection between knowledge production and the market? In rethinking rationalization in general, and the modernization of the university in particular, we should first notice that the fundamental presupposition at play is not one limited to academic questions, but goes much deeper, having to do with the self-conception of modern science and study in general, which, as we shall see, has ramifications for the self-understanding of students as well as faculty. At root of the self-conception that I have in mind is a presupposition described by Hannah Arendt as “the almost universal functionalization of all concepts and ideas” (p. 101 in Arendt 1968; Rider 2017). By this Arendt meant not merely the replacement of ideas with values, and of means with ends, but also the instrumentalization of conceptual distinctions altogether in terms of the functions they fill. Ideas and ideals are absolute; as absolute, they set the standard for measurement and comparison and are themselves neither comparable nor measurable. In contrast, values have no intrinsic meaning. The notion of value is tied to commerce, exchange, and expediency. A value is always a matter of relation (comparison) and thus relative by definition. The equation of things, both ideas and material objects, with value means making everything into some sort of social commodity. But it also entails that real differences in *sense* or meaning are dissolved into an identity of functional utility, so that, to use her own example, if argumentation and violence have the same political function of achieving the goal of consensus, then they are functionally identical (Arendt 1968). Such an identification, to continue with the same example, obliterates the conceptual distinction between the attempt to convince someone of the benefit or disadvantage of something, and the attempt to force one’s will on someone: they are both understood merely in terms of their relative worth in achieving some practical end. Looking at the matter functionally, the meaning for the actor, what he intends, is irrelevant for the sense of the action.

²I am indebted to Wesley Shumar for elucidating this point in his many helpful and creative comments to an earlier draft of this paper.

One might, of course, question if this distinction between principles and values is tenable. It is common to think that what we call economic value is in point of fact the simple recognition that human beings are willing to forego certain things (products or services) in order to obtain others, and that is the basis of the free market. On this view, all that a unifying principle of action is, is a general prediction of what sort of exchanges an individual or group is inclined to make. A thorough discussion of such a profound question about the nature of value is beyond the scope of this paper. For present purposes, it will have to suffice to say that there is an ethico-metaphysical doctrine implicit in the assumption that principles of action can be reduced to functions, which has consequences for how we understand the meaning of critical human activities and institutions, such as those involved in research, teaching, and learning. Just as we can only intend actions that we deem possible to actualize, we can only realize intentions that we are capable of having. If we deny that we can have unifying principles of action, we reject with it the idea of autonomous agency, since our behaviour is caused by external compulsion or internal impulse, rather than chosen in accordance with some unifying purpose or sense, which is to say, *for a reason*.

Stefan Collini has argued that while universities are useful, often in ways that are indirect and thus not always obvious, especially in the humanities, the purpose of mission of the university should not be understood in terms of outcomes. But he does not provide much in the way of conceptual clarity with regard to the distinction between unifying purpose and desired outcomes. Yet the difference between functional value and principle of action described above, i.e. the difference between “in order to” and “for the sake of which”, is fundamental for understanding “what universities are for” (Collini 2012). When considering institutions of enormous significance such as those involved in education, the criminal justice system, or courts of law, one should always bear in mind Arendt’s distinction between governing principles and functional values. A judge, for instance, might be tempted to take on simpler cases and let more complex ones wait, since the more complicated ones will be time-consuming and uncertain, and thus undermine the goal of meeting production targets checked in annual audits. But meeting those goals in this way would have the effect of undermining a fundamental principle of the

rule of law, due process, which in practice requires that cases are to be processed in the order in which they are entered into the docket in order to ensure non-preferential treatment. The judge who finds himself struggling with this dilemma is in something of a pickle. If he “performs well” for the audit, he will do so at the expense of undermining everything that his office and his professional norms dictate for judges in liberal democracies. If he acts in accordance with legal principles, his performance indicators will sink and he will expose himself and his court to a battery of inquiries and inspections trying to locate the source of the inefficiency: Ineptitude? Lethargy? Insufficient oversight by management? Now it is all very easy to say that he should of course behave first and foremost as a judge, serving the interests of the law and the public. But the fact is, he will be in very serious trouble if the court falls too far behind in cases processed during the year. The goals of management here, the “external conditions” of exercising his judgment, stand in conflict with the most basic principles of his profession. By tying the evaluation of the judge’s work as a judge to institutional performance indicators that do not take into consideration the specific character of the institution in question (the law and the complexities of judicial process), the strategies for achieving ideally functioning (legal) institutions actually undermine the conditions that make those institutions strong and effective, to wit: their autonomy.

In the best functioning democracies, courts of law will be entirely autonomous with regard to political, ideological, commercial, private, or economic interests. But political and economic interests tend to get smuggled in through the back door, through audits and performance indicators. The only way to handle this conflict is to place some trust in the competence and professional integrity of the judge and assume that if, according to his professional judgment, certain cases were so complex that they needed time and resources that would delay the processing of other cases, the auditor must take his word for it, for the simple reason that the auditor is not himself in the position to make a well-founded decision on the matter one way or another. It is beyond his area of expertise. On the other hand, that means that the judge’s autonomy with respect to how he runs his court rests on the assumption of responsibility: what one might call the responsibility of professional discretion. The very

idea of professions such as law and medicine originally rested on the idea that they were self-regulating. It is what distinguished them from manual labour or the assembly line. If they are deprived of that autonomy, they are thereby relieved of the responsibility for the consequences of their judgments. You cannot take away the very means for decision-making (recourse to professional judgment) and expect people to take responsibility nonetheless. There needs to be a principle or set of principles in light of which the decision to be made is considered. It is the cultivation, assimilation, and maintenance of such principles or reasons that *are* the profession.

Of course, there are differences between professions. To begin with, the law aims at stability and is thus averse to frequent and far-reaching change, while professions based in the natural sciences, such as medicine and engineering, since the early Enlightenment tend to formulate their activities as projects of perpetual improvement and innovation. On the other hand, the professional judgment in the case of both the judge and the doctor is bound to specific sources of legitimation, while the science and scholarship conducted at the university, by contrast, is the supplier of those sources. In that respect, university research authorizes the practice of the professions, most obviously through its monopoly in selecting, instructing, and examining the next cohort of professionals and granting or withholding credentials and degrees. But this difference only compounds the responsibility of university faculty, since there is no external epistemic authority to authorize their epistemic authorization.

The role of epistemic authorization, however, is just one of the many functions of the “multiversity” that has developed over the last fifty years. The contemporary university encompasses a variety of occupations, serving a plurality of interests and needs; the various demands entail different principles of action, directed at aims that can and often do conflict with one another (Kerr 2001). At public universities, the Vice-Chancellor and the Board of Governance are responsible for realizing a plethora of political ambitions and strategically guiding their institutions through the thorny terrain of the “global knowledge economy”. But there is a risk that this function of leading the organization toward some target vision of success in competition with other comparable actors on the “higher education and research market”, expansion of the consumer base through

product development and customization to clients (“stakeholders”), if you like, occludes the academic side of authority, that of *primus inter pares*, first among peers who share the aim of together generating new knowledge, preserving, and continuing to cultivate venerable and viable traditions of learning, and contributing to the common good through the dissemination and further development of both.

The increasing tendency to concentrate control of resources in the hands of line-managers while placing responsibility for “quality” squarely on the shoulders of the academic staff (teachers and researchers), who have at best “advisory” or “consultative” roles, leads to practical problems in holding people accountable for something over which they do not exercise any real control. Another way of putting it is to say that if you isolate accountability from the conditions that need to be met in order to be answerable for the decisions taken, what you will get is not accountability, but mere accountancy. One advantage of shared governance is that the department or faculty in question is not only formally but *actually* responsible for the consequences of the decisions and actions of its boards and committees, since they have elected them. For this reason, one should be cautious about making committee work and the like count as academic accomplishments toward promotion; such a step runs the risk of creating a parallel stream for advancement, further blurring the issue of accountability. The reward for participation in collegial bodies ought to be the satisfaction of making sure that choices having to do with the form and content of teaching and research incarnate the professional principles of the professoriate. “Freedom” on paper without the means to realize it effectively (which means some control over resources and substantive decision-making powers) is empty. The “freedom” to choose how best to pursue goals that have been formulated from above through “incentivizing” strategies impedes judgment, and thus diminishes professional responsibility, both collectively and for the individual.

The limitations of freedom described above have substantial consequences for the reference of the “quality” to be controlled. What “quality assurance” assures, having been functionally defined by managerial practices rather than principles of judgment tied to the practice of reason and justification internal to the field of inquiry, is *compliance*, that is, conformity with the external criteria by which the practice is to be evaluated.

Thus the responsibility of the faculty is not to judge and authorize academic quality at all, but to guarantee adherence to a set of goals that are not in and of themselves part of scientific or scholarly judgment. To the extent that these external goals are fully integrated into academic thinking as such, it loses its epistemic authority (Fuller 2009). This transformation can be understood in light of Weber's dual use of the notion of a vocation: the inner calling that gives scientific inquiry its subjective sense, its reasons, is silenced, and what is left is merely the rules of the trade, determined by prevailing external attitudes and interests, in which the individual is occupied.

The connection between professional autonomy and responsibility is difficult to see clearly in the prevalent confusion marring much discussion about policy, largely due to the use of the term "autonomy" as roughly synonymous with "freedom", "liberty", or simply lack of constraints, none of which says anything about duty, answerability, rationality, or responsibility. "Autonomy", literally, "self-governance" or "self-legislation", on the other hand, has everything to do with reason, law, standards, and accountability. It characterizes the capacity of an agent or institution to act freely in accordance with universalizable principles rather than internal (private) predispositions or external compulsions (*coercion*). In other words, it is the freedom to act in accordance with *duty*; its opposite is "heteronomy", which means unquestioning submission to exterior demands, edicts, or decrees (obedience), or alternatively, acting on the basis of desires, proclivities, or ambitions, on the one hand, or group interests (loyalties) on the other, rather than duty to reason or principle. The autonomous agent is not free to do as s/he pleases, but to the contrary, only to follow her inner calling, which means to do what she realizes that she must. This is no mere semantic distinction: the justification for collegial bodies and shared governance rides on it.

Autonomous judgment is not and cannot be a matter of "what's good for me" or even "what's good for us (faculty)", but is a question of a verdict or ruling: what is the best decision given all the relevant arguments and information that can be brought to bear on the question at hand, the goal of which is to arrive at a reasoned conclusion through careful consideration and deliberation among those who have actual *reasons* rather than mere preferences or stakes, in much the same way that we expect peer

review to function. Of course, this is only a regulative ideal. As such, it is what prevents collegial organs, editorial review boards, and expert panels from deteriorating into intellectual coteries, competing research-funding factions, and citation syndicates; this ideal can be described as an awareness, sometimes dim, sometimes acute, of the distinction between autonomy and freedom, and of their “higher” duty to actualize and incarnate academic principles. The ideal is merely regulative insofar as members of faculty boards, for instance, cannot in practice be expected at each and every turn to put the good of the university or of the students or of science or of society as a whole before the interests of their career, their research group, their field, their department, or their discipline. Perhaps they fail constantly, or at least very frequently, and most likely without the faintest idea of so doing. But the failure to realize an ideal, abide by a principle, or even to grasp and acknowledge the existence of such a thing, does not constitute a refutation of its validity. If that were the case, then every time a teacher happens to misspeak when lecturing, or a scientist makes a sloppy mistake in the laboratory, we would reject the ultimate aim of trying to say the right thing, or achieve accuracy in measurements, which would mean the end of all science. To the contrary, failure in these cases implicitly presupposes this ideal, the hope and possibility of success, without which there is no sense to education or the scientific endeavor. Similarly, without the implicit assumption that faculty are at least capable of impartial judgements regarding the form and content of the activities for which they are responsible, there is no justification for academic freedom.

In Sweden, there are at present three universities that have retained a vigorous collegial structure after the so-called *Autonomy Reform* of 2011 (Ahlbäck Öberg and Sundberg 2017). The reform deregulated university management, and gave the universities and university colleges greater leeway with regard to their organization. The results were almost immediate: within a few years, the majority of regional colleges and universities had moved away from governance via collegial bodies and adopted line management. Of those having retained robust collegial structures, two are the oldest universities in Sweden, Uppsala University (1477), Lund University (1666), the third being the University of Stockholm in the nation’s capital. If we look at these three comprehensive universities,

leaving aside for the moment the institutes for technology and medicine, which are a special case, it will be observed that they are the ones that are most associated with solid positions in the rankings, the lion's share of research funding, and students with the strongest academic backgrounds.

Now what do these relatively privileged students find when they come to Uppsala or Lund, for instance, aside from the gowns and ancient buildings? Let us allow these two to stand as exemplars, or rather as convenient fictions before which we for the moment suspend disbelief, for some at least partially realized ideal of academic autonomy. One might expect students at "Lund" or "Uppsala" to find that if they ask their teachers how it has come to pass that the department offers this course, but not that one; or why the required literature does not include this or that book; or to explain the rationale behind the progression of courses; or how the teacher's research is related to the courses she teaches, or anything else that might matter for understanding why the program of study looks the way it does, they will get a reasoned answer of the kind, "oh, *we* decided that *we* should teach X or Y every term, because *we* all agreed that it was vital for understanding Z..."; or "yes, *we* considered using that book, but it didn't cover B, which the students need to have for the advanced course next term", and so on. That is, they discover or have confirmed the notion that *knowledge confers a specific and proscribed kind of authority and the freedom to do what is necessary in the responsible exercise of that authority*. The authority in question means having agency, making decisions on the basis of reasons that one has, rather than acting on demand or impetus, i.e. causally. It is a demonstration of real autonomy, what it means and how it works. In other words, this kind of authority, based as it is on agency, argument, and judgment, can be *reasoned with*. New issues, aspects, or evidence may come to light which can alter the decision, whereas no argument can be effective where there is no agency to do otherwise. (You can't argue with the effects of causes). The authority that accompanies knowledge, what I have called epistemic authority, thus stands in stark contrast to the authoritarian attitude that simply gives orders and instructions, and so, along with everything else they are studying, the students learn what having a certain kind of education means in terms of freedom, authority, relevant knowledge, and responsibility. One might consider the inculcation of the acknowledgement of this

connection to be part of the hidden curriculum: you are here to become like us, to take your place among those who demand the right to be held accountable for their judgments concerning what should and should not be done, according to the best of their ability to deliberate upon matters in which they have attained a certain level of competence. But all of it can be questioned, indeed, questioning is at the very heart of university science, scholarship, and teaching (again, as a regulative ideal, not as a matter of fact).

Let us now contrast this ideal type of academic environment to one which in no way resembles it (which is to say most colleges and universities everywhere and always). The students there, many of whom will come from backgrounds with less educational and cultural capital than their peers in the ideal-typical “Lund” and “Uppsala” (and often, less economic and social capital as well), will find that that their teachers cannot give reasoned explanations as responses to their inquiries. The reply to the questions listed above will be again and again, “The provost decided that...”, or “I dunno, we haven’t been told”, or “Oh, they said something about that, but I don’t recall what their justification was, or if they gave one at all...”. The hidden curriculum here is: the education you are receiving, the ability developing out of it, conveys no authority, no autonomy, no responsibility. Don’t ask, don’t tell. You are being trained to be a cog in a wheel—like your teachers.

What I describe above are very different *places*, out of which arise very different *mentalities*. The first thing a university that wants to “put itself on the map” should do is consider the *place* that the university itself is. If it is a place for training obedient skilled workers who can fill the needs of industry and obey contemporary mores unquestioningly, the teaching conducted will be very different from one that takes upon itself the role of fostering in someone a sense of personal answerability for her ideas, actions, and abilities. To engender *that* kind of mentality, a place would manifest and sustain an atmosphere of reasoned discourse based on acquaintance with and insight into the matter at hand to be determined. Calling vocational training with a dash of socialization in a pre-determined array of isms that conform to the mood of the period “higher education” does not make it higher, any more than describing the heteronomy of faculty in terms of institutional autonomy means realizing academic

freedom. In one place, the primacy of reason(s) reigns supreme (at least, in principle). In the other, it is demonstrated on a daily basis that consequential decisions can and will be taken by fiat or edict without the possibility of appeal or redress and without anchoring in the bedrock of the ongoing activities in question (the research conducted, and teaching performed at the university). Here the student and the teacher are *displaced*; their reasons for acting can only be a matter of deference to others (outer compulsion) or proclivities having nothing whatsoever to do with the subject (private ambition, personal loyalties, intellectual laziness, vanity, etc.). They are not the agents of their actions and judgments, which is to say that any talk of autonomy here is misapplied.

3 The Subjective Conditions of Autonomous Reason

In the previous section, I analyzed the institutional conditions under which autonomy for faculty can be realized today, with a stress on forms and shared practices of professional autonomy. I tied this exercise of autonomy with the regulative ideal of exercising judgment and executing duties in accordance with a guiding principle, namely, the achievement of “what a university is for”, its *raison d’être* within a culture, which I distinguished from the secondary tasks of the multiversity, which can be everything from providing athletic facilities for students and adequate parking for staff to ensuring regulatory compliance in admissions and recruitment procedures and procuring sizable donations from alumni. The latter, however practically necessary they may be, exist for the purposes of the former. (What makes “student housing” and “faculty clubs” what they are is that there are faculty and students.) In this section, I want to show that, assuming that we accept the notion that universities have a primary purpose that determines the adequacy of the means for its achievement and are not simply a meaningless concatenation of operations with no internal order, then the professional identity (or what Max Weber calls the “dignity”) of the faculty consists in nothing more or less than the (ideal) autonomy of each of its members.

Weber argues that in the modern world, one can justifiably ask: “What is the vocation of science within the totality of human life and what is its value?” (p. xxx in Owen and Strong 2004). It can no longer be to seek some unadulterated true being (the Ideas) as it was for Plato, the secrets of nature as it was for Bacon, or religious insight as it was for Swammerdam. The notion that science can lead to happiness, he thinks, can only be entertained by “some overgrown children among the professoriat” (ibid.). The reason is that we cannot really believe in such things anymore without diminishing the intellectual *demands* that we, as scholars and scientists, should place on ourselves. It would mean pretending not to know what we in fact know, which, for Weber, is a cardinal sin in academic life. Citing Tolstoy, Weber reminds us:

“Science is meaningless because it has no answer to the only questions that matter to us: ‘What should we do? How shall we live?’” The fact that science cannot give us this answer is absolutely indisputable. The question is only in what sense does it give “no” answer, and whether or not it might after all prove useful for somebody who is able to ask the right question. (p. xxxi ibid.)

Given the irreducible plurality of worldviews, what academic instruction can do is provide clarity with regard to the meaning of the stance that one takes, one’s ultimate values, and what “can be inferred consistently, and hence also honestly” (ibid.), from this or that fundamental ideological or religious commitment or philosophical position. It is a matter of what can and cannot be inferred without doing violence to reason. He writes: “To put it metaphorically, if you choose this particular standpoint, you will be serving this particular god and will give offense to every other god.” (ibid.). The point of higher education is to compel, or at least help, the student “render an account of the ultimate meaning of his own actions” (p. 26 in Weber 2004), i.e. give reasons, by making explicit to the student the circumstances and commitments involved in his intentions and moral orientation, to create “a sense of duty, clarity, and a feeling of responsibility.” (p. xxxii in Owen and Strong 2004).

But the teacher can only do that if she herself can “render an account of the ultimate meaning of her own actions”, especially in her

professional role as teacher and researcher, and if her thoughts and actions are led by “a sense of duty and clarity” and accompanied by a “feeling of responsibility”. If the external conditions for realizing this aim are such that it cannot be achieved, as studies of current trends toward the deprofessionalization of academic work suggest, then there is a serious risk that we not only fail at the moment to fulfil the role of properly academic institutions, but that the faculty will devolve to a point when we are no longer capable of shouldering the responsibility of either academic freedom for the individual or institutional autonomy for the university.

Let us now recapitulate the characteristics of the modern university, such that the institution and the individuals serving it require and deserve to be self-legislating. With regard to the former, we said that a university exists to provide *higher* education, and that this education is predicated on the student already having sufficient prior preparation such that she is in a position to refine and develop these basic capacities. Further, a university consists of a faculty that can be relied upon as a source of knowledge for the student for the purposes of improved understanding. Because science and scholarship “progress” in the sense that their aim is to supersede, surpass, or reinvigorate what is already known and understood, in order to maintain this competence, the faculty have to devote a certain amount of time to study that is not directly tied to a given immediate pedagogical task such as a specific course to be taught. Because of its crucial role, the university is accountable to its backers and constituents for ensuring that these first two requirements are met in accordance with state and institutional regulations. Finally, a university exists because a state or society judges that there is a need for and a value in having 1–3. We said then that everything else that a university does is secondary with respect to 1–4, and can be arranged by other actors with other agendas. Thus the modern European university exists to provide the society of which it is a part with knowledgeable, competent, and judicious “professionals” to perform vital, social, civic, and economic functions that require advanced intellectual training.

Now, in order for the student and the society which she is to serve to value the training being provided, the knowledge and skills on offer must be seen as having a value in their own right, regardless of the *specific* economic interests or ideological agendas they might serve. Another way of

putting the point is to say that science and scholarship have to *display* the autonomy they insist is so central to their activities. And that means that the inner organization of the university requires independent organs existing for the sole purpose of ensuring that each of its members performs her duties (teaching and research) autonomously, that is, that the content is derived from scientific or scholarly principles, whatever private, economic, or political interests might also be involved. In short, autonomy is the professional and *institutional performance of impartiality*. The usefulness, validity, and legitimacy of the content of teaching and research should be equally available to all, even if, in reality, few will take advantage of what is made thus available; indeed, one might imagine that the results of a given study might go against the grain of the desired answers from interested parties, be they political or commercial, or that a student might not want to hear certain “inconvenient facts” as Weber calls them. The university, however, exists precisely for the purposes of “saying it like it is”, not for saying what anyone, for whatever causes or purposes, wants to hear or let be known. But notice what a tall order Weber’s injunction entails. In “saying it like it is”, the academic authority must display a very difficult kind of self-discipline. She can give no answer whatsoever as to how one should live or what one should do, but only show the internal relations between intentions and consequences, aims and results, given what we do know. By doing so, she offers something that can be useful to anybody, but claims no authority regarding what is worth aiming for or intending. In that respect, she is equipping the student, and, in Steve Fuller’s terminology, enhancing her “modal power” (Fuller 2018).

In his essay “The Academic Freedom of the Universities”, Weber warns that when universities take it upon themselves to impart specific values and indoctrinate them into certain world views, they display a hubris that will inevitably lead to their undoing. Here, as in the *Vocation* lecture, he suggests that there is only one value, strictly speaking, that belongs intrinsically to the idea of the university, namely, the ideal or ultimate aim of enhancing the human capacity to judge with impartiality conceptual relations and states of affairs. Objectivity, in this sense, is the principle “value base” of the university, in respect of which all other values are secondary or ancillary:

“Universities do not have it as their task to teach any outlook or standpoint which is either “hostile to the state” or “friendly to the state”. They are not institutions for the inculcation of absolute or ultimate moral values. They analyse facts, their conditions, laws and interrelations; they analyse concepts, their logical presuppositions and content. They do not and they cannot teach what should happen—since this is a matter of ultimate personal values and beliefs, of a fundamental outlook, which cannot be “demonstrated” like a scientific proposition. Certainly the universities can teach their students about these fundamental outlooks, they can study their psychological origins, they can analyse their intellectual content and their most ultimate general postulates [...]. The universities can sharpen the student’s capacity to understand the actual conditions of his own exertions; they can teach the capacity to think clearly and “to know what one wants”. [...] They are under the obligation to exercise self-restraint. The one element of any “genuine” ultimate outlook which they can legitimately offer their students to aid them in their path through life is the habit of accepting the obligation of intellectual integrity; this entails a relentless clarity about themselves.” (p. 591 in Weber 1973)

Needless to say, this characterization is far from anything that actually happens at most universities today. Of course, there are some that display this ideal-typical character more than others, but there is likely not a single seat of higher learning in the world that does not regularly combine and confuse the scientific, scholarly, and educational mission with aims that have no inherent connection to, say, mathematics or philosophy as disciplines, or intellectual pursuits. Such aims, when manifested in the individual faculty member, are things like success at grant capture, building and maintaining national and international networks, enhancing citation rates or eliciting positive student evaluations, or, in another spirit, instilling certain values in students and propagating them in science and scholarship. Due to the current cultural climate in many liberal democracies, the first group tends to meld with the second (Goodhart 2017). Notably, the same can be said of illiberal regimes, with the qualification that the latter aim to inculcate and disseminate a different set of political or social values. But it is the fusion of properly academic thinking with other ends in the minds of the faculty that Weber worries will

ultimately undermine the university as an institution, whatever the values being promoted are.

At the level of the institution, the result of the conflation of the mission of the university *as such* with its economic, social, and political functions leads to a preoccupation with recruitment and retention, in competition with other universities (an expanded and satisfied consumer base); climbing league tables and rankings (in part to attract students); patents, prizes, grants, and donations; and the recruitment and retention of “world class” researchers (in part to attract grants and donations). This kind of mentality has existed at universities in varying degrees since at least the seventeenth century, but the question is to what extent such values determine and control faculty behaviour and thinking. There is ample evidence that the political and economic value of the university is now entirely dominant. I cite below a number of statements, marshaled so as to highlight the tenor of the text, from a recent report published by the UK National Audit Office (pp. 5–12 in Morse 2017, my emphasis throughout):

In recent years, the government has increasingly *delivered* higher education using *market mechanisms*, in particular relying more on *student choice* and *provider competition* to improve quality [...]. [G]raduate earnings for some *providers* and subjects are lower than for non-graduates, emphasising the importance of making an *informed choice* [...]. The (National Audit) Office finds that the] Department [of Education] needs a more comprehensive approach to the oversight of the higher education *market*, and must use the proposed regulatory reforms to help address the deficiencies identified in this report, if the students and the taxpayer are to secure *value for money* [...]. Higher education has a more limited level of *consumer protection* than *other complex products such as financial services* [...]. There is no meaningful *price competition* in the sector [...]. [and] [*m*]arket incentives for higher education [...] are [*too*] weak [...]. The relationship between course quality and *providers' fee income* is [also] weak [...]. [The National Audit Office finds] that, on average, a provider moving up five places in a league table gains just 0.25% of additional *fee income* [...].

And so on. The language here explicitly takes as self-evident the equivalence of academic quality with consumer satisfaction and beating the

competition (league tables). Weber cautioned against the tendency already then to academicize practical subjects (an early indication of the credentialization that we see in our own day), decorating vocational training with university degrees that furthered neither students' education nor the aims of science, nor even national economic competitiveness or informed citizenship. In its current form, higher education is being organized as *primarily* a consumer service. And if the customer is always right, then whether it is a matter of the form of the "delivery" of his preparation for work and life or a head of cabbage at the farmer's market, the decision about what he wants and needs is his and his alone. But then there is a problem if the institution has a vested interest in selling a certain kind of product (values, world views), since it is his prerogative as consumer to select the product or service that most appeals to him. In short, if universities must accommodate changing consumer demands, then, in accordance with the logic of the National Audit Office, an institution that successfully negotiates these shifting patterns in competition with others is, by definition, of better "quality" than one that maintains Weberian value-neutrality in teaching and research in the spirit of academic autonomy discussed above.

There are consequences also for the inner workings of the university, for instance in questions of recruitment. If the goal is to attract students and subsidies through high standings in rankings, then success in grant capture will become increasingly important as evidence of scientific and scholarly "excellence". There are numerous worries attached to peer preview trumping peer review. But especially given how much research funding is motivated by political or economic interests, the desire to be "excellent" will carry with it an inducement to conform to the criteria by which academic value is assessed. And at that point, the individual faculty member is no longer thinking in terms of his subject matter at all; the latter has been thoroughly integrated into the external conditions for scientific work. In short, to ensure continued employment as philosopher or mathematician, the faculty member is to be socialized into heteronomy.

4 Concluding Remarks on Autonomy and Collegiality

It would be inaccurate and even preposterous to suppose that the structural changes in higher education of the last forty years have no historical precedents. To the contrary, as the references to Weber are intended to indicate, the modern university is largely a product of earlier attempts to navigate the treacherous waters of social usefulness and relevance while maintaining its course as an institution devoted to autonomous research and instruction. If the latter are simply services rendered for a price, and the point and purpose of the enterprise is simply supplying services and products for a variety of consumer preferences based on “value for money”, then there is no room for “academic freedom” in the strict sense of autonomy defined above, but only *free enterprise*. At the same time, the products and services made available, as well as the work of the staff employed to deliver them (the faculty) are highly regulated through appropriation directions and the like, which means that there are limitations on the sector and its agencies that do not exist on other markets. If university faculty and management are to argue for autonomy, they oblige themselves to fulfil the promise of what it can offer: credibility and legitimate authority, not in the service of this economic interest or that political ideology, but of anybody anywhere needing to know.

In the end, ideally, a university is a certain kind of community, one forged not by family, ethnic, national, or economic interests, but by inquiry and study, the specific human interest in knowledge itself, the boundaries of which are fluid and cut across and through all domains. This fluidity of the human capacity for knowledge and understanding must be harnessed somehow, in order to be effective. That requires self-restraint or discipline, and therefore disciplines. Disciplines are nothing more than the institutionalization of focus on a certain kind of question, a how, what, or why. Astronomy: what’s out there and what’s been happening in space? Geology: what is down here and what’s been happening on and in the earth? History: what’s been happening since human beings started causing events? Economics: what’s happening in markets, and how do they work to produce and transfer wealth? Mathematics: what is

the structure of number, quantity, and space, and how can it be applied? And so forth. This focus requires learning how and when to apply certain kinds of principles and certain sets of rules, ultimately with the aim of being able to do it without guidance from others, as it becomes second nature. The university, its students and teachers, is a society consisting of disciplines, that is, academic tribes with a common culture and their own dialects; but these cultures and dialects are tied to the kinds of questions that guide their intellectual pursuits, rather than economic, linguistic, religious, or familial ties. What keeps the society as a whole going is mutual acknowledgement and a shared recognized institutional framework and leadership. This is why the notion of *primus inter pares* is very important. The first among equals in the academic setting—departmental chairs, deans, vice chancellors, provosts, and so forth—should be in allegiance with their students and colleagues toward—what? I will return to my opening remarks. There are any number of pressing goals that need to be met: student enrolment, funding, etc. But for what ultimate aim? What, in a word, is the point of it all? There must be a final purpose, otherwise there is no meaning to any of it. As Lessing asked: What is the utility of utility? In the case of the university, along with everything else (employability of its students, supporting regional commerce and industry, and so forth), its specific and unique mission must be the propagation of these diverse, and in some cases vulnerable, knowledge cultures as being of intrinsic value for human flourishing, something that we think ought to be maintained, developed, and handed down to future generations for whatever uses they may put them. The things taken as fundamental to who we are and what we do, what ultimately guides our actions and decisions, are what makes it possible to say “we”. In the ideal university, one that deserves to be “on the map”, there will be a stark sense of responsibility to the amalgamation of tribes, the society as a whole, to the place of thinking as such. In an academic context, this requires that decisions effecting the members of the society are made on the basis of knowledge and understanding of the “local” or “tribal” context of knowledge cultures, and not merely organizational considerations. For this reason, deliberations should be made with a sense of shared responsibility, “in partnership”, or, to put it in Latin, “collegially”. But that ideal stands and

falls with the capacity of the individuals involved to be clear about what that responsibility presupposes and entails.

Now the tasks of the modern research university, or what Clark Kerr called the “multiversity”, extend far beyond teaching and research. There exists a variety of issues of direct concern for the health and well-being of the university that cannot and should not be decided by the faculty. The state, the region, the local community are now all *de facto* stakeholders, and have every reason to make demands. It is the work of university management to negotiate between these legitimate interests and the core tasks of the university. This is why universities need shared governance: it allows professors to be professors, and managers to be managers, each in their respective domains. But as Michael Ignatieff, the patron saint of academic freedom, tirelessly stresses, academic freedom, understood as autonomy in the sense I discussed earlier, is not (or should not be) a privilege “enjoyed” by senior academics, but a right that in the long run protects us all. When academics push back against managerial or political overreach, they are defending an institution the function of which is to serve, protect, and defend society’s capacity “to know anything at all”. He has a list of must-haves to ensure academic freedom in this sense: rule of law and constitutional review; politically independent accreditation bodies; informal rights of consultation about pending legislation, and so forth. And you need professional associations and scientific bodies for academic matters (peer review, promotion, etc). But these are only objective manifestations of a collective inner calling. He writes:

[U]niversities need to think of themselves as counter-majoritarian institutions, as integral to the survival of free societies as a free press, an independent judiciary, and parliamentary review of legislation. We’re part of an intricate structure of counter-majoritarian freedom [...] Universities exist to do the one thing they absolutely have to do, which is winnow the hard facts of knowledge from the chaff of opinion, rumour, fantasy, paranoia and the whole deluge of false information which makes it almost impossible for our societies to deliberate freely on the basis of what we actually know to be true. That’s what universities are for. What they have to do is train students to appreciate that knowledge is extremely hard—it’s a discipline you have to follow. Once you have knowledge, you have access to the

most important thing a democratic system must have, which is the capacity to find out what is true and right. It's an unpopular job, it's a job with a message that people may not want to hear, but it is our job and we have to defend it with courage and without any embarrassment that sometimes this will be counter-majoritarian in its impact. (p. 8 in Ignatieff 2018)

Ignatieff argues here and elsewhere that universities have to make it clear that it is their job to say things that people may not want to hear. Now my point in all that I have said hitherto is that this applies as much to Sweden or the UK as it does to Hungary, and as much within the university as beyond its borders. It seems to me that one of the main functions of faculty boards is to serve this function within the university. But I cannot stress enough that this task refers to questions within their domain of knowledge: course plans, the creation of new courses and abandonment of obsolete ones, the structure and content of PhD programs, criteria for habilitation, selection of peer reviewers for faculty openings and dissertation committees, and so on. It does not mean that there should be a faculty committee or representative on every question confronting management (student health services, personnel issues, compliance with environmental sustainability regulations and labour laws, parking facilities, or a myriad of technical, legal, and economic issues requiring a different kind of expertise). Of course, there will always be grey areas; in cases where the boundaries between “jurisdictions” is unclear, the matter will have to be negotiated.

The point of joint governance is to ensure both institutional and academic autonomy for universities. It consists of a division of decision-making labour by which the university management represents the university as an autonomous agent with regard to its environment (politicians, economic actors, social pressures), and the collegial organs represent teachers and researchers as a single autonomous agent or subject within, say, the department, faculty or the university as a whole. (It should be obvious that such organs and their chairs—faculties and deans, department steering committees and department heads—can only be representative if they are elected by those whom they are to represent, and not assigned by line managers. A commission of trust must be based on there being trust, a mandate, to begin with). The role of speaking truth to

power is a two-way street; just as universities, represented by their vice-chancellors and governing boards, can challenge the political sphere, it is necessary for their legitimacy that they need to do so with authority, and that they can in turn be challenged from within. Against the backdrop of what I have said, we may now contemplate the reasoning behind UNESCO's recommendation concerning the Status of Higher Education Teaching Personnel (1997), to wit:

VI. Rights and freedoms of higher-education teaching personnel, B. Self-governance and collegiality

31. Higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution.

32. The principles of collegiality include academic freedom, shared responsibility, the policy of participation of all concerned in internal decision-making structures and practices, and the development of consultative mechanisms. Collegial decision-making should encompass decisions regarding the administration and determination of policies of higher education, curricula, research, extension work, the allocation of resources and other related activities, in order to improve academic excellence and quality for the benefit of society at large. (p. 11 in UNESCO 1997).

I mentioned earlier that “autonomy” was a misunderstood concept. The same might be said of faculty governance or “collegiality”. Collegiality in a strict sense, that is, as a regulative ideal, assumes that everyone involved considers himself under obligation to contribute to the commons: the teaching and research performed at the university for the greater good of all. This is the specific mission of the university, and what distinguishes it from other organizations and agencies. It is on the basis of this mission that the university claims the right and even the duty to demand its autonomy: but that means both within and without its walls. Naturally, this does not make the life of the vice-chancellor a bed of roses, but then, as Geoffrey Boulton and Colin Lucas argue, this tension is the

very source of the university's specific form of institutional strength. In their pithy formulation, "An easily governed university is no university at all" (p. 2515 in Boulton and Lucas 2011).

References

- Ahlbäck Öberg, Shirin, and Elin Sundberg. 2017. Vad har hänt med det kollegiala styret? (What happened to collegial governance?) In *Det ostyrd universitet?: Perspektiv på styrning, autonomi och reform av svenska lärosäten* (The unruly university? Perspectives on the governance, autonomy and reform of Swedish institutions of higher education), eds. Linda Wedlin, and Josef Pallas, 91–119. Stockholm: Makadam Förlag.
- Ahlbäck Öberg, Shirin, and Helena Wockelberg. 2016. Nordic Administrative Heritages and Contemporary Institutional Design. In *Nordic Administrative Reforms: Lessons for Public Management*, ed. Carsten Greve, Per Læg Reid, and Lise H. Rykkja, 57–78. London: Palgrave Macmillan.
- Arendt, Hannah. 1968. *Between Past and Future. Eight Exercises in Political Thought*. New York: The Viking Press.
- Boulton, Geoffrey, and Colin Lucas. 2011. What Are Universities For? *Chinese Science Bulletin* 56 (23): 2506–2517.
- Clark, William. 2006. *Academic Charisma and the Origins of the Research University*. Chicago: University of Chicago Press.
- Collini, Stefan. 2012. *What Are Universities For?* London: Penguin.
- Deem, Rosemary. 1998. 'New Managerialism' and Higher Education: The management of performances and cultures in universities in the United Kingdom. *International Studies in Sociology of Education* 8 (1): 47–70.
- Descombes, Vincent. 2001. *The Mind's Provisions. A Critique of Cognitivism*. Trans. Stephen Adam Schwartz. Princeton–Oxford: Princeton University Press.
- . 2014. *The Institutions of Meaning. A Defense of Anthropological Holism*. Trans. Stephen Adam Schwartz. Cambridge (MA)–London: Harvard University Press.
- Donoghue, Frank. 2008. *The Last Professors: The Corporate University and the Fate of the Humanities*. New York: Fordham University Press.
- Fuller, Steve. 2009. The Genealogy of Judgement: Towards a Deep History of Academic Freedom. *British Journal of Educational Studies* 57 (2): 164–177.
- . 2018. *Post-Truth: Knowledge as a Power Game*. London: Anthem Press.

- Goodhart, David. 2017. *The Road to Somewhere. The New Tribes Shaping British Politics*. London: Penguin Random House.
- Hood, Christopher, and Ruth Dixon. 2015. *A Government That Worked Better and Cost Less? Evaluating Three Decades of Reform and Change in UK Central Government*. Oxford: Oxford University Press.
- Ignatieff, Michael. 2018. *Academic Freedom and the Future of Europe (Centre for Global Higher Education working paper series 40)*. London: Centre for Global Higher Education, UCL Institute of Education. <https://www.researchcghe.org/perch/resources/publications/wp40.pdf>. Accessed 3 February 2021.
- Josephson, Peter. 2013. När boken hotade föreläsningen (When the Book Threatened the Lecture). *Respons* 6: 50–53.
- Kerr, Clark. 2001. *The uses of the university, Fifth Edition*. Cambridge (MA)–London: Harvard University Press.
- Mirowski, Philip. 2011. *Science-Mart: Privatizing American Science*. Cambridge (MA)–London: Harvard University Press.
- Morse, Amyas. 2017. *The Higher Education Market*. London: UK National Audit Office. <https://www.nao.org.uk/wp-content/uploads/2017/12/The-higher-education-market.pdf>. Accessed 10 December 2020.
- Naidoo, Rajani. 2007. *Higher Education as a Global Commodity: The Perils and Promises for Developing Countries*. London: The Observatory on Borderless Higher Education.
- . 2011. Rethinking Development: Higher Education and the New Imperialism. In *Handbook on Globalization and Higher Education*, ed. Roger King, Simon Marginson, and Rajani Naidoo, 40–58. Cheltenham: Edward Elgar Publishing.
- Neave, Guy. 2012. *The Evaluative State, Institutional Autonomy and Re-engineering Higher Education in Western Europe. The Prince and His Pleasure (Issues in Higher Education)*. Basingstoke: Palgrave Macmillan.
- Noble, David F. 1977. *America by Design: Science, Technology, and the Rise of Corporate Capitalism*. New York: Alfred A. Knopf.
- Östling, Johan. 2018. *Humboldt and the Modern German University. An Intellectual History*. Trans. Lena Olsson. Lund: Lund University Press.
- Owen, David, and Tracy B. Strong (eds). 2004. Introduction. In *Max Weber: The Vocation Lectures*. “Science as a Vocation”. “Politics as a Vocation”, Trans. Rodney Livingstone, ix–lxii. Indianapolis–Cambridge: Hackett Publishing Company.

- Pollitt, Christopher, and Geert Bouckaert. 2011. *Public Management Reform: A Comparative Analysis—New Public Management, Governance, and the Neo-Weberian State*. 3rd ed. Oxford: Oxford University Press.
- Rider, Sharon. 2016. Science and Speed Addiction: The Scholar's Vocation in the Age of Efficiency. *Nordic Journal of Studies in Educational Policy* (NordSTEP) 2-3. Special Issue: Work and Life in Academia. <https://doi.org/10.3402/nstep.v2.33725>.
- . 2017. Coercion by Necessity or Comprehensive Responsibility? Hannah Arendt on Vulnerability, Freedom and Education. In *Phenomenology and the Primacy of the Political. Essays in Honor of Jacques Taminiaux (Contributions to Phenomenology 89)*, ed. Véronique M. Fóti and Pavlos Kontos, 155–174. Cham: Springer.
- Rider, Sharon, Ylva Hasselberg, and Alexandra Waluszewski, eds. 2013. *Transformations in Research, Higher Education and the Academic Market: The Breakdown of Scientific Thought (Higher Education Dynamics 39)*. Berlin: Springer.
- Rider, Sharon, Michael A. Peters, Mats Hyvönen, and Tina Besley, eds. 2021. *World Class Universities: A Contested Concept (Evaluating Education: Normative Systems and Institutional Practices)*. Cham: Springer.
- Rowlands, Julie, and Susan Wright. 2019. Hunting for Points: The Effects of Research Assessment on Research Practice. *Studies in Higher Education*. <https://doi.org/10.1080/03075079.2019.1706077>.
- Shore, Cris, and Susan Wright. 2015. Audit culture revisited: rankings, ratings, and the reassembling of society. *Current Anthropology* 56 (3): 421–444.
- UNESCO. (1997). *Recommendation concerning the Status of Higher-education Teaching Personnel, adopted by the General Conference at its 29th session Paris, 21 October—12 November 1997*. <https://unesdoc.unesco.org/ark:/48223/pf0000113234.page=2>. Accessed 10 December 2020.
- Weber, Max. 1949. The 'Objectivity' of Social Scientific and Sociopolitical Knowledge. In *The Methodology of the Social Sciences*, Trans., and Ed. Edward A. Shils, and Henry A. Finch, 49–112. New York: The Free Press.
- . 1973. The Power of the State and the Dignity of the Academic Calling in Imperial Germany. The Writings of Max Weber on University Problems. Ed., and Trans. Edward A. Shils. *Minerva* 11 (4): 571–632.
- . 2004. Science as a Vocation. In *Max Weber: The Vocation Lectures. "Science as a Vocation". "Politics as a Vocation"*, eds. David Owen, and Tracy B. Strong, Trans. Rodney Livingstone, 1–31. Indianapolis–Cambridge: Hackett Publishing Company.

Part II

Legal Perspectives



Freedom of Research in Austria

Magdalena Pöschl

1 Introduction

There is almost nothing that powerful men fear as much as the truth, with the exception of perhaps political satire and art. It is not by chance that authoritarian states always try to keep something of a rein on science and art while at the same time steer the direction in which these things go. But even in democracies, there have always been tensions between science and the state because the latter needs the knowledge science brings but at times may feel threatened by it. In Hungary for example, these tensions recently reached such a level that the Central European University was forced to abandon its campus in Budapest and relocate to

I would like to thank Ian Silver and Kirsten Schmalenbach for their English language support throughout the writing and editing of this text.

M. Pöschl (✉)
University of Vienna, Vienna, Austria
e-mail: magdalena.poeschl@univie.ac.at

Vienna.¹ But even in Austria, freedom of research can sometimes be perceived as fragile. In view of the density of constitutional guarantees of such freedom, this may seem surprising. In this regard, the freedom of research in Austria has been guaranteed no less than three times. Indeed, since 2008 the constitution has even contained an institutional guarantee for public universities, and since 2013 Austria has declared applied and basic research to be a national objective. This body of law will be briefly presented in Sect. 2, in order to then explain in more detail in Sect. 3 the five doctrinal components of the freedom of research. The first three components are largely uncontroversial, namely the subjects of the freedom, the addressees and its scope of protection. However, it is contested as to when interference with the freedom of research occurs and under what conditions this interference is justified. This uncertainty arises to some degree from Austria's current science policy, which could be described as "smart research governance": It consists of many individual low-impact measures, which act in concert to noticeably steer science, but do so in a much more sophisticated way than conventional command and control instruments. It is no coincidence that these low-impact measures are less tangible than common state interferences and that they accordingly frequently evade traditional justification schemes. The difficulties this more subtle approach creates will be demonstrated using three examples of such measures employed in Austria—the duty of universities to subject research to ethical assessment, qualified research funding as well as the recording and evaluation of scientific performance at universities (4). Finally, in light of these observations, the situation regarding the freedom of research in Austria will be assessed (5).

2 Constitutional Guarantees for Research

Freedom of research and its relevance for public universities is invoked by Austrian constitutional law in a wide variety of legal documents:² These laws and documents vary greatly by age and source, ranging from being

¹ See Novak (2019); Walker (2019).

² The Austrian constitution does not contain any requirement for incorporation of constitutional provisions in one single document; therefore, in addition to the original document—the Federal

very recent to over 150 years old and with some being purely national in origin while others stem from international or European Union law. This colourful mixture of laws forms the seemingly robust constitutional framework that creates the environment within which research is currently being conducted in Austria.

2.1 Three Guarantees of Freedom

The first of these legal guarantees comes from Art. 17 of the State Basic Law of 1867 (*Staatsgrundgesetz*, StGG) which declares research and its teaching to be free. The StGG covers a catalogue of fundamental rights originally dating from Habsburg times that is still valid in Austria today.³ The second guarantee ensuring freedom of research is derived from the freedom of opinion in Art. 10 of the European Convention on Human Rights (ECHR),⁴ which also enjoys constitutional status in Austria.⁵ The final guarantee arises from Art. 13 of the Charter of Fundamental Rights (CFR) which, according to the jurisprudence of the Austrian Constitutional Court (*Österreichischer Verfassungsgerichtshof*, VfGH), must be treated as if it had constitutional status.⁶

When examining these three guarantees, it is striking that the oldest and only purely Austrian law explicitly refers to the freedom of research.⁷ Art. 17 StGG clearly states that “science and its teaching are free”. Furthermore, in contrast to most of the other freedoms covered by the

Constitutional Law (B-VG)—there are a large number of other constitutional laws, treaties of constitutional rank, and even constitutional provisions in simple laws.

³The Basic Law of 21 December 1867, on the general rights of citizens for the kingdoms and countries represented in the Imperial Council, Imperial Law Gazette 1867/142, was adopted in 1920 from the monarchy’s body of law with the rank of a constitutional law, see Art. 149(1) B-VG.

⁴At least that is the jurisprudence of the European Court of Human Rights, see with further references § 23 at 14 in Grabenwarter and Pabel (2021).

⁵Art. II(3) Federal Constitutional Law of 4 March 1964 amending and supplementing provisions of the 1929 version of the Federal Constitutional Act on international treaties, Federal Law Gazette for the Republic of Austria (*Bundesgesetzblatt für die Republik Österreich*) 1964/59.

⁶*Ausgewählte Entscheidungen des Verfassungsgerichtshofes* (VfSlg), which is a collection of the findings and most important decisions of the Austrian Constitutional Court, 19.632/2012.

⁷This was by no means a normal standard in the nineteenth century. Presumably the StGG was in this respect inspired by the *Paulskirchenverfassung*, in more detail see para. 2 in Hammer (2016).

StGG, freedom of research is not subject to an explicit legal reservation. In this respect, the ECHR uses a broader brush as it guarantees scientific freedom simply because it falls within the scope of freedom of opinion, which in turn (as with most of the freedoms provided for under the ECHR) is subject to legal reservation. The CFR charts a course between the reservation free Art. 17 StGG and the restrictable Art. 10 ECHR in that it dedicates an independent guarantee to the freedom of research in Art. 13, but subjects this freedom to a legal reservation in Art. 52. Perhaps somewhat surprisingly, it is the oldest guarantee of these three that carries the most weight in Austria. For this reason, legal scholars and jurisprudence use Art. 17 StGG alone when measuring the state's research governance for its conformity with fundamental rights. Art. 17 StGG is, therefore, the sole focus of the following sections, but with academic opinion playing a major role in all this because there is little case law on this guarantee.

2.2 An Institutional Guarantee for Public Universities

In the 1970s, Austria abandoned the traditional university hierarchy that was so heavily dominated by professors: academic administration was no longer to be reserved purely for full professors but was to be undertaken with the participation of associate professors and the like as well as student bodies. The Constitutional Court had no objections to this change, although it proved to be a bitter pill to swallow for many full professors who were used to the traditional system.⁸ According to the Constitutional Court, Art. 17 StGG only serves to fend off unjustified state interference on research, but it is not an impenetrable bulwark as it contains no institutional reference whatsoever. In particular, it does not oblige the state to take any positive precautions, for example, to ensure that full university professors can always overrule other members of the university thereby having the greatest influence on academic administration.

⁸VfSlg 8136/1977.

Some forty years later, public universities were finally given an institutional guarantee, which appeared in the most important of constitutional documents, the Federal Constitutional Law (*Bundes-Verfassungsgesetz*, B-VG).⁹ Since 2008, Art. 81c B-VG has guaranteed the role of public universities as “places of free scientific research, teaching and the appreciation of the arts” which act autonomously within the framework of the law. Although this guarantee provides no more protection to universities from organisational changes than Art. 17 StGG does, it contains three statements essential to the universities’ existence: they are now not only entitled to conduct research but research is their constitutional duty.¹⁰ In order to be able to fulfil this duty, Art. 81c B-VG grants both public universities the right to set research goals independent from governmental instructions¹¹ as well as obliging the state to support these universities by positive measures in the fulfilment of their tasks.¹²

2.3 A Commitment to Applied and Basic Research

Even though freedom of research in Austria is guaranteed by the three legal sources mentioned above (Art. 17 StGG, Art. 10 ECHR and Art. 13 CFR), and enjoys an institutional guarantee applicable to public universities (Art. 81c B-VG), it stands to reason that this freedom must also have limits as it cannot infringe the rights of other individuals and groups within society. For example, consider medical research which is limited by the right to life and the physical well-being of test subjects, or of the limits placed on biobanks which collect a variety of human genetic materials for preservation and use at a future point in time. However, research can also conflict with public goods, such as animal welfare or environmental protection, to which Austria has committed itself in constitutional law since 2013.¹³ Interestingly, the same constitutional law that

⁹Federal Law Gazette 1930/1 (Re-Enactment) as amended by Federal Law Gazette 2021/107, the aforementioned amendment is based on Federal Law Gazette I 2008/2.

¹⁰For more details see para. 35 in Kucsko-Stadlmayer (2011).

¹¹See paras. 17 and 41ff. in Kucsko-Stadlmayer (2011).

¹²See para. 36 in Kucsko-Stadlmayer (2011); paras. 17ff. in Hammer (2016).

¹³§§ 2 and 3 Federal Constitutional Act on Sustainability, Animal Welfare, Comprehensive Environmental Protection, Water Security and Food Supplies and Research, Federal Law Gazette I 2013/111 as amended by Federal Law Gazette I 2019/82.

elucidates these commitments acknowledges only a few provisions later “the importance of basic and applied research”,¹⁴ an inclusion that was probably made to clarify that the commitment to animal protection does not exclude animal experiments.¹⁵ Legal scholars rightly doubt that such a tempering qualification was really necessary, because the right to undertake such experiments is already provided for in the freedom of research under constitutional law and can be enforced, unlike state objectives.¹⁶ A secondary benefit of this commitment to research could be that Austria has now constitutionally committed itself not only to applied research—which is currently strongly promoted in political circles—but also explicitly committed itself to basic research.

3 Components of Freedom of Research

3.1 Persons Entitled to the Freedom

According to today’s prevailing academic opinion, freedom of research has long since protected not only professors¹⁷ but the entire academic staff at universities, non-university research institutions, as well as doctoral students and freelance researchers who are not employed at any such institution.¹⁸ Industrial researchers are now also regarded as protected

¹⁴ § 6 *leg. cit.*

¹⁵ This is only hinted at in legislative preparatory documents: “Mit dieser Bestimmung soll im Hinblick auf die anderen Staatsziele die Bedeutung der Forschung hervorgehoben werden.” (Engl.: This provision is intended to emphasise the importance of research in relation to the other state objectives; p. 2 in Ausschussbericht 2383 der Beilagen zu den Stenographischen Protokollen des Nationalrates, 24. Gesetzgebungsperiode); but it becomes clearer in the plenary debate of the National Council when, for example, Member of Parliament Vock called § 6 a “compromise” (see p. 155 in Stenographisches Protokoll, 207. Sitzung des Nationalrates der Republik Österreich, 24. Gesetzgebungsperiode, 13 June 2013) and Member of Parliament Brunner then complained that § 6 has the consequence that animal protection does not take precedence in animal experiments (see p. 157 *ibid.*), whereupon delegate Gerstl emphasised: “it is not the case that animals are above everything” (see p. 159 *ibid.*) which led to delegate Spadiut again complaining that § 6 restricts animal protection (see p. 160 *ibid.*).

¹⁶ See p. 74 in Budischowsky (2014).

¹⁷ On the status of the earlier opinion, which sometimes took this position, for further references see p. 117 at n. 145 in Pöschl (2010).

¹⁸ Cf. e.g. the findings in VfSlg 14.485/1996, 18.559/2008, and 18.763/2009, which grant scientific freedom to any person who conducts scientific research or teaches.

according to academic opinion¹⁹ and rightly so, if only because the boundaries between purely university-funded and third-party funded research have become increasingly blurred since the government has started to heavily promote cooperation between science and industry. It is now also politically desired that science is more open towards society in general: Within the framework of *Citizen Science*,²⁰ a programme which promotes public participation in scientific research, professional researchers involve citizens in specific research projects, meaning that citizens can also be subjects of the freedom of research. In short, all who do research—whether at public institutions, in private industry or independently on their own initiative, whether permanent staff, short to mid-term contractors or even the self-employed—such individuals enjoy the protection of the freedom of research.

3.2 Addressees

While the subjects of the freedom of research who can invoke Art. 17 StGG are becoming ever larger and more diverse, the obligations arising from this freedom continue to bind only the state, albeit at the federal, state and municipal levels. This applies by extension to public universities as well, even if they are autonomous vis-à-vis the state.²¹

The prevailing academic opinion is that freedom of research does not have a direct third-party effect, i.e. is not binding for private individuals.²² When the StGG was enacted in 1867, there were indeed private actors who were putting research under massive pressure, a prime example being the church, which had controlled the direction and nature of research for centuries. Nevertheless, at the time, the state legislator did not want to bind the church directly to freedom of research obligations, rather the legislation

¹⁹ See para. 25 in Hammer (2016); p. 170 in Pöschl (2017); more narrowly, see p. 73 in Budischowsky (2014).

²⁰ See for example Finke (2014).

²¹ See for example p. 45 in Berka (2008); for further references see also paras. 102 et seq. in Kröll (2014).

²² See paras. 88 and 94 in Kröll (2014); para. 14 in Hammer (2016); on the indirect third-party effect, see for example pp. 134 et seq. in Berka (2002); paras. 94 et seq. in Kröll (2014); p. 171 in Pöschl (2017).

was designed to ensure that the state protects research against interventions from such private actors in the future.²³

With the notable exception of theological studies,²⁴ the church today no longer poses a threat to research. With time, however, other private actors have started to exert strong influence in the research sector: for example, industry has gained influence because of its significant financial contributions which allow it to set research goals based on commercial interest. This has an impact not only on researchers directly employed by such actors,²⁵ but increasingly on all third-party funded scientists and, at times, such private sponsors even contractually oblige scientists to keep their research results secret.²⁶ Publishers also have considerable influence on research as they decide which scientific works get published.²⁷ Perhaps somewhat ironically, even the broader *scientific community* has gained in influence over itself and the research it conducts as it partially self-regulates its activities through standards of good scientific practice and recommendations on research ethics.²⁸ The final two parties worth singling out for mention in this section are the media and an ever-increasingly well-informed public. Both of these actors can play at times a pivotal role if they mobilise against certain scientific projects or goals in such a way that researchers “voluntarily” refrain from undertaking such activities.²⁹ As private actors, all of those mentioned above are not directly bound by the obligations associated with the freedom of research. However, Article 17 StGG obliges the state to protect researchers from excessive interference with their freedom to conduct research by such private actors.³⁰

²³ See para. 5 in Hammer (2016).

²⁴ The Concordat allows the Catholic Church far-reaching control over scientific doctrines at Catholic faculties; this control can basically be justified by the (collective) freedom of religion, but is not always proportionate in detail, further detail see para. 69 in Hammer (2016).

²⁵ The VfGH has already clarified in VfSlg 8136/1977 that industrial researchers cannot invoke Art. 17 StGG vis-à-vis their employers, see also p. 73 in Budischowsky (2014).

²⁶ With further references see pp. 165–166 in Pöschl (2017).

²⁷ See below 4.2. at n. 86–89 and pp. 203 et seq. in Pöschl (2018).

²⁸ See pp. 208 et seq. in Pöschl (2018).

²⁹ An Innsbruck research team, for example, was forced by strong media criticism to stop experiments on pigs that were subjected to an avalanche under anaesthesia in order to determine when death would occur and how much time a search party would have to look for avalanche victims: see Albrecht (2010).

³⁰ That freedom of research also has protective effects against social forces other than the church is undisputed in academia, see the evidence in para. 5 in Hammer (2016).

3.3 Scope of Protection

In the 1950s, the Austrian Constitutional Court described the scope of the protection under freedom of research as the “search for new knowledge”³¹ and the “consolidation of older knowledge”.³² It is recognised that research not only seeks the “truth” but also aims to develop new technologies that may well have significant real-world impacts. According to the prevailing view in legal science, this also is part of the scope of the protection of the freedom of research.³³

In all this, Art. 17 StGG conveys freedom in the field of scientific activity and work: researchers are basically free to determine for themselves which course to pursue, which methods they will use for this purpose, which experiments they will carry out and how they will evaluate the results of their research. They are equally free to decide whether and, if so, how to disseminate their findings to legal scholars, other experts and the public.³⁴

Naturally, it goes without saying that in addition to these freedoms to pursue research, scientists also need the resources to actually do so. In the 1970s, the Constitutional Court categorically rejected the idea of deriving a state duty to take proactive measures from the freedom of research.³⁵ The Constitutional Court would probably no longer formulate this so succinctly today, especially as it has since the 1990s affirmed in principle the state’s duty to protect (and that means: take proactive measures) against excessive private interference into the freedom of research.³⁶ Nevertheless, Art. 17 StGG does not create any state obligation to finance science *per se*. According to current academic opinion, however, Art. 17 StGG when read in conjunction with the principle of equality obliges the

³¹VfSlg 3191/1957.

³²VfSlg 3191/1957; 15.617/1999.

³³With further references see pp. 172–173 in Pöschl (2017).

³⁴See for example p. 24 in Rebhahn (1982); paras. 39–40 in Kröll (2014).

³⁵VfSlg 8136/1977.

³⁶On this understanding of fundamental rights see Holoubek (1997), who, however, is sceptical about the institutional content of Art. 17 StGG in particular (pp. 204 *et seq.*); similarly paras. 56 *et seq.* (see para. 63 regarding Art. 17 StGG) in Kucsko-Stadlmayer (2014); generally on the ECHR see § 19 in Grabenwarter and Pabel (2021).

state not to exclude researchers from resources for subjective reasons,³⁷ that is to say, that if the state grants research funds at all, it must distribute them according to objective criteria.

It is different only with public universities: According to the Constitutional Court, the state is responsible under Art. 81c B-VG for ensuring that an “appropriate amount” of “autonomous research” is financed at public universities. Research is “autonomous” only if it is not subject to any influences on its content and not subject to anything other than intrinsic incentives.³⁸ This is a strong statement at a time when researchers often feel themselves to be subject to external pressures. It is true that Art. 81c B-VG does not protect the individual researcher but only public universities, therefore it is the duty of these universities to demand the public funding described above. Having said this, it cannot be ruled out that the Constitutional Court will, at some point, transfer its understanding of “autonomous” research developed for Art. 81c B-VG to Art. 17 StGG. If this were to occur, staff members of public universities would possibly also gain the right to request of the state—mediated by the universities—that such autonomous research is adequately funded.

3.4 Interference

The first three components of the freedom of research—the subjects, the addressees, and the scope of protection—do not create any academic consternation in Austria. However, it has become unclear when exactly a state measure interferes with the freedom of research and thus requires justification. In the absence of such justification (and only then), the interference violates the freedom of research. There is only agreement on such interference in three scenarios:

It is undisputed by legal scholars that there is interference when the state orders or prohibits the research of a certain question, the use of a certain method, the performance of an experiment or the evaluation of

³⁷ See pp. 190–191 in Eisenberger (2016); para. 37 in Hammer (2016).

³⁸ VfSlg 19.775/2013.

research results in a certain way. Nevertheless, such interferences do still occur in Austria,³⁹ even though it is extremely rare.

The existence of interference is equally undisputed by legal scholars if the state prohibits or orders the dissemination of research results. Interferences of this kind are not as far-fetched as they initially sound, but they are nevertheless rare: a ban on publication is conceivable, for example, in the case of dual-use research.⁴⁰ A publication requirement ultimately boils down to creating an environment that is aptly described by the credo *publish or perish*.⁴¹

There is no doubt that interference is ultimately at hand when researchers are instructed to withdraw a publication, correct it or apologise for it. The latter occurred in Austria, for example, when the head of a university asked a researcher to apologise publicly for a plagiarised publication: The Administrative Court (*Verwaltungsgerichtshof*, VwGH) rightly regarded this as interference with the freedom of research.⁴²

Beyond these clear cases in which the state orders or prohibits research or its dissemination, a wide range of official measures remain in a somewhat grey area still vigorously discussed by legal scholars and not yet ruled upon by the judiciary: By way of example in this regard, one could ask whether the rules of good scientific practice interfere with the freedom of research because they dictate how science is to be conducted. Or do these rules only specify what is meant by “research”, so that any action contrary to the rules cannot claim the protection of the freedom of research from the outset? Issues such as this are still open to dispute. In one of its decisions, the VwGH at least indicates that rules of good scientific practice can in principle interfere with the freedom of research, however, it left open as to whether this applies to all or only some of these rules.⁴³ In my opinion, the answer can only be determined by examining the content of the rule.⁴⁴

³⁹ For further references see pp. 181–182 in Pöschl (2017).

⁴⁰ See pp. 163–164 and 182 in Pöschl (2017).

⁴¹ On publication pressure in science see pp. 635 et seq. in Pöschl (2013).

⁴² *Sammlung der Erkenntnisse und Beschlüsse des Verwaltungsgerichtshofes* (VwSlg), which is a collection of the findings and most important decisions of the Austrian Administrative Court 18,449 A (administrative law part)/2012.

⁴³ See n. 42.

⁴⁴ See pp. 122 et seq. in Pöschl (2010).

Assessing whether or not the freedom of research has been interfered with when an ethics committee classifies research as “unethical” is also problematic. As such an ethical vote results in neither an order nor a prohibition to ban the research, one may be inclined to deny that this is interference. However, a negative ethics vote can have significant consequences for researchers—ranging from a third-party (i.e. the head of a university) prohibition on their research project or refusal of research funds through to a publication ban and media ostracism. Given this scenario, one is again left pondering to what extent it is sufficient to regard such an ethics vote as an interference.⁴⁵

As mentioned previously, resources are essential to research and denying funding can hinder or make research impossible without explicitly prohibiting it. In such cases, it is equally questionable whether, or under what conditions, such a refusal encroaches on the freedom of research.⁴⁶

Similar uncertainty arises if a member state or EU body recommends funding organisations not to fund certain research, such as military or human enhancement projects.⁴⁷ On the one hand, such a recommendation is not an imperative, but on the other hand, it will undoubtedly have an effect, i.e. it will at least make the research more difficult to undertake as it becomes less palatable for financiers, indeed, if funding then becomes completely unavailable, would this be an interference after all?⁴⁸

Unsurprisingly, the state is not the only actor that can be active in this grey area. Research can also be steered in the desired direction if a university records and evaluates scientific achievements and includes certain results in its databases while omitting others. The same applies if some forms of publication or research are valued more highly than others and assigned greater academic prestige. Whether this is sufficient to qualify as an interference with the freedom of research is again unclear.⁴⁹

⁴⁵ See also below 4.1.

⁴⁶ See 4.2. below and pp. 189 et seq. in Eisenberger (2016); for the discussion in Germany see pp. 627 et seq. in Trute (1994).

⁴⁷ See e.g. Commission Recommendation of 7 February 2008 on a Code of Conduct for Responsible Nanosciences and Nanotechnologies Research, C (2008) 424 final, Annex, points 4.1.15, 4.1.16, according to which human enhancement research should not be funded.

⁴⁸ See pp. 184–85 in Pöschl (2017).

⁴⁹ See also below 4.3.

3.5 Justification

The question of when a state measure becomes an interference is important because not every side effect of a measure sufficiently disturbs the freedom of research to qualify as such and thus requires justification. However, what exactly qualifies as a justified interference is also disputed in Austria.

According to its wording, Art. 17 StGG guarantees the freedom of research but does not contain any legal reservation. Nevertheless, there is agreement among legal scholars that this guarantee does not override other interests and provide researchers with an overly privileged position. Accordingly, the Constitutional Court stated that general laws, i.e. laws that address every human being, may also restrict researchers in their freedom.⁵⁰ Since causing bodily injury is prohibited under criminal law, researchers are also not allowed to injure test subjects. If a university researcher proves to be unfit for work, the university may respond in the same way as it would for any of its non-research employees. Research facilities must comply with building regulations, and scientific experiments must comply with the full range of health and safety regulations. There is virtually universal agreement in Austria that if these general laws are relevant—such as those typically found in the penal code, service law, building bylaws as well as health and safety regulations, etc.—researchers must abide by them.⁵¹

What is disputed, however, is what requirements are to be placed on research-specific standards, i.e. on laws which only address researchers or which specifically regulate research: One line of argument in this regard is that research-specific laws violate the freedom of research if they are issued with the sole intention of restricting research. However, such standards are acceptable if they pursue an objective that goes beyond the research restriction and are proportionate.⁵² This position is opposed by some who claim that it does not sufficiently take into account the

⁵⁰VfSlg. 1777/1949; 3565/1959; 4732/1964.

⁵¹See e.g. p. 264 in Kopetzki (2011); pp. 127–28 in Pöschl (2017).

⁵²See pp. 269 in Stelzer (1991); p. 200–1 and 234 in Eisenberger (2016).

unconditional granting of research freedom.⁵³ Since, realistically, no interference is made solely for the sake of simply restricting research, this standard of justification does not differ from the standard applicable to other fundamental freedoms subject to the law.

According to a second position,⁵⁴ the fact that Art. 17 StGG lacks an explicit authorisation to make legal reservations is only taken seriously if state interference is merely permitted for reasons equivalent to the constitutional right to research. Therefore, it is not sufficient that interference pursues some public interest and is proportionate; it must also be required by a constitutionally protected legal right or national objective. This position is countered by the argument that the Austrian constitution protects national objectives without a discernibly systematic approach; therefore, the coincidence of a legal position having constitutional protection cannot be the decisive factor to justify interference.⁵⁵

A third position holds that more consistent solutions can be found by focusing not on the reason for the interference but on its threat potential. A research-specific law would therefore only violate the freedom of research if it infringed on the autonomy of research, i.e. if, for example, researchers could no longer freely choose where their interest in new knowledge goes, which hypotheses they put forward and which methods they use.⁵⁶

If one confronts current research policy (assuming that it qualifies as an interference) with these three different opinions of justification, one gets into certain difficulties: According to this third position, the current research policy would have to be unconstitutional from the outset because it constantly tries to manipulate the direction of research—through its ethical controls, funding policy and evaluations as discussed previously. The prerequisite demanded by the second opinion mentioned above is also difficult to meet because it is not easy to find a constitutional position that requires these manipulative measures. Should we therefore completely reject the current research policy as unconstitutional simply

⁵³ See p. 178 at n. 86 in Pöschl (2017).

⁵⁴ See pp. 264–265 in Kopetzki (2011); pp. 130–131 in Pöschl (2017).

⁵⁵ See pp. 198–199 in Eisenberger (2016); para. 53 in Hammer (2016).

⁵⁶ See para. 56 in Hammer (2016).

because it prioritises certain research? This appears to be excessive and seems to make the first opinion the most viable, according to which current research policy—assuming it is proportionate—can be easily justified since it is not done solely for the sake of restricting research. The objection remains that this standard does not sufficiently take into account the specific need for protection of research (and thus also the fact that Art. 17 StGG does not specifically contain a legal reservation). Having said that, the first opinion would not have a problem with a state research policy that directs research even more strongly in a certain direction than is currently the case. Given these difficulties, it seems that all three opinions concerning justification mentioned above struggle to stand up to a practical test.

One way out could be the formula which the Constitutional Court has developed for “free research” within the meaning of Art. 81c B-VG and which it may at some point transfer to Art. 17 StGG. Research-specific standards would then have to overcome two hurdles: Firstly, as with any interference with freedom, they must be proportionate, i.e. suited to achieving a legitimate aim, necessary and not disproportionate to that aim. Secondly, in order to meet the specific requirements of the freedom of research, these standards should not reduce autonomous research to an inappropriate level. In the end, this would amount to a mitigation of the third opinion of justification: An intervention in the autonomy of research would not be forbidden, however, it should not exceed a certain level, which would have to be specified in more detail. With regard to the scope, a differentiation would probably also have to be made according to the profile of the respective research area, i.e. whether it is carried out by a public university, a university of applied sciences or on behalf of a company.

Whether the Constitutional Court will ever transfer its understanding developed for Art. 81c B-VG to Art. 17 StGG is completely uncertain, as is the question of when it will have the opportunity to do so since complaints about a violation of the freedom of research are rare. This may also be due to the fact that research in Austria is usually not controlled by command and control but by more subtle, smarter means against which one can hardly take legal action.

4 Smart Research Governance

4.1 Ethical Assessment

Regulatory Steps

One example of smart research governance is ethical assessment which, in substance, is intended to prevent unethical research primarily by ethics committees which are to be set up *ex lege* at medical universities⁵⁷ and are voluntarily established by many other universities in their statutes.⁵⁸ These university ethics committees charged by law or by the university statutes determine whether specific research projects are, in simple terms, “ethically justifiable”, however, what this actually means is sometimes left open by the laws mentioned. In order to concretise these vague guidelines, some university commissions then seek refuge in the research-ethical recommendations of the *scientific community*, particularly frequently in the Declaration of Helsinki,⁵⁹ a catalogue of rules that the World Medical Association—a private association—has drawn up for medical research.⁶⁰ It contains a large number of guidelines which are somewhat more specific but which do not have the clarity and consistency that one would expect from state laws.⁶¹

This makes understanding the consequences of an ethics committee’s vote that a research project is ethically questionable or unjustifiable, whatever that means, all the more pressing. Some universities rely on coercion in this respect, i.e. their statutes empower the university head to prohibit research classified as unethical.⁶²

⁵⁷ § 30 Universities Act 2002 (*Universitätsgesetz*, UG), Federal Law Gazette I 2002/120 as amended by Federal Law Gazette I 2021/20; in addition, there is a wide variety of non-university ethics committees, which are not considered here, for details see pp. 253 et seq. in Kneihls (2019).

⁵⁸ See p. 207 in Pöschl (2018).

⁵⁹ The current text is available at <https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/> (accessed 24 September 2021).

⁶⁰ On the origin, development, and content of this declaration see Schmidt and Frewer (2007); Ehni and Wiesing (2012).

⁶¹ See pp. 223–224 in Pöschl (2018).

⁶² This applies, for example, to the Universities of Graz and Salzburg: § 6(2) of the Ethics Committee Bylaws of the University of Graz, available at <https://static.uni-graz.at/fileadmin/Rechtsabteilung/>

A second model can be found at the University of Natural Resources and Life Sciences, Vienna (BOKU). The established ethics platform discusses ethically sensitive research university-wide and issues non-binding recommendations on this basis.⁶³ Unsurprisingly, any researcher acting against such recommendations has to expect a loss of reputation because their research has been branded as “unethical”. If the media becomes aware of such research, the negative effects may even intensify. Accepting funding from a source such as the US Department of Defense,⁶⁴ might then cause public criticism even if the money is used for research that has no military connection whatsoever, e.g. breast cancer research.⁶⁵

A third model is found at the University of Vienna where its ethics committee has not been established as a control body but as a kind of service institution that responds to the fact that researchers in many disciplines require a positive ethics vote for publication commitments and research funding. Consequently, members of the University of Vienna are entitled but not obliged to submit scientific projects to the ethics committee, however, if choosing to submit their project they have to justify why they are doing so.⁶⁶ The most commonly cited reason given by applicants is that they need the ethics committee for a publication or grant, meaning that the ethics committee is aware that if it classifies a research project as unethical the consequences will likely be that the project is denied funding or publication by another body. An ethics committee based on this model was also established at the BOKU.⁶⁷

[Ethikkommission_20081223.pdf](https://www.plus.ac.at/wp-content/uploads/2021/03/Satzung_konsolidiert_-_26022021.pdf); § 148(3) of the Bylaws of the University of Salzburg, available at https://www.plus.ac.at/wp-content/uploads/2021/03/Satzung_konsolidiert_-_26022021.pdf (both accessed 24 September 2021).

⁶³ § 13(7) of the Bylaws of the University of Natural Resources and Applied Life Sciences, Vienna, available at https://boku.ac.at/fileadmin/data/H01000/H10220/homepage/Satzung/Satzungskompilation_01.01.2021.pdf; § 1 Rules of Procedure of the Ethics Platform of the University of Natural Resources and Applied Life Sciences, https://boku.ac.at/fileadmin/data/H99000/H99100/Ethik/GO_EthikPlattform2106_2.pdf (both accessed 24 September 2021).

⁶⁴ See e.g. Strunz and Figl (2014); Figl (2014, 2016).

⁶⁵ See e.g. Figl (2014a).

⁶⁶ § 3(1) of the Bylaws of the Ethics Committee of the University of Vienna, available at <https://satzung.univie.ac.at/alle-weiteren-satzungsinhalte/ethikkommission/> (accessed 24 September 2021).

⁶⁷ §§ 13a–13g of the Bylaws of the University of Natural Resources and Applied Life Sciences, Vienna.

All three ethics control models steer science with different resources: the first model relies on classical coercion (prohibition of research), the second model on the loss of reputation, and the third model is effective because research classified as unethical loses funding or publication options. Each of these steering methods work; coercion's effectiveness is self-evident, and with regard to the other two, the reason for their effectiveness is readily grasped: researchers are dependent upon funding, publication options and reputational opportunities, meaning they will respond accordingly.

Interference and Justification

Another question is whether these ethical controls interfere with the freedom of research, and if so, whether this is justified. In the coercion model, the question of interference is easy to answer: If a university head prohibits research that is determined to be unethical, he or she clearly interferes with the freedom of research.

However, it is questionable whether or not interference has occurred in the second model used at the BOKU, in which delicate research is discussed by a commission in a relatively public forum and then general recommendations are formulated. The mere obligation to put ethically sensitive research up for discussion probably does not hinder research significantly enough to be classified as an interference with the freedom of research. This would be different only if the project could not be started before the ethics review is completed: the researcher would no longer be free to decide when to start a project; in addition, such delays can form significant disadvantages in scientific competition.⁶⁸ Whether the resultant ethical recommendations qualify as an interference ultimately depends on how one defines an interference. If one understands by this only measures which are unilateral, imperative, of a certain relevance and directly effective,⁶⁹ an interference in the case of mere recommendations would have to be denied simply because of the lack of imperative. If, on the other hand, interference is defined as any significant infringement into the freedom of research from the perspective of the researcher, the

⁶⁸ See p. 50 in Thurnherr (2014).

⁶⁹ See in general pp. 17 et seq. in Holoubek (2007); para. 84 in Kucsko-Stadlmayer (2014); paras. 292 et seq. in Kingreen and Poscher (2017).

social consequences for the researcher also come to play a role: an interference would not have occurred if it were only up to the conscience of the researcher to decide whether or not to take the recommendations of an ethics committee into account. Freedom of research does not protect researchers from being confronted with ethical objections to their projects. If, on the other hand, a researcher who does not follow the recommendations is stigmatised within the university or even throughout the broader *scientific community*, thus noticeably impairing his or her standing, this would qualify as interference.

It is difficult to assess whether or not interference has occurred in the third model, which does not oblige but entitles researchers to submit their projects to an ethics committee: This alone is certainly not interference, nor is it if private parties refuse to finance or publish projects classified as “unethical” following an ethics vote. This is because private parties are not obliged under the freedom of research, and similarly, even state funding agencies are not obliged to finance specific research projects, as mentioned above,⁷⁰ according to the currently prevailing academic opinion. So does an ethics vote itself interfere with the freedom of research? Again, this depends on what is meant by interference. If it is defined narrowly, the ethics vote does not constitute an interference because it neither directly causes a restriction on the freedom nor commands one.⁷¹ Indeed, there is not even a legal disadvantage connected to the vote as no law obliges private funding agencies or publishers to demand a positive ethics vote; such private parties do so only of their own free will. For this reason, researchers may be able to make use of publishers and funding agencies—even if less prestigious ones—that facilitate publication or funding without an ethics vote. If, however, such funding agencies and publishers can no longer be found by a specific discipline, a negative ethics vote is tantamount to a funding or publication ban: In my opinion, interference would have occurred in such cases, even if one uses the narrow definition. If, on the other hand, interference is defined as a foreseeable and major disruption to the use of the freedom for which the state is responsible it would have occurred earlier, namely, when the

⁷⁰ See 3.3.

⁷¹ See p. 150 in Eberhard (2011); p. 132 in Novak (2018).

project applicant needed a positive vote to have a particular funding or publication option. This is the case because a negative vote would mean that the researcher loses the accessible counterpart whose cooperation is required to make exercising his or her freedom possible.⁷²

Under certain conditions, and depending upon the applied definition of interference, a vote on ethics can thus interfere in the freedom of research in all three models. This leads to the question of whether such interference is justified: This would be answered in the affirmative as long as the ethics committee's ethical review only protects the rights of third parties, in particular the physical and mental integrity of the participants, their self-determination and the confidentiality of their personal data.⁷³ In my opinion, however, it is not justifiable if ethics committees are authorised to examine projects for their "ethical standards" without further specification as this is far too vague to justify an interference into the freedom of research.⁷⁴

Legal Protection

The complexities of the foregoing make the question of legal protection all the more pressing. The level of legal protection improves in situations that involve a clear case of interference: If a university head forbids a researcher to carry out a certain research project, the person concerned can seek recourse under labour law. Although, in the course of such a procedure, the viability of the relevant ethics vote on which the prohibition is based would also have to be reviewed by the court.

Things are different with the second model (BOKU's ethics platform): there are no legal recourses to combat mere recommendations. This is probably why Austrian legal scholars only exceptionally qualify non-imperative measures as interference: A generous, effect-oriented understanding of interference is of little use if the enforcement of freedom

⁷² See on the comparable problem of state warnings and recommendations paras. 97 et seq. in Tschannen (1999).

⁷³ This is the standard of review applied by the Ethics Committee of the University of Vienna and the Ethics Committee of the BOKU.

⁷⁴ See p. 143 in Pöschl (2010).

ultimately fails because of a lack of legal protection. There is legal protection against disparaging media coverage, which recommendations in the second model may fall under,⁷⁵ but it is not very effective because it usually comes too late and the stigma remains. Rapid public defence of the university would be more effective, however, in Austria there is no right to claim this and, hence, no legal recourse to ensure a university does so.

There is also no legal protection against negative ethics votes in the third model employed by the University of Vienna, which once again lacks imperatives: As simple sovereign administrative acts, they could only be combated in Austria if the legislator set up a separate legal process for this purpose.⁷⁶ This has not happened for ethics opinions delivered under the third model, nor with the recommendations given under the second model.

Overall, ethical controls serve to noticeably steer research in Austria, although if this qualifies as interference is, at times or even often, questionable. Nevertheless, even if interference has occurred, its justification would be doubtful if the standard of ethical control applied is vague or the legal protection against these controls is deficient.

4.2 Research Funding

Regulatory Steps

The second aspect of Austria's smart research governance is the current system of research funding.⁷⁷ This is designed to promote quality research, stimulate politically desirable research and curb, if not eliminate, undesirable research. Some funding providers in Austria are private but the majority of funding comes from state sources,⁷⁸ however, only the latter are bound by fundamental rights.⁷⁹

⁷⁵ See the overview on legal protection in the case of defamation of honour in (online) media provided on pp. 115 et seq. in Karner and Pehm (2018).

⁷⁶ Art. 130(2)(1) B-VG, "Verhaltensbeschwerde", in detail see e.g. Holoubek (2014); Müller (2018).

⁷⁷ In detail see p. 690 in Mitter (2019).

⁷⁸ See pp. 200 et seq. in Pöschl (2018).

⁷⁹ See in general pp. 130 et seq. and pp. 145 et seq. in Berka et al. (2019).

The state steering strategy is essentially based on a series of incremental steps. The initial step is that the state stops increasing, or even reduces, the overall budget made available to universities in line with their increases in students and academic staff.⁸⁰ At the same time, academics are encouraged to accept project-oriented research funding. This steering method is particularly effective in disciplines which require much more than a quiet workspace and access to a library for their projects, such as natural sciences which often require expensive equipment. Researchers from these funding intensive disciplines in particular must present their project proposals, whether they like it or not, to underfunded state funding agencies which decide how much of the funding such researchers will receive.

The second step is that the state and the EU offer calls for specific projects⁸¹ that researchers may not normally pursue of their own accord, but which they would pursue if research funds are made available to do so. This has resulted in many researchers answering these calls by steering their research towards the demands of the state and the EU.

The third step applied is the Matthew principle—“For to him who has, more will be given, and he will have an abundance”: The more third-party funding a university receives, the more budgetary support the university can expect from the state.⁸² This motivates universities to encourage their academic staff to acquire third-party funding or even to demand such funding in new employment contracts that are offered.

In the fourth and final step, those scientists securing third-party funds are provided with a reputational boost by being celebrated as successful researchers⁸³ and are more likely to advance in terms of professional

⁸⁰ See pp. 180 in Pöschl (2017).

⁸¹ Cf. for Austria the Austria Science Funds programmes: <https://www.ffg.at/themen>; for the EU see “Horizon Europe” with a separate pillar for predefined research programmes, available at https://ec.europa.eu/info/research-and-innovation/funding/funding-opportunities/funding-programmes-and-open-calls/horizon-europe_en (both accessed 24 September 2021).

⁸² Cf. § 12(4)(2) lit. b) and last sentence, as well as § 12a(2)(2) lit. b) UG, according to which up to 20% of the state research budget may be remarked using a “competitive indicator”, taking into account third-party funding from various sources (see § 5(1) University Funding Ordinance, Federal Law Gazette II 2018/202 as amended by Federal Law Gazette II 2019/216).

⁸³ See pp. 9 and 13 in Hirschi (2018).

progression⁸⁴ and are also better competitively placed for professorships.⁸⁵ In this way, the key need of researchers for reputation is cleverly diverted into a quest for money, ideally money that will serve to advance research favoured by the state.

Interference and Justification

Does the refusal of funding interfere with the freedom of research? As mentioned above,⁸⁶ this cannot be deemed so in principle as long as—as is currently the case in Austria—the freedom of research does not translate to a claim to the financing of concrete research projects. This restrictive position should only be reconsidered in disciplines that are so dependent on external funding that a funding refusal amounts to a factual research ban.

If the refusal of research funds remains below the interference threshold, as is usually the case, the only question left to ask is whether government agencies grant research funds in accordance with the principle of equality. This itself leads to questions surrounding the criteria according to which project-related research funds are awarded.⁸⁷ Unsurprisingly, the most important criterion is the scientific excellence of the researcher. It is measured on the basis of the submitted project proposal and previous publications, which makes sense. What is more problematic is that some (and important) funding agencies consider only two types of publications to be of substantive value: First, those publications with an *impact*

⁸⁴For example, the acquisition of third-party funding is routinely required in contracts with those having a tenure-track professorship, see for example p. 6 in “Tenure Track-Professuren an der Universität Wien: Verfahrensdokument” of 30 July 2019, available at: https://www.qs.univie.ac.at/fileadmin/user_upload/d_qualitaetsicherung/Dateidownloads/20201223_Tenure_Track_Verfahrensdokument_DE.pdf (accessed 24 September 2021). Similarly, within the process of appointing former university lecturers and associate professors as full university professorships pursuant to the simplified procedure (§ 99(4) UG), experience in the acquisition of third-party funding is routinely assessed, see p. 101 in Lang and Lichtmanegger (2017).

⁸⁵For example, the University of Graz explicitly mentions “third-party funding” as an evaluation criterion in appointment procedures, see https://static.uni-graz.at/fileadmin/Rechtsabteilung/Berufungsverfahren_Aenderung.pdf (accessed 24 September 2021).

⁸⁶See above 3.3.

⁸⁷For further details see pp. 698 et seq. in Mitter (2019).

factor that the agency considers to be sufficient, i.e. in indexed journals with high distribution and citation frequency.⁸⁸ Such journals tend to only accept exceptional research⁸⁹ so that those who carry out less attention-grabbing or small-scale research have less opportunity to be published there. The second set of publications with substantive value are those journals requiring articles to be *peer-reviewed*.⁹⁰ Experience shows that they tend to favour mainstream research⁹¹—meaning those who carry out unconventional research are consequently less likely to be published in such journals. Another important award criterion is the international visibility of the research—those who carry out research with only regional significance are thus less favoured. The social benefit of the research is also decisive when trying to secure funding, as the latter is often tied to the direct practical impacts of the research results⁹²—meaning again that those who carry out basic research are probably less successful here. Finally, a frequent award criterion is the ethical soundness of the project,⁹³ which introduces the consequence of the problems of some ethical controls mentioned previously, namely the vague standards and deficient legal protection. These two issues now extend into research funding and become even more palpable.

⁸⁸ See the self-descriptions of two of the largest scientific publishing groups: <https://clarivate.com/webofsciencelibrary/journal-evaluation-process-and-selection-criteria/>; <https://www.elsevier.com/solutions/scopus/how-scopus-works/content/content-policy-and-selection> (both accessed 24 September 2021).

⁸⁹ Illustrative (with historical references): Buranyi (2017).

⁹⁰ For details see Hirschi (2018).

⁹¹ See p. 386 at n. 101 in Geis (2010); pp. 21–22 in Council of Science and Humanities (2017); pp. 125–126 in Gamper (2018).

⁹² See § 1(2)(3) of the Research Organisation Act, Federal Law Gazette 1981/341 as amended by Federal Law Gazette I 2020/75, according to which one of the objectives of federal funding of science and research is to ensure that the results of science and research are quickly utilised (and disseminated).

⁹³ See p. 9 at n. 3 of the “Application Guidelines for Individual Projects” of the Austrian Science Funds, available at https://www.fwf.ac.at/fileadmin/files/Dokumente/Antragstellung/Einzelprojekte/p_antragsrichtlinien.pdf, with reference to European Commission, Ethics for researchers, 2013: https://ec.europa.eu/research/participants/data/ref/fp7/89888/ethics-for-researchers_en.pdf (both accessed 24 September 2021).

Do these award criteria serve justifiable objectives and are they suitable for achieving these objectives? In some respects clouds of doubt certainly arise, not about the objectives—it is certainly appropriate that public funding bodies only finance high-quality research—but doubts about the means by which this is done. Nevertheless, it is questionable whether research quality can be accurately determined by journals using *impact factor* or *peer review* because these journals tend to exclude low profile and unconventional research which can still be of high quality. The aim of prioritising socially useful research is certainly justifiable; however, it is questionable to measure societal benefit in terms of the immediate usability of research results as this would leave basic research, and thus the basis of applied research, underfunded. The goal of prioritising internationally visible research is not in itself objectionable, but only if resources are still made available for regionally significant research so as to prevent entire disciplines being starved of opportunity despite the quality of their findings.⁹⁴

Legal Protection

In view of these concerns, legal protection needs further discussion. Can the financing decision of a state funding agency be challenged on the grounds that it is based on unobjective award criteria or that it applies objective criteria but assesses them incorrectly? In theory, an award decision can be challenged by means of a civil lawsuit,⁹⁵ but this legal procedure is seemingly never used in Austria. There can be a number of reasons for this: Perhaps state funding agencies are perceived as too powerful to challenge; perhaps researchers bow to the *scientific community's* expectation that rejection should be met with a “sporting gesture” and a new funding application made instead of going to court. A final hurdle to overcome in pursuing this path may be the difficulty of proving that one’s own project is of higher quality than the projects actually financed by the

⁹⁴This is not least applicable to legal science: a commentary on the Vienna Building Regulations will generate little interest outside of Vienna and be of no interest whatsoever outside Austria; nevertheless, it can be of value that this law of this area is subject to research.

⁹⁵In greater detail see pp. 703–704 in Mitter (2019).

funding agency, especially given that a court is unlikely to agree to summarily examine any projects in question.⁹⁶

The bottom line is that while there is legal protection for researchers against interference stemming from funding issues, it is not particularly effective. This is not necessarily a terminal shortcoming, because (and as long as) rejected project applicants can obtain a new evaluation for their project and have the possibility of financial support from alternative funding sources. These alternative funding sources are, in comparison to the first funding choice, perhaps not as prestigious, but at least the project will be funded and therefore the outcome is comparable to a successful legal remedy but with the financial resource simply coming from a different origin. A project may be funded on its second or third submission, but if this does not happen, the project may indeed have the quality deficiencies which the declining funding agency communicates to the project applicant along with the rejection. This gives a researcher the options of either further refining the research proposal or—if the deficiencies are too fundamental—abandoning it completely.

This multi-stage application process replaces to a certain extent the lack of legal remedies, however, it does not entail that a court reviews the award criteria for objectivity. Thus, Austria's current research funding policy steers science gently, but largely unchecked, in the desired direction. In short, anyone wishing to obtain funding and the reputational

⁹⁶This is demonstrated by the experience made in Switzerland, where funding decisions are reviewed by the courts; however, the courts are noticeably reluctant to do so, see e.g. the ruling of the Federal Administrative Court of 4 March 2019, B-5179/2018, para. 3(2): “Das Bundesverwaltungsgericht auferlegt sich Zurückhaltung bei der Überprüfung von verweigerten Forschungsgeldern, soweit sich die Rügen auf die Beurteilung der wissenschaftlichen Qualität des Projekts und der wissenschaftlichen Qualifikation der Gesuchstellenden durch die Vorinstanz beziehen [...]. In Bezug auf die Beantwortung von Fragen, die besonderes fachtechnisches Wissen voraussetzen, weicht es daher nicht ohne Not von der Beurteilung durch die erstinstanzliche Fachbehörde—beziehungsweise durch deren Fachgremien—ab. Es schreitet hier erst ein, wenn die Behörde sich von sachfremden oder sonst wie offensichtlich unhaltbaren Erwägungen hat leiten lassen, so dass ihr Entscheid als nicht mehr vertretbar erscheint.” (Engl. Translation: The Federal Administrative Court self-imposes restraint when reviewing research funds that have been refused, insofar as the complaints relate to the assessment of the scientific quality of the project and the scientific qualification of the applicant by the lower court [...]. In answering questions that require special technical knowledge, it therefore deviates not without reason from the assessment of the first-instance authority—or its expert committees. It only intervenes if the authority has been guided by irrelevant or otherwise obviously untenable considerations, so that its decision no longer appears justifiable.)

boost that goes with it would be well advised to direct their research towards projects that are ethically sound, internationally visible, directly exploitable, fit into government programmes and are either high profile in some way or mainstream.

4.3 Evaluation of Scientific Achievements

Regulatory Steps

A third example of Austria's smart research governance is the practice of universities to record and evaluate scientific achievements.⁹⁷ This is also undertaken through a series of small steps: First, the legislator obliges the universities to define research priorities in a development strategy,⁹⁸ i.e. topics that are to be researched intensively at the university. Secondly, on the basis of this strategy, the university concludes a "performance agreement" with the responsible ministry using a public-law contract in which the university commits itself to certain services and for which the state will provide a budget.⁹⁹ Thirdly, the university then breaks down these contractual obligations into individual target agreements with its various organisational units.¹⁰⁰ In order to determine whether these units are fulfilling their obligations, the university records their performance in pre-defined databases¹⁰¹ that can include certain research outcomes and not others. Some databases then weight these outcomes and steer significantly by, for example, putting a monograph on the same level as a *peer-reviewed* article in a professional journal. These databases are ultimately used to evaluate both organisational units and individual researchers,¹⁰² and if the evaluation is positive, there is the prospect of access to increased

⁹⁷In detail see pp. 119 et seq. in Gamper (2018); pp. 258 et seq. in Maier (2018).

⁹⁸§ 13b in conjunction with § 13(2)(1) lit. b) UG; for examples see pp. 115 et seq. in Maier (2018).

⁹⁹§ 13 UG; see also para. 4 in Kucsko-Stadlmayer (2018).

¹⁰⁰§ 20(5) UG.

¹⁰¹For example, the University of Vienna operates the portal "u:cris" (<https://ucris.univie.ac.at/> [accessed 24 September]); on such databases in general see pp. 258 et seq. in Maier (2018).

¹⁰²§ 14(2) and (7) UG; for the evaluation of university organisational units, see § 4 of the Bylaws of the University of Vienna, Quality Assurance Section of the Statutes, available at: <https://satzung.univie.ac.at/alle-weiteren-satzungsinhalte/qualitaetssicherung/> (accessed 24 September 2021).

resources¹⁰³ and a gain in reputation. Conversely, a negative evaluation may initially result in a loss of reputation, but after two consecutive negative evaluations, it may even lead to the termination of the researcher's employment contract.¹⁰⁴

Interference and Justification

Where in this long chain of legal acts is interference into the freedom of research to be found? Is it as early as in the recording of achievements, later in the performance evaluation based on these recorded achievements, or right towards the end when the consequences that are linked to this process come to bear fruit?

The simple recording of research achievements is not interference if one uses a narrow definition of what interference is because it is not coercive and the causal chain between recording and the consequences of the evaluation is too long and too uncertain. Claiming that interference has occurred in the context of the consequences is plausible in the case of employment termination because it is unilaterally done by the university. However, the same cannot be said if a negative evaluation results in no increase in resources or no gain in reputation as the individual has no claim to be allotted additional resources or reputational increase. This suggests that when it comes to the recording and evaluation of scientific achievements by universities, interference is most likely to be located mid-process, i.e. at the evaluation stage,¹⁰⁵ which is both obligatory and forms the basis for further measures to be taken by the university's head, who is a state agent.

If interference has occurred, one must also ask what standards were used to evaluate scientific achievements and whether these standards corresponded to those applicable to ensuring the freedom of research. Here,

¹⁰³ University bodies shall base their decisions on evaluation results (§ 14(8) UG); on the forms of financial rewards for positive results see pp. 265 et seq. in Maier (2018).

¹⁰⁴ For full university professors see § 25(5) and (6) Collective Agreement for University Employees 2021, version with 12th supplement; see pp. 119–120 in Gamper (2018).

¹⁰⁵ This is the case with academia in Switzerland, see for example para. 12 in Biaggini (2017) with further references.

old acquaintances return when the focus falls again on the quality of research, measured by impact factor, peer review and third-party funding, the international visibility of the research, its immediate usability and, finally, the research's contribution to the priorities of the university. This reinforces what was mentioned previously, namely that those who do not conduct high profile research, those who conduct unconventional research, those who do not raise third-party funds, those who conduct regionally applicable research, those who are more at home in basic research and those who contribute little to the university's research priorities will probably come off worse.

This intensive interference with the autonomy of research is incompatible with two of the three justifications that legal scholars have developed to protect research.¹⁰⁶ Although interference would be justified under the third standard, this standard is unable to prevent much more far-reaching interference anyway. The real weakness of this recording and evaluating policy is more likely to be exposed by those who ask with the Constitutional Court: Is it still possible to carry out research to an *appropriate* extent that is not subject to any influence on content or that is only subject to intrinsic incentives?

Legal Protection

There is, of course, effective legal protection against unfair dismissal in Austria,¹⁰⁷ however, it will probably not be necessary to resort to using it as a result of interference into the freedom of research. At least for the time being, it seems unlikely that a university researcher will be dismissed because he or she is not conducting research in the preferred areas, if he or she is researching at all. As the situation currently stands, it is more likely that conducting research outside of preferred areas “only” affects the distribution of funds and reputation—two measures that cannot be remedied by legal action.

¹⁰⁶ See above 3.5.

¹⁰⁷ For an overview see paras. 449 et seq. in Brodil and Risak (2019).

5 Conclusion

If one reflects back on the three mechanisms discussed above—ethical assessment, research funding and performance evaluation—it becomes clear that the Austrian state is noticeably steering research. On the one hand, ethical assessment that can result in negative recommendations is intended to prevent certain research, in part however, according to relatively unclear standards. On the other hand, financing and evaluation measures are used to try to steer research in certain directions by means of positive recommendations.

It is difficult to judge whether these mechanisms interfere with the freedom of research because traditional requirements of interference are unilateral, imperative, of a certain relevance and directly effective—but these requirements are neither always clear nor always present in the Austrian context: Many steering instruments are not unilateral, for example, voluntarily requested ethics votes, performance and target agreements, employment contracts or research funding. Many of these mechanisms are not imperative, as can be seen with the determination of ethical unjustifiability, the recommendation rather than a command to follow ethical guidelines and the recording of scientific achievements which creates pressure but leaves options. In many of these mechanisms, the processes take place in several steps, each of which is low-impact by itself and may only reach the intensity required to qualify as interference when they are combined. This then leaves one asking when does interference actually occur? With the first, sometimes almost imperceptible act, or only at the end of a process when all of the pieces have been brought into play? It is precisely because these guiding mechanisms are broken down into several incremental steps that the chain of causality between specification and reaction can ultimately be relatively long, indeed, in some cases it is even open whether causality exists at all. For example, perhaps the funding of a project classified as unethical would have failed anyway because it lacks scientific quality? What is clear is that the mechanisms described are highly effective when they work in concert. This has, in turn, allowed the state for a considerable period of time to refrain from the use of coercion, and instead exert control with money, publication

opportunities and reputational opportunities, i.e. with the very lifeblood on which researchers depend.

If one were to qualify these measures as interference in the freedom of research because of their overall effect, one would have to ask whether they are justified. Two out of three standards of justification developed by legal scholars especially for the freedom of research do not allow for the effects of such mechanisms. From this one can either conclude that the measures are excessive or that the two standards of justification are too strict. With regard to the third line of reasoning on justification developed by legal scholars, this seems too permissive as it does not sufficiently protect the autonomy of research. A useful approach for a new standard could be provided by a statement made by the Constitutional Court on Art. 81c B-VG in which the bench noted that the state must ensure that autonomous research, i.e. research that is uninfluenced in its content and is purely intrinsically motivated, is financed at public universities to an “appropriate extent”. Although this would have to be specified in more detail to have meaningful real-world impacts.

As previously noted, it may still take some time before the Constitutional Court even has the opportunity to apply this formula *mutatis mutandis* to the freedom of research guaranteed in Art. 17 StGG. This is by and large due to the fact that according to conventional understanding many of the existent steering mechanisms either do not interfere with the freedom of research or at least not to the extent that interference can be legally remedied. As a result they cannot be efficiently legally remedied and will therefore not find their way to the Constitutional Court. Perhaps this is also the reason why the Constitutional Court made the above-mentioned statement on Art. 81c B-VG only by way of *obiter dictum*. In any case, from the perspective of legal doctrine, the current research regulatory regime gives reason to reconsider the conventional understanding of interference and the standards of justification that allow it. From a legal policy point of view, the current situation makes it evident how deficient legal protection is when it is based—as is the case in Austria—on imperative legal acts rather than on the claim that rights have been infringed.

References

- Albrecht, Harro. 2010. Schweine, kalt. *Die Zeit*, January 21.
- Ausgewählte Entscheidungen des Verfassungsgerichtshofes/Erkenntnisse und Beschlüsse des Verfassungsgerichtshofes (VfSlg). 1920ff. So far 85 Volumes. Wien: Verlag Österreich.
- Berka, Walter. 2002. *Autonomie im Bildungswesen. Zur Topographie eines bildungspolitischen Schlüsselbegriffs* (Studien zu Politik und Verwaltung 76). Wien–Köln–Graz: Böhlau.
- . 2008. Die Quadratur des Kreises: Universitätsautonomie und Wissenschaftsfreiheit. *Zeitschrift für Hochschulrecht, Hochschulmanagement und Hochschulpolitik* 7 (2): 37–48.
- Berka, Walter, Christina Binder, and Benjamin Kneih. 2019. *Die Grundrechte. Grund- und Menschenrechte in Österreich*. Zweite Auflage ed. Wien: Verlag Österreich.
- Biaggini, Giovanni. 2017. *Bundesverfassung der Schweizerischen Eidgenossenschaft. Kommentar*. Zweite Auflage ed. Zürich: Orell Füssli.
- Brodil, Wolfgang, and Martin Risak. 2019. *Arbeitsrecht in Grundzügen*. Zehnte Auflage ed. Wien: LexisNexis.
- Budischowsky, Jens. 2014. Das Staatsziel der Bedeutung der Forschung. *Zeitschrift für Hochschulrecht, Hochschulmanagement und Hochschulpolitik* 13 (3): 68–74.
- Buranyi, Stephen. 2017. Is the staggeringly profitable business of scientific publishing bad for science? *The Guardian*, June 27. Accessed 24 September 2021. <https://www.theguardian.com/science/2017/jun/27/profitable-business-scientific-publishing-bad-for-science>.
- Council of Science and Humanities. 2017. *Begutachtungen im Wissenschaftssystem. Positionspapier*. Accessed 24 September 2021. <https://www.wissenschaftsrat.de/download/archiv/6680-17.pdf>.
- Eberhard, Harald. 2011. Ethikkommissionen—Stand und Perspektiven. *Zeitschrift für Hochschulrecht, Hochschulmanagement und Hochschulpolitik* 10 (5): 147–155.
- Ehni, Hans-Jörg, and Urban Wiesing, eds. 2012. *Die Deklaration von Helsinki. Revisionen und Kontroversen* (Schriftenreihe der Hans-Neuffer-Stiftung 24). Köln: Deutscher Ärzte-Verlag.
- Eisenberger, Iris. 2016. *Innovation im Recht* (Forschungen aus Staat und Recht 176). Wien: Verlag Österreich.

- Erkenntnisse und Beschlüsse des Verwaltungsgerichtshofes (VwSlg). Administrativrechtlicher Teil. 1946ff. So far 73 Volumes. Wien: Verlag Österreich.
- Figl, Bettina. 2014. Drittmittel im Visier. *Wiener Zeitung*, December 19. Accessed 24 September 2021. <https://www.wienerzeitung.at/archiv/pentagongelder/723863-Drittmittel-im-Visier.html>.
- . 2014a. Das ist absolut nichts Unanständiges. *Wiener Zeitung*, July 18. Accessed 24 September 2021. <https://www.wienerzeitung.at/nachrichten/politik/oesterreich/645928-Das-ist-absolut-nichts-Unanstaendiges.html>.
- . 2016. Ethik als Prozess. *Wiener Zeitung*, January 11. Accessed 24 September 2021. https://www.wienerzeitung.at/nachrichten/politik/oesterreich/794948-Ethik-als-Prozess.html?em_no_split=1.
- Finke, Peter. 2014. *Citizen Science. Das unterschätzte Wissen der Laien*. München: Oekom.
- Gamper, Anna. 2018. Wissenschaftsfreiheit: Entwicklung und Herausforderungen in Zeiten des Postfaktizismus. *Zeitschrift für Hochschulrecht, Hochschulmanagement und Hochschulpolitik* 17 (4): 113–126.
- Geis, Max-Emanuel. 2010. Universitäten im Wettbewerb. In *Gemeinwohl durch Wettbewerb? Berichte und Diskussionen auf der Tagung der Vereinigung der Deutschen Staatsrechtslehrer in Graz vom 7. bis 10. Oktober 2009* (Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 69), ed. Christoph Engel et al., 364–406. Berlin and New York: De Gruyter.
- Grabenwarter, Christoph, and Katharina Pabel. 2021. *Europäische Menschenrechtskonvention. Ein Studienbuch*, Siebte Auflage. München, Basel, and Wien: C.H. Beck, Helbing Lichtenhahn, Manz.
- Hammer, Stefan. 2016. Art 17 StGG. In *Österreichisches Bundesverfassungsrecht*, ed. Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin, and Ulrich E. Zellenberg, Loseblatt-Ausgabe, 12. Lieferung. Wien: Verlag Österreich.
- Hirschi, Caspar. 2018. Wie die Peer Review die Wissenschaft diszipliniert. *Merkur* 72 (832): 5–19.
- Holoubek, Michael. 1997. *Grundrechtliche Gewährleistungspflichten. Ein Beitrag zu einer allgemeinen Grundrechtsdogmatik*. Wien and New York: Springer.
- . 2007. Der Grundrechtseingriff—Überlegungen zu einer grundrechtsdogmatischen Figur im Wandel. In *Grundfragen der Grundrechtsdogmatik* (C.F. Müller Wissenschaft), ed. Detlef Merten, and Hans-Jürgen Papier, 17–34. Heidelberg: C.F. Müller.

- . 2014. Die Verhaltensbeschwerde—Das Verfahren über Beschwerden wegen Rechtswidrigkeit eines Verhaltens einer Verwaltungsbehörde. In *Das Verfahren vor dem Bundesverwaltungsgericht und dem Bundesfinanzgericht*, ed. Michael Holoubek and Michael Lang, 113–136. Wien: Linde.
- Karner, Ernst, and Julian Pehm. 2018. Zivilrechtliche Verantwortlichkeit von (Online-)Medien: Zwischen Medienfreiheit und Persönlichkeitsschutz. In *Tatsachenmitteilungen und Werturteile: Freiheit und Verantwortung*, ed. Helmut Koziol, 105–132. Wien: Jan Sramek.
- Kingreen, Thorsten, and Ralf Poscher. 2017. *Grundrechte. Staatsrecht II*. Heidelberg: C.F. Müller.
- Kneihs, Benjamin. 2019. Ethikkommissionen im Recht. In *Festschrift Christian Kopetzki zum 65. Geburtstag*, ed. Erwin Bernat, Christoph Grabenwarter, Benjamin Kneihs, Magdalena Pöschl, Karl Stöger, Ewald Wiederin, and Johannes Zahrl, 253–279. Wien: Manz.
- Kopetzki, Christian. 2011. Muss Forschung ‘ethisch vertretbar’ sein? In *Vom praktischen Wert der Methode. Festschrift Heinz Mayer zum 65. Geburtstag*, ed. Clemens Jabloner, Gabriele Kucsko-Stadlmayer, Gerhard Muzak, Bettina Perthold-Stoitzner, and Karl Stöger, 253–274. Wien: Manz.
- Kröll, Thomas. 2014. Artikel 17 Abs 1, 5 StGG. In *Rill-Schäffer-Kommentar Bundesverfassungsrecht*, ed. Benjamin Kneihs and Georg Lienbacher, Loseblatt-Ausgabe, 13. Lieferung. Wien: Verlag Österreich.
- Kucsko-Stadlmayer, Gabriele. 2011. Art 81c B-VG. In *Österreichisches Bundesverfassungsrecht*, ed. Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin, and Ulrich E. Zellenberg, Loseblatt-Ausgabe, 10. Lieferung. Wien: Verlag Österreich.
- . 2014. Die allgemeinen Strukturen der Grundrechte. In *Handbuch der Grundrechte in Deutschland und Europa. Band VII/1: Grundrechte in Österreich*, Zweite Auflage, ed. Detlef Merten, Hans-Jürgen Papier, and Gabriele Kucsko-Stadlmayer, 77–138. Heidelberg et al.: C.F. Müller, Manz.
- . 2018. § 13 UG. Leistungsvereinbarung. In *Kommentar zum Universitätsgesetz*, rdb.at. Version 3.01, ed. Bettina Perthold-Stoitzner. Accessed 24 September 2021. https://rdb.manz.at/document/1145_2_ug_p0013?execution=e3s1&highlight=13.
- Lang, Michael, and Annette Lichtmannegger. 2017. Das vereinfachte Berufungsverfahren nach § 99 Abs 4 UG. *Zeitschrift für Hochschulrecht, Hochschulmanagement und Hochschulpolitik* 16 (3): 95–107.
- Maier, Elisabeth. 2018. *Bewertung juristischer Forschung, rechtliche Grundlagen und Praxis*. Diss., University of Graz.

- Mitter, Herwig. 2019. Forschungsregulierung durch Förderung. *Juristische Blätter* 141 (11): 690–705.
- Müller, Thomas. 2018. Rechtsschutz gegen schlichte Hoheitsakte—zugleich eine Besprechung von VfGH 15.10.2016, E 560/2016. *Journal für Rechtspolitik* 26 (1): 76–83.
- Novak, Manfred. 2018. Ethikkommissionen und Wissenschaftsfreiheit—zwischen Schutzfunktion und Kompetenzgrenzen. *Zeitschrift für Hochschulrecht, Hochschulmanagement und Hochschulpolitik* 17 (4): 127–138.
- Novak, Benjamin. 2019. Pushed from Hungary, University Created by Soros Shifts to Vienna. *The New York Times*, November 15. Accessed 24 September 2021. <https://www.nytimes.com/2019/11/15/world/europe/university-soros-vienna-orban.html>.
- Pöschl, Magdalena. 2010. Von der Forschungsethik zum Forschungsrecht: Wie viel Regulierung verträgt die Forschungsfreiheit? In *Ethik und Recht in der Humanforschung* (Schriftenreihe Ethik und Recht in der Medizin 5), ed. Ulrich H. J. Körtner, Christian Kopetzki, and Christiane Druml, 90–135. Wien and New York: Springer.
- . 2013. Wissenschaftliche Integrität. In *Gedenkschrift Robert Walter*, ed. Clemens Jabloner, Dieter Kolonovits, Gabriele Kucsko-Stadlmayer, Hans René Laurer, Heinz Mayer, and Rudolf Thienel, 609–642. Wien: Manz.
- . 2017. Normative Grenzen der Wissenschaftsfreiheit. In *Grenzen in den Wissenschaften* (Wissenschaft, Bildung, Politik 20), ed. Reinhard Neck, Heinrich Schmidinger, and Christiane Spiel, 159–200. Wien, Köln, and Weimar: Böhlau.
- . 2018. Private Rechtsetzung in der Wissenschaft. In *Privatisierung der Rechtssetzung*, ed. WiR—Studiengesellschaft für Wirtschaft und Recht, 195–227. Wien: Linde.
- Rebhahn, Robert. 1982. *Weisungen im Universitätsbereich. Eine verwaltungsrechtliche Untersuchung* (Beiträge zum Universitätsrecht 1). Wien: Manz.
- Schmidt, Ulf, and Andreas Frewer, eds. 2007. *History and Theory of Human Experimentation. The Declaration of Helsinki and Modern Medical Ethics* (Geschichte und Philosophie der Medizin 2). Stuttgart: Franz Steiner.
- Stelzer, Manfred. 1991. *Das Wesensgehaltsargument und der Grundsatz der Verhältnismäßigkeit* (Forschungen aus Staat und Recht 94). Wien and New York: Springer.
- Strunz, Benedikt, and Bettina Figl. 2014. US-Militär lässt an Österreichs Universitäten forschen. *Wiener Zeitung*, July 8. Accessed 24 September 2021. https://wienerzeitung.at/nachrichten/politik/oesterreich/643644-US-Militaer-laesst-an-Oesterreichs-Universitaeten-forschen.html?em_no_split=1.

- Thurnherr, Daniela. 2014. *Biosecurity und Publikationsfreiheit. Die Veröffentlichung heikler Forschungsdaten im Spannungsfeld von Freiheit und Sicherheit—eine grundrechtliche Analyse*. Bern: Bundesamt für Bauten und Logistik.
- Trute, Hans-Heinrich. 1994. *Die Forschung zwischen grundrechtlicher Freiheit und staatlicher Institutionalisierung. Das Wissenschaftsrecht als Recht kooperativer Verwaltungsvorgänge* (Jus publicum 10). Tübingen: Mohr Siebeck.
- Tschannen, Pierre. 1999. Amtliche Warnungen und Empfehlungen. *Zeitschrift für schweizerisches Recht* 140 (2): 355–455.
- Walker, Shaun. 2019. Classes move to Vienna as Hungary makes rare decision to oust university. *The Guardian*, November 16. Accessed 24 September 2021. <https://www.theguardian.com/world/2019/nov/16/ceu-classes-move-to-vienna-orban-hungary-ousts-university>.



Freedom of Science in Germany: Constitutional Guarantee and Current Hazard Situation

Christian Hillgruber

1 Introduction

In Germany, freedom of science has traditionally been guaranteed by constitutional law since the middle of the nineteenth century. In Article 5(3)(1), the German Basic Law declares not only art, but also science, research, and teaching “free”.

“So that science may freely align itself with its characteristic quest for truth”, science—to a certain extent as a subsystem in the Luhmannian sense—is to be protected in its autonomy: According to the BVerfG, “Science is an area of autonomous responsibility that is fundamentally free of heteronomy.” This means more than the evident insight that scientific knowledge cannot be effectively ordered or prohibited by law. Rather, all genuinely scientific decisions, namely those concerning the aims and methods of scientific research, should be left to science itself by constitution.

C. Hillgruber (✉)

University of Bonn, Bonn, Germany

e-mail: sekretariat.hillgruber@jura.uni-bonn.de

This guarantee of autonomy “is based on the idea that a science that is free of ideas of social utility and political expediency best serves the state and society” (BVerfGE 47, 327, 370). Guided science is bad science. Free striving for knowledge, which is subject only to the law of logic, best serves the common good. Ensuring freedom of science is therefore in the public interest, and vice versa: endangering or even violating freedom of science is harmful to the public interest. Everyone who is scientifically active therefore enjoys protection from state interference in the process of obtaining and communicating scientific knowledge (BVerfGE 90, 1, 12). This protects the specific behaviours involved in finding, interpreting and passing on knowledge.

Everything that can be regarded as a serious attempt to generate new knowledge in terms of content and form falls under the category of science (Ruffert and Schulte 2006).¹ Article 5(3)(1) of the Basic Law does not protect a particular view of science or a particular theory of science. This would be incompatible with the incompleteness in principle that science possesses despite its constitutive reference to truth. The protection of this fundamental right depends neither on the correctness of the methods and results nor on the validity of the argumentation and evidence or the completeness of the points of view and evidence on which a scientific work is based.

Science can be freely practiced, presented, taught, further developed as well as discussed and intellectually challenged. Scientific truth is not subject to any state evaluation (cf. BVerfGE 5, 85, 145—Kommunistische Partei Deutschlands—regarding the theory of Marxism-Leninism).

Good and bad science, truth or falsehood of results can only be judged scientifically; views that have prevailed in the scientific discussion remain subject to revision and change (BVerfGE 90, 1, 12). Freedom of science therefore also protects minority opinions; unorthodox and intuitive behaviour enjoys the protection of fundamental rights. Scientific progress would not be possible otherwise. It must always be possible to question what the prevailing view of science has become, even if new research approaches and results subsequently prove to be erroneous (BVerfGE 90,

¹ If the BVerfG instead speaks of a serious attempt “to establish truth”, it does not give an account of what scientific “truth” is or can even be.

1, 12). On the other hand, the state does not have to establish real or supposed scientific truths authoritatively, i.e. to proclaim them as “valid” (Gärditz 2009); it cannot commit itself to any scientific doctrine (Krüger 1966).²

What may be regarded as scientific, however, cannot be solely the final self-assessment of the individual, but must be objectively comprehensible. “A work cannot, however, be denied scholarliness simply because it has one-sidedness and gaps or because it does not sufficiently take into account opposing views. All this may prove a work to be flawed in the sense of science’s self-definition of scientific standards. It is not removed from the realm of science until it systematically fails to meet the claim of scientificity—not only individually or according to the definition of certain schools, but systematically. This is particularly the case when it is not directed towards truth, but merely gives the appearance of scientific extraction or demonstrability to preconceived opinions or results. This may be indicated by the systematic exclusion of facts, sources, views, and results that question the author’s view. On the other hand, it is not sufficient for a work to be denied scientificity in inner-scientific controversies between different content-related or methodological directions (BVerfGE 90, 1, 13).

Article 5(3)(1) of the Basic Law not only guarantees the freedom from state commandments and prohibitions but also obliges the state, as an objective decision of principle, to protect and promote science and grants those active in science participation in public resources and in the organisation of the scientific enterprise (BVerfGE 111, 333, 354). Thus, the individual holder of fundamental rights derives from the value decision of Article 5(3) of the Basic Law a right to such measures, also of an organisational nature, which are indispensable for the protection of his freedom secured by fundamental rights because they enable him first and foremost to free scientific activity (BVerfGE 35, 79, 115 et seq.).

²Who defined the budget economy of the Federal Government and the Länder on the basis of the objective of macroeconomic equilibrium, goes back to the idea of the so-called global control Keynesian coinage, but the Keynesian concept of a state budget and financial policy in the service of an anti-cyclical control of the economic cycle was not itself elevated to constitutional law (cf. Article 109(2) at pp. 45, 69 et seq. in Hillgruber 2005).

Of course, freedom of science, like any legally guaranteed freedom, is not unlimited. According to the case law of the BVerfG, freedom of science, like other unconditionally guaranteed fundamental rights, can (only) be restricted on the basis of conflicting constitutional law, whereby a legal basis is required for this (BVerfGE 47, 327, 369 et seq.). However, there are already factual limits that result from the proper assessment of the direction of protection and the guaranteed content of this guarantee of freedom: It wants to protect the intellectual development and the communicative effect in the field of science against state dirigisme, but not exempt it from observing the rights of third parties. Article 5(3)(1) of the Basic Law guarantees a process of knowledge that is free from state influence; but it does not entitle the scientist to the absolute disposition of foreign legal interests, even if he should need them as “research material”. “Those who work scientifically are not subject to any official definition of truth, but are not entitled to access the property, bodies or personal rights of others [...]” p. 558 in Hase 2007).

The scientist enjoys “all the freedom of research, but not of causing adverse consequences for third parties” (see p. 65 in Hoffmann-Riem 2004). The legislator considered the establishment of legal barriers to be unnecessary, not because he overestimated the freedom of research, but because he already limited the scope of protection of the freedom guarantee to the researcher’s own legal sphere and therefore no potential for social conflict to be mitigated by the legislator could arise from the exercise of the freedom of research understood so limited.

2 Hazardous Situations

With regard to hazardous situations, a distinction must be made between external and internal dangers to the freedom of knowledge, i.e. between dangers which threaten free science, certainly from outside, from the state’s side or from outside third parties, and those which originate from the scientific world itself. The state is a potential threat, but also an indispensable guarantor of freedom if the threat does not emanate from itself but from private third parties (Kirchhof 2004). But even if the freedom of science is endangered by the behaviour of the scientists themselves, the

state may be challenged to intervene to protect it; this is not a question of protecting the scientists from themselves—which is highly questionable—but of objectively protecting the freedom of science as a public good in the sense described above.

2.1 Threats by the State

University Organisation

A potential permanent threat to the freedom of science is the state organisation of science. On the one hand, it is an indispensable structural framework for the development of scientific freedom, but at the same time, it tends to restrict it and shorten it by involving the individual scientist in the organisation. This insight led the BVerfG, in its groundbreaking 1973 ruling on group universities, to derive requirements for the organisation of higher education institutions from scientific freedom and thus helped the organisational and procedural law dimension of the protection of fundamental rights to a breakthrough (BVerfGE 35, 79). The criterion for a constitutional higher education organisation could only be whether it could be used to conduct free science in a possible and safe manner. This does not mean a guarantee of academic self-administration in its traditional form, but it does mean a prohibition of “structural endangerment”: In the constitutional examination of the compatibility of organisational norms with Article 5(3)(1) of the Basic Law, it must be taken into account whether these norms structurally endanger free scientific activity and the fulfilment of functions (BVerfGE 35, 79, 117, 120 et seq.)

This correct standard needs to be concretised on a case-by-case basis and, if necessary, further developed in order to adequately safeguard freedom of science institutionally against possible new organisational legal threats from far-reaching structural changes. Although the BVerfG grants the legislature a fundamentally comprehensive authority to shape the way in which the holders of fundamental rights participate in decisions relevant to science, it places them under the proviso that they “sufficiently

guarantee the structures for free teaching and research” (BVerfGE 111, 333, 355 et seq.).

Particularly in the area of freedom of science, the traditional hierarchical control instruments can serve the protection of fundamental rights better than the creation of new control and steering bodies without clear interrelations of responsibilities. If the traditional dependence on the democratically legitimised ministerial university administration is replaced by the dependence on diffuse “social forces”, as is the case with many university councils, where no attributable responsibility can be discerned without their inadequate democratic legitimacy being compensated for by special scientific expertise in the manner of functional self-administration, then the danger potential for science to be kept free of superficial social considerations of utility is not diminished but structurally increased.³

In its most recent case law, the BVerfG again emphasises the limits of the legislator’s creative freedom in matters of science organisation: “The participation of those involved in science, which is necessary to ensure the scientific adequacy of decisions taken in the organisation of higher education institutions, does not have to take place in every case in the sense of conventional self-administration. However, the safeguarding of freedom of science through organisational regulations requires that the holders of freedom of science, through their representatives in university bodies, are able to ward off threats to freedom of science and to contribute their specialist competence to the realisation of freedom of science to the university. The legislature must therefore guarantee a sufficient level of participation by the holders of fundamental rights” (BVerfGE 127, 87, 117, para 94/1).

The overall organisational structure to be appreciated in its interrelationships could be unconstitutional as a whole if, at the central or faculty level, “substantial personnel and factual decision-making powers in the

³ The BVerfG saw this differently in BVerfGE 111, 333, 356: “Institutions outside higher education institutions could contribute to on the one hand limiting state control to ensure freedom of science and on the other hand countering the danger of the consolidation of status quo interests through pure self-administration”. Here one encounters the soupçon against the profession, the supposedly structure-conservative professors who are only concerned with defending their “privileges” and otherwise unwilling to reform.

area relevant to science are assigned to the management body, but the body staffed with university teachers hardly has any competences in relation to this and also no decisive participation and control rights remain. The legislator is not prevented from granting the governing body extensive powers, even in areas with scientific relevance [...]. However, the more the legislator provides the governing body with competences, the more it must in return develop the direct or indirect participation, influence, information, and control rights of the collegial bodies in order to avoid dangers to the freedom of teaching and research” (BVerfGE 127, 87 117 et seq.). This means that the BVerfG has now also come to the conclusion that if freedom of science is not to be undermined, it is not possible to simply “rule through” the university functionally.⁴

Promotion of Science

The way in which the state promotes (certain) sciences (as excellent) and does not promote others can also develop into a threat to the freedom of science, despite the fact that withholding funding does not encroach on fundamental rights. This assumption is only an apparent paradox. In any case, those branches of science that can only achieve innovations through elaborate experiments and are therefore dependent on considerable financial support can be steered with the “golden reins”.

The Excellence Initiative of the Federal Government and the States to promote science and research at German universities was controversial from the outset in terms of science and education policy. The funding programme, which is based on an administrative agreement and comprises three funding lines (graduate schools, clusters of excellence, and concepts for the future) and has so far achieved a total funding volume of more than 4.6 billion euros in its two consecutive programme phases, is intended to “sustainably strengthen Germany as a science location,

⁴ However, this decision does not lack the obligatory, professor-critical reference to the fact that “allocation decisions made by collegial bodies, which in turn are predominantly staffed by university teachers affected by these decisions, can also endanger free science due to the lack of a clear personal allocation of responsibility and a lack of distance from the subject matter of the decision” (BVerfGE 127, 87, 124 et seq.).

improve its international competitiveness and make top-level research visible at German universities” (Federal Ministry of Education and Research).

Whether these objectives have been achieved needs to be verified. The criticism is manifold. In some cases, it is merely based on details of implementation, such as non-transparent and unweighted promotion and evaluation criteria and a lack of planning security. In part, however, it is also of a fundamental nature and criticises in particular the fact that the Excellence Initiative continues to drive forward the economisation process at universities and divides the German higher education landscape into elite and non-elite universities.

In any case, the relevance and significance of the Excellence Initiative for scientific freedom as well as its potential steering effect cannot be doubted given the volume of this funding programme, which leads to a considerable increase in third-party funding, which is becoming increasingly important for the financing of higher education institutions. What does not appear worthy of funding according to the funding and evaluation criteria is hardly likely to be on the research agenda of a scientist who cannot afford to forego participation in this financial funding from the outset. The distribution of the very considerable funds thus affects the scientific freedom of all scientists working at the universities who are dependent on public science and its resources. Non-funded scientists and groups of scientists can thus be considerably impaired in their research work. The basic decision on such a funding programme must therefore be made by parliament because of its considerable practical significance for the development of scientific freedom. In addition to defining the funding purpose, which may already lie in the corresponding budget heading, this presupposes the regulation of the facts to which the funding measures are linked. In addition, a statutory preliminary decision on the most important funding criteria is indispensable. If the elaboration of such criteria is to be left to a process of self-management within the scientific community, the procedure must in any case be legally pre-drawn.

Finally, it must be ruled out that non-scientific criteria may have an influence on the allocation of resources. The state has more freedom to make decisions if it voluntarily supports science than if it interferes with the freedom of science. However, science funding must not be based on

evaluation patterns that are inadequate for science either.⁵ It is therefore a matter of concern if “concepts for equality between men and women in science” are set as a quality indicator and gender or a gender quota is thus raised as a starting point for determining the quality of scientific research performance.⁶

It is also problematic if interdisciplinarity is consistently elevated to the status of a prerequisite for excellent research that is eligible for funding; this is because access is thereby taken to the choice of method, which, like the selection of the research object, falls under the individual freedom of science. Declaring interdisciplinarity to be an indispensable quality feature is forbidden even in view of the doubts about the meaningfulness and yield of some marginal research activities that are generously supported because of their supposed interdisciplinarity. The demand for “strengthening interdisciplinarity” has long since become a fetish of science policy.

Instead of cultivating this mantra, it would be necessary first of all to reflect thoroughly on the possibilities and limitations as well as the conditions for the success of real interdisciplinarity (see p. 913 in Hilgendorf 2010) to make appropriate proposals, and at the same time to criticise the current practice of many allegedly interdisciplinary research projects and their generous support by the scientific institutions, which hardly meets the high demands.⁷

⁵Of course, Article 5(3)(1) of the Basic Law does not prohibit the assessment of scientific quality or the linking of such an assessment to consequences in the distribution of resources (BVerfGE 111, 333, 359; 130, 263, 300). However, adequate scientific evaluation criteria are necessary, and in order to safeguard them and “to avoid scientifically inadequate control potentials”, the representatives of science must be adequately involved in the process of establishing such criteria (BVerfGE 111, 333, 359).

⁶The resulting impairment of academic freedom may, however, still be justified in principle by the overall social objective of actually enforcing gender equality (Article 3(2)(2) of the Basic Law), especially since the development of the concept of equality is left to the respective higher education institution itself. Nevertheless, it should not be overlooked that this is already a break-in into the knowledge system and its rationality and its use for non-scientific goals.

⁷It must also remain possible, for reasons of the choice of methods protected by scientific freedom, to insist on strict discipline—such as “pure jurisprudence”—without already falling a limine out of the circle of (jurisprudential) research worthy of promotion.

2.2 Risks Posed by Sciences Themselves

To protect the freedom of science, it is not enough to leave all science-relevant decisions to intra-university processes or more generally to science and its alleged representatives such as the *Deutsche Forschungsgemeinschaft*—a registered association that functions as a self-governing institution for the promotion of science and research in the Federal Republic of Germany—or the *Wissenschaftsrat*, the most important science policy advisory body in Germany. Scientific self-regulation can itself become a problem for the freedom of science. For science itself and, in particular, science policy and management organisations that operate independently and on their own can also pose a threat to their autonomy.⁸

Therefore, framing by legal requirements and a functioning control of their observance are necessary here.

A “autonomy sale” by individual scientists can occur in the case of results-oriented contract research (Grimm 2006). Here the state can and must take countermeasures. It can do this, for example, by imposing an obligation to publish in order to facilitate internal quality control within the scientific community. In addition, it is constitutionally obliged to exclude the possibility that the acquisition of third-party funding, the receipt of which provides incentives for contract- and result-oriented research, may be used as an evaluation criterion for scientific excellence (BVerfGE 111, 333, 359).

However, the autonomy of science is also threatened by the fact that scientific institutions, even without state legal compulsion, are subject to social expectations alien to science and thus betray the freedom of science. For example, the so-called civil clause represents a self-obligation of scientific institutions such as universities to conduct research exclusively for civil, peaceful purposes. The first civil clause came into force at the

⁸In this sense very critical of the DFG (Reuß and Rieble 2011): “The ministerial agents can develop research concepts for the entire Federal Republic of Germany at their own discretion—within an association under private law, which is not responsible to anyone”. The practice of reviewing grant applications is unlikely to meet the requirements of the rule of law, as decisions are not substantiated and there are no possibilities for appeal; see Salaw-Hanslmaier 2003. For legal recourse in the event of a negative decision on applications for funding within the framework of the Excellence Initiative, see pp. 227–246 in Marzlin 2015.

University of Bremen in 1986. In the meantime, several German universities have included it in their basic regulations. In view of the potential applicability of many research results in civilian research areas also for the military (keyword: dual use), the freedom of research could be severely curtailed, and even mere reporting obligations on research cooperations with armaments companies or more generally in areas relevant to armaments could, in view of the reputation-damaging campaigns triggered against the scientists and scientific institutions concerned, significantly impair the freedom of science. After all, even political and legal science dealing with security policy issues as alleged “intellectual armament and militarization” could fall into the twilight and under the spell of a civil clause.

The all too willing acceptance of non-scientific concepts such as “gender mainstreaming” and “diversity management” is also a testament to the poverty of the universities and the scientists working in them. The promotion of women and other underrepresented groups of people in scientific institutions can, if it is to be compatible with scientific freedom, only be based on scientific criteria, but not on gender, sexual orientation, or migration background. The BVerfG must be used as a reminder of the fact that extraneous influences in the selection of university teachers as the fundamental rights holders primarily responsible for academic activity in the university can “entail direct dangers for the free exercise of academic teaching and research” (BVerfGE 35, 79, 133).

But the vast majority of scientists, regardless of their knowledge of their scientific inadequacy, accept such specifications without complaint, because contradiction against them would be a violation of political correctness, which is punished with social ostracism, which hardly anyone wants to expose him or herself to. In addition, the influential science organisations have committed themselves to these questionable concepts. For example, the DFG has developed “research-oriented equality standards” and imposed them on its member universities as a voluntary obligation. The DFG’s funding programmes make the participation of women in research projects a *conditio sine qua non* of funding; no application for funding for a research group or research training group is approved unless women scientists are represented. However, this is only adequate for scientific purposes if the funding institution can assert that

a specific female scientist cannot be ignored because of her research profile and the excellence of her research, i.e. if only scientific criteria are applied.

The Council of Science and Humanities calls on the universities “to commit themselves to flexible quotas of female scientists based on the cascade model”, for the sake of the diversity of perspectives that “the diversity of scientific staff” also requires.

It is apparently unaware of how problematic it is to justify the demand for an increase in the proportion of women in scientific leadership positions with “diversity of perspectives” instead of with equally good or even better scientific ability and achievement. This is because the cascade model, according to which the higher proportion of women at a lower qualification level is to become the target quota for the next higher level, cannot be explained and justified at all. After all, it is based on the assumption—which, incidentally, is untenable for a number of reasons—that if it were really gender-equitable and there were no gender bias, as many women would have to habilitate and become professors as there are women doctorates. But why should a supposedly specific women’s perspective be represented at such a percentage?

Even more problematic, however, is the basic assumption itself that there is a gender-determined, genuinely female scientific perspective. It assumes that women think differently from men (Reusch et al. 2013). This peculiar conception, empirically not provable, is simply irrational, an atavistic relapse into a pre-enlightenment, preemancipatory time, in a word: unscientific.

If the situation were really different, a scientific comparison of the performance of women and men would not be meaningful at all, but rather special women’s professorships would have to be created for which women only compete with each other. If special dogmas and special theories were actually generated, an indefinite number of professorships would have to be held for such special situations: Professorships for gays and lesbians in order to allow the homosexual perspective to come into its own, professorships for children of workers in order to include the social perspective

from below, professorships for migrants because of the migration background perspective, etc.⁹

If one took the cascade model seriously and wanted it within a period of 10 years—politics envisions a period of 5 years!—the average proportion of women among university professors to the proportion of women among PhD graduates, so that—due to retirement or fluctuation—professorships that become vacant are from now on only likely to be filled by women, with the principle of selecting the best being ignored (Kaube 2012); the male scientific offspring would have no chance.

Against the crude attempt to redefine the criteria of gender and sexual orientation of the migration background into quality criteria, it is necessary for science to take legal custody for the sake of science.¹⁰ Realistically, no help can be expected from the state, which would have to defend the freedom of science here, since the scientifically inadequate guiding ideas have long since become established parameters in politics.

Another threat to the freedom of science is the misconception of so-called safe spaces at universities. The place of science is not a safe space or port, but rather a place of systematic and productive mental insecurity! Everything else is a grotesque misunderstanding of the task of university science: “But the concept of a safe space, whereby those with distasteful or offensive views are prevented from speaking at a university, is fundamentally at odds with the rigorous intellectual exchange central to the idea of the academy itself.” (Whitten 2018). Those who also want to be and remain mentally wrapped in cotton wool, who are disturbed by foreign, undivided views as supposed “linguistic violence”, should absolutely avoid the university, “marketplace of ideas”, as a “dangerous place”! Free science does not tolerate any prohibitions on thinking or speaking, but lives from the free exchange of scientifically founded opinions, from which it expects scientific progress.

⁹This would always be linked to differentiation features which otherwise—due to their irrationality—are rightly regarded as absolutely inadmissible in legally bound distribution decisions (see Article 3(3) of the Basic Law).

¹⁰“Diversity romanticism” is a culturalist concept of social diversity. Cultural differences, which in view of the universality of human rights should actually play no role at all, become allegedly scientifically relevant reference variables because categories such as gender, sexual orientation, ethnicity, nationality, and religion are culturally relevant and at the same time points of contact for systematic discrimination.

Where there is freedom of science, there can be no once and for all established truths. The prevailing view of a problem in science is, so to speak, only the latest state of error. Science lives from the permanent questioning of supposed truths.

Contrary to the impression given by the marches for science, the so-called fake news or alternative facts are not really a problem of scientific freedom.¹¹ They may temporarily obscure the “light of enlightenment” (see Naumann 2018), unsettle the general public, and mislead for a time, but science and its freedom are not seriously affected.

Plain false reports can usually be quickly identified and rejected as such in scientific discourse. But such false reports are relatively rare; data manipulations are more likely to be carried out in order to maintain a scientific hypothesis that could not be empirically substantiated. Scientifically decisive, however, are usually the linking and interpretation of data (sentences), and here there can very well be a scientifically founded dispute that must be endured. For the freedom of science, therefore, it is more likely to be the finding that the Hungarian writer Péter Esterházy formulated aphoristically: “It is miserably difficult to lie if one does not know the truth.”

2.3 Threat to Science from Threat to Scientists

If scientists are put under psychological pressure or even threatened with physical violence by third parties because of their scientific research or scientific teaching, this impairs the freedom of science. The state is obliged to protect the threatened scientists and to put an end to the threat. Article 5(3)(1) of the Basic Law requires the legislature under constitutional law to take appropriate organisational measures to ensure that disturbances and impediments to the free scientific activities of university lecturers are excluded as far as possible as a result of the influence of other groups (BVerfGE 35, 79, 116, 128; 55, 37, 54, 68).

¹¹The trigger was the decision by US President Trump to no longer fund certain research into environmental protection with federal funds, assuming that this decision was based on the will to reduce environmental protection in the USA and to avoid unwelcome research results in return.

The cases of the Eastern European historian *Jörg Baberowski*, who has been exposed to the psychoterror of a Trotskyist student group for years, and of the political scientist *Herfried Münkler*, who has been exposed to permanent observation and denunciation by the blog “Münkler-Watch”, show recently that this protection is not always sufficient. Even the university management usually shies away from the conflict and therefore deliberately talk small about such attacks, which, if they take place massively and repeatedly, can wear down.

3 Conclusion

Freedom of science is enshrined as a fundamental right in the Basic Law of the Federal Republic of Germany and has been effectively developed in its various protective dimensions by the BVerfG. Nevertheless, there are always dangers for the freedom of science. At present, they emanate less from the state than from the autonomous scientific community itself, which all too often voluntarily submits to objectives alien to science and accepts scientifically inadequate selection and funding criteria. Here, however, only science itself can take countermeasures and every scientist is called upon to defend the rationality of the science system and thus the freedom of science. In view of the public welfare benefits of free science, it thus also provides society with an important service.

References

- Entscheidungen des Bundesverfassungsgerichts (BVerfGE). 1952 ff. So far 153 Volumes. Tübingen: Mohr Siebeck.
- Gärditz, Klaus Ferdinand. 2009. *Hochschulorganisation und verwaltungsrechtliche Systembildung (Jus publicum 182)*. Tübingen: Mohr Siebeck.
- Grimm, Dieter. 2006. Diskussionsbeitrag. In *Kultur und Wissenschaft. Berichte und Diskussionen auf der Tagung der Vereinigung der Deutschen Staatsrechtslehrer in Frankfurt am Main vom 5. bis 8. Oktober 2005*, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 65, ed. Karl-Peter Sommermann et al., 223–224. Berlin: De Gruyter.

- Hase, Friedhelm. 2007. Freiheit ohne Grenzen? In *Staat im Wort. Festschrift für Josef Isensee*, ed. Otto Depenhauer and Markus Heintzen, 549–560. Heidelberg–München: C.F. Müller.
- Hilgendorf, Eric. 2010. Bedingungen gelingender Interdisziplinarität—am Beispiel der Rechtswissenschaft. *Juristenzeitung* 65 (19): 913–922.
- Hillgruber, Christian. 2005. Kommentierung des Artikels 109 GG. In *Kommentar zum Grundgesetz. Band 3: Artikel 83 bis 146*, ed. Hermann von Mangoldt, Friedrich Klein, and Christian Starck, 5th ed., 1289–1330. München: Franz Vahlen.
- Hoffmann-Riem, Wolfgang. 2004. Enge oder weite Gewährleistungsgehalte der Grundrechte? In *Haben wir wirklich Recht? Zum Verhältnis von Recht und Wirklichkeit. Beiträge zum Kolloquium anlässlich des 60. Geburtstags von Bruno Otto Bryde*, ed. Michael Bäuerle et al., 53–76. Baden-Baden: Nomos.
- Kaube, Jürgen. 2012. Die Politik plant eine große Frauenkaskade. *Frankfurter Allgemeine Zeitung*, November 20.
- Kirchhof, Paul. 2004. *Der Staat als Garant und Gegner der Freiheit. Von Privileg und Überfluss zu einer Kultur des Maßes (Schönburger Gespräche zu Recht und Staat 3)*. Paderborn–München: Ferdinand Schöningh.
- Krüger, Herbert. 1966. *Allgemeine Staatslehre*. 2nd ed. Stuttgart: Kohlhammer.
- Marzlin, Christian. 2015. *Die Exzellenzinitiative von Bund und Ländern auf dem verfassungsrechtlichen Prüfstand. Zuständigkeiten, Grundrechte und Rechtsschutz (Kölner Schriften zu Recht und Staat 58)*. Frankfurt am Main: Peter Lang.
- Naumann, Thomas. 2018. Wahrheit und Schönheit. <https://www.forschung-und-lehre.de/zeitfragen/wahrheit-und-schoenheit-1021>. Accessed 25 March 2020.
- Reusch, Siegfried, Klaus Giel, and Otto-Peter Obermeier, eds. 2013. *Denken Frauen anders? (der blaue reiter. Journal für Philosophie 33)*. Hannover: der blaue reiter.
- Reuß, Roland, and Volker Rieble. 2011. Die freie Wissenschaft ist bedroht. *Frankfurter Allgemeine Zeitung*, October 18.
- Ruffert, Matthias, and Martin Schulte. 2006. Grund und Grenzen der Wissenschaftsfreiheit. In *Kultur und Wissenschaft. Berichte und Diskussionen auf der Tagung der Vereinigung der Deutschen Staatsrechtslehrer in Frankfurt am Main vom 5. bis 8. Oktober 2005 (Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 65)*, ed. Karl-Peter Sommermann et al., 146–210. Berlin: De Gruyter.

- Salaw-Hanslmaier, Stefanie. 2003. *Die Rechtsnatur der Deutschen Forschungsgemeinschaft. Auswirkungen auf den Rechtsschutz des Antragstellers (Studien zur Rechtswissenschaft 129)*. Hamburg: Dr. Kovac.
- Whitten, Suzanne. 2018. Why 'Safe Spaces' at Universities are a Threat to Free Speech. <http://theconversation.com/why-safe-spaces-at-universities-are-a-threat-to-free-speech-94547>. Accessed 25 March 2020.



Academic Freedom in France: A Concept Neglected and Liberties under Threat

Olivier Beaud

It is perhaps not sufficiently recognized in other countries that French universities are in a particular situation with regard to common international standards. They constitute the weak, “lower” sector of higher education and research. They are, logically, not held in high esteem by public opinion, and looked down upon by those in power and the elites that did not attend them. Do we need to be reminded that these universities do not actually educate the political, economic, and social élites of the country, this role falling to the famous (at least in France) *Grandes Écoles*? In addition, in research the universities face competition, equally unfairly, and disloyally, from the big research establishments (CNRS and other bodies) or “pure” researchers who do not teach (Beaud et al. 2010). This position of structural inferiority of the universities, which has a long history, goes a long way towards explaining the progressive erosion over time

Translated by John Jeremy Mossop.

O. Beaud (✉)

Université de Panthéon-Assas, Paris, France

e-mail: olivier.beaud@u-paris2.fr

of the status of university professors. Unlike the magistrates, whose status is regulated by an organic law, the status of university professors is governed by a simple decree which can change at the whim of those in power. As if that were not enough, professors are now referred to as “*teacher-cum-researchers*”—a horrible term in bureaucratic newspeak—to include them in the wider category of academics containing also lecturers, whose status is inferior to that of professors. Finally, academics i.e. both professors and lecturers, have lost almost all social prestige in France, as reflected by their level of remuneration, which is obscenely low by international criteria.

However, these same professors have probably considered for quite some time that their status, having become lamentable over the years, was compensated for by considerable liberty in the exercise of their professional activity. It could be maintained, without undue exaggeration, that this freedom was the only positive element they retained, and that it was the sole reason for which minds hungry for knowledge and independence chose this socially underrated profession. Sadly, things are changing, and there may be reason to fear that this last bastion, that of freedom, may be collapsing under the repeated and incessant attacks of the authorities (not so much of those in power, indifferent to university matters, as of the ministerial bureaucracy). This is what the present article sets out, in part, to demonstrate.

Let us return to the first point by pointing out the link which we believe exists between this inferior situation of universities in France and the relative unawareness of the concept of *academic freedom* in France. The latter term is even unknown, as several factors would indicate,¹ while in two other neighbouring French-speaking (partly) countries, Belgium and Luxembourg, there are publications by academics on “academic freedom” as such (Delgrange 2007, 2019; Prüm and Ergéc 2010). This absence may seem astonishing: does it mean that French universities have existed for centuries without professors, having freedom? Not quite, for if France did not have real autonomous universities, independent of the

¹The proof of this is that, in a recent work now recognized as authoritative, on the law of higher education the expression “academic freedom” does not appear in the index (Beignier and Truchet 2018).

state, there was, on the other hand, a tradition of intellectual independence which was always the privilege of academics. This apparent contradiction resolves itself if it is understood that the French have a separate term used to designate academic freedom: “libertés universitaires”.² This is the term of which a bibliographical study should be made. Then it will be seen that there exists in France a body of scientific literature on the subject, even if this is extremely limited compared to the voluminous quantity of literature relating to *academic freedom* or *akademische Freiheit*.

Another peculiarity of the French situation is that exclusively, or almost so, jurists have concerned themselves with university freedoms, while other academics have proudly ignored them (with one exception see *infra*, 1a). There do exist two excellent theses (PhD in Law) unfortunately unpublished: the first by Bernard Toulemonde (1971) and the second, more recent, by Camille Fernandes (2017), both references on the subject. Between these two dates we ourselves brought out a book in critical essay form on the situation in France, evoking *academic freedom neglected* (Beaud 2010a). However, it is easy to see that the mere fact that only jurists have examined the question of academic freedom proves how superficial the knowledge of universities is in France, and how little it interests the intellectual élite. This simple observation of a bibliographical nature illustrates the evident lack of attention paid in France to the university question, in the noble sense of the term, not just in the almost trivial sense of public policy.

Furthermore, this treatment in France of the question of academic freedom from the angle of university freedoms necessarily implies a different approach to the actual content of the concept concerned. “University freedoms” is a much wider domain than *academic freedom*, in that it encompasses what are known in France as “*university franchises*”. These are the ancient privileges, dating back to the mediaeval universities, which protect the autonomy of the universities by protecting their “Masters” and students. We find traces of it too, in section VII of the “Framework Law Concerning Higher Education” (loi d’orientation de l’enseignement

²Translator’s note: the term “university freedoms”, as used in France, designates both the academic freedom of individual members of a university and the academic freedom of the university itself, seen as an institution.

supérieur; known as the Edgar Faure law) of 12th November 1968 (Art. 35 to 38) pertaining to police power and disciplinary power.³ The first is the exemption under which, except in cases of *in flagrante delicto*, the police may not enter university premises i.e. university buildings, without the prior permission of the Vice-chancellor of the university. This is approximately the equivalent of the sanctuary formerly granted by the Church in its edifices. This ancient tradition still survives in our modern universities. The same applies to exemption from justice. In France, unlike other state employees, university academics cannot be punished by the minister for committing disciplinary offences (violations of the ethical code of conduct), but only “judged” by their peers in a form of magistrate’s court. So, being submitted to this special university justice constitutes for academics an extraordinary privilege in the context of common law in public service. This demonstrates that academics are not civil servants like the rest.⁴ Until 2019, academic jurisdiction was the domain exclusively of academics, but a law was introduced to modify this ancestral rule by granting the presidency of the institution to a senior member of the Council of State. If one needed an example of the imperialism of the Council of State in France and of the now subordinate status of academics, then this would be a textbook case (Beaud 2019).

This inclusion of university franchises in the concept of academics’ freedoms is interesting in as far as it illustrates a striking continuity between the mediaeval and the modern university. University Franchises were actually characteristic of mediaeval universities. Now, as we know, academic freedom is a Invention of the Modernity, as it presupposes freedom of thought and thus the rejection of any truth dogmatically imposed by the authorities as guardians of learning. In other words, academic freedom is based principally on the freedom to search for truth, independently of all existing dogma, and it necessarily implies freedom of research. In one sense, while remaining true to this ancient expression of “academics’ freedoms”, France had failed to become fully aware of the modernity of universities, which, ever since the writings of Guillaume de

³These two exemptions, which form part of the body of institutional guarantees granted to academics, regard both individuals (teachers and students) and the institution to which they belong (the university).

⁴This is the general sense of our 2010 book on university freedoms (see Beaud 2010a).

Humboldt and the adoption of these principles in the universities, in the second half of the nineteenth century by American universities, have always been research universities.⁵

Once these points have been made, we should get to the heart of the discussion by examining how, in France, the question of academic freedom has been handled by authors, and of how it is regulated in practice. Therefore, we shall attempt, on the one hand, to re-examine the discussions which have been held on the precise meaning of academic freedom (1) and on the other hand to describe, though not exhaustively, the current threats to this freedom (2).

1 What We Learn from the French Debate on the Precise Meaning of Academic Freedom

The notion of academic freedom cannot be understood without it being seen in the context of university, and, more precisely, in the context of the function of university (Beaud 2010b). The prevailing, utilitarian conception does not even feature this preoccupation with the function of university. However, all authors who have “examined” the notion of academic freedom have made the connection with this function; this applies to the philosopher, Paul Ricœur.

1.1 The Link Between Academic Freedom and the Function of University (P. Ricœur)

Paul Ricœur is an exception in that he is one of the very few “great intellectuals” in France to have contemplated the question of academic freedom.⁶ He had already written about the university question in the review *Esprit* in 1964 (Ricœur 1964). Then the events of May 1968 forced him

⁵To save space, we quote little foreign literature on the subject of academic freedom. French-speakers should consult Beaud (2010b, 2010c), English-speakers Beaud (2020).

⁶Nowadays we should point to the works of Pascal Engel, particularly his article in the *European Review of History* (see Engel 2020).

to return, in the heat of the moment, to this thorny question. At that time, he was a professor at the University of Nanterre, where the movement originated. At first, he was more on the side of “the Movement” and of the angry students, having even been Cohn-Bendit’s lawyer before the disciplinary commission. It was not until later, in 1970, when he had become Dean of the Faculty of Arts, that he had to suffer the excesses of the revolutionary students who, for example, threw a dustbin on his head. This led him to go and teach abroad (in Belgium and Chicago), tired as he was of the excesses of these “rebel” students.

But let us revisit May ‘68. Here, Ricœur discusses the university question in the review *Esprit*, of which he is one of the inspiring forces, by reflecting on the necessary reforms to the system as well as on the students’ demands, which, it is too often forgotten, originally applied more specifically to the universities than to society in general. He is probably familiar with the Nanterre texts which develop the framework for a true ‘68 utopia in respect of education and teaching. This revolutionary project, born in his own university (Nanterre), is based on the one hand on radical criticism of university knowledge, denounced as non-knowledge, and on the other hand on the idea that the taught will also teach the teachers, who know no more than they do.⁷ If we re-read them today, these texts appear somewhat grotesque, unrealistic as they are, but it would be anachronistic to deny that they are of some interest. In any case, Ricœur was confronted with this need for upheaval in education and in the university system. He participates in the debate launched by the review *Esprit* in its special edition of June 1968. In his article he dismisses both the rebel students and the conservative professors, defenders of the old, Napoleonic university. On the one hand he denounces the “utopia of self-teaching” (see p. 990 in Ricœur 1968, 1991), which maintains that “the taught teach themselves through the medium of the teacher” (*ibid.*). He does, however, recognize an important truth about this utopia: “teaching is not for the benefit of the professors, but for that of the students: that being taught constitutes a positive act, an initiation to which

⁷The principal ideas can be found in the work of Epistémon (1968). This is a pseudonym for Didier Anzieu, then professor of psychology at Nanterre, so well-placed to know the “literature” produced by the students. I am extremely grateful to François Vatin for supplying this reference.

teaching itself is subordinated” (ibid.). On the other hand, he challenges the hierarchical, Napoleonic concept of mandarin knowledge imposed by the masters. For him, “teaching is an asymmetrical relation, but not a one-way one. The contract that binds the teacher to the taught involves an essential reciprocity, which is the principle for and the basis of collaboration” (p. 989). The teacher contributes not mere knowledge but also “the will to know, to say, to be” (p. 991).

This reformist point of view of Paul Ricœur’s is also exemplified by his recognition of the mutual rights of students and professors alike. He uses this occasion to defend academic freedom—without ever employing the term, let us note in passing—while taking great care to make the distinction between the status of teachers and that of students. Regarding the latter, as the taught ones, they “have the right to an education which is not simply granted but over which they exercise real control: they are entitled to a degree with real value in the job market; they are also entitled to a culture that will allow them to be a part of humanity’s intellectual adventure and to fulfill themselves personally, beyond any professional or mercantile conception of culture” (p. 990). It is the classic, humanist function of university, which forms citizens and does not confine itself to merely teaching students or providing them with career prospects, this limited, utilitarian conception which dominates today.

However, adds Ricœur, university professors do enjoy a distinct status, characterized by the enjoyment of certain specific rights, which in our view, constitute the essence of academic freedom: “The right of the teacher is, first and foremost, the right conferred by competence and experience, such as they are, to be judged not by the students, but by other competent people, peers. It is also the right to freedom of thought and expression, independently of any political or ideological censure. Finally, it is the right to fulfil one’s own plan for knowledge and science within as well as outside the context of teaching” (p. 992). Thus, Ricœur describes on the one hand certain corporative rights—the main one being the principal of peer cooptation—and, on the other the rights inherent in the academic freedom of teachers, these being freedom of research, defined at the end very idealistically—“one’s own plan for knowledge”—freedom of instruction, and of expression. Starting with this article of 1968, he steers the debate relating to academic freedom towards the idea

of a liberty which is not only a corporative privilege, but also a responsibility, a social responsibility.

A little later he was to continue in this vein in a preface he wrote for a work by two colleagues on *Conceptions of University* (Ricœur 1969). In it he refers to a work by Karl Jaspers on *The Idea of University* in which the author declares that “it is a right of humanity as humanity for the search for truth to be conducted somewhere without constraints” (see p. 10 *ibid.*). From this Jaspers deduces the function of university: “its mission is to seek truth in the community of researchers and students” (*ibid.*). Ricœur offers the following comment on this work: “These two theses together define the liberal foundation of all universities. They are also interdependent: if the first weakens, the second fails. If the second is not fulfilled, the first remains a pious hope, unless there does exist a place where the search for truth can be pursued without any constraints; in short, if we cease to perceive a necessary link between truth, humanity, and unconstrained research, then the idea of university ceases to exist.” (*ibid.*). Thus two major consequences follow from the idea of university: the first is the right to continue the search for truth, without constraints; the second is academic freedom, defined as follows by Ricœur:

According to the liberal conception of university, academic freedom originates solely in the right of humanity to pursue the search for truth somewhere, *without constraint*. So, academic freedom is neither the privilege of a class, nor of the institution as such, nor of the teachers as a corporation, nor of the students as a unionized, corporative, political, or ideological body; it originates in the right of university to pursue the search for truth, somewhere. It is the quest for this ‘somewhere’. We have to return to this foundation to expose the distortions and the caricatures of academic freedom. It cannot just be reduced to a simple right of extraterritoriality which would allow teachers and students to exempt themselves from law; academic freedom affords neither immunity nor impunity with regard to the laws of the land. Neither can academic freedom be the privilege of a particular class allowing the self-perpetuation of an oligarchy thanks to co-optation; the corporatist interpretation of academic freedom is a betrayal just as abominable as its reduction to the right of asylum for protesters. This is so precisely because the law of the university community rests on its relation to truth and on a law of humanity, being neither anarchic nor

oligarchic nor corporative. The rejection of political censure is simply the opposite, the negative of it. Academic freedom is defined positively by responsibility with regard to knowledge. The right of students to protest, the freedom of expression of the professors in their teaching, the educational, administrative, and financial autonomy of the university are merely expressions and embodiments of this responsibility of all with regard to knowledge. (p. 13 *ibid.*)

So, the university must be conceived as a space for academic freedom, if we want it to be able to act in accordance with its role as regulator of the disinterested search for truth. Academic freedom is not a corporatist privilege, but it is first and foremost the condition for the exercise of the academic's profession. Certainly, it implies rights, but also duties. If the university loses this twin compass of the regulation of the disinterested search for truth, as well as of academic freedom, then it is a university only in name (Hook 1970). The great merit of Paul Ricœur is that he proposes a philosophical conception of academic freedom. He defines the idea which underlies the principle of it, and so proposes a very demanding conception. However, he is not convinced that this idea is—at least in France—borne out in practice. Indeed, when he writes that “the educational, administrative, and financial autonomy of the university” (see p. 13 in Ricœur 1969) constitute some of the expressions of this academic freedom, it is an assertion that does not apply to the French system, which is at the other end of the scale from the autonomy described. In fact, the distinctive feature of the French situation is that even if the universities have in theory been autonomous since the law of 12th November 1968 (known as the Edgar Faure law), this autonomy even being regarded as strengthened by the law of 10th August 2007 governing the “Liberties and Responsibilities of Universities” (known as the LRU or “Pécresse” law), they have, *de facto* no autonomy at all. In reality, they have no educational, administrative, or financial autonomy, for they are, *de facto*, under state supervision (Lami 2015). As a result, the poor French universities have to bear the yoke of the “Rue Descartes”, *i.e.* of the Ministry of Higher Education Research located in this Parisian street. This has considerable effects, as we will see below, on the situation regarding academic freedom.

Interesting though this initial investigation by Paul Ricœur may be, it still does not suffice for providing a complete solution to all the problems presented by academic freedom and university freedoms.

1.2 The Dilemmas Common to Academic Freedom and Academic's Freedoms

The question underlying both these concepts (academic freedom and *libertés universitaires*) is whether an individual freedom or a collective freedom is meant. This amounts to asking the question: who are the beneficiaries of academic freedom? The university as an institution or the university members, or if one prefers, the whole corporation, or the university members as single members of the corporation? In short, is such freedom a *corporative (institutional)* freedom, or is it an *individual* freedom i.e. “a freedom of individuals”, or “a freedom of the university as a whole”? (see p. 136 in Vedel 1960). It is a corporative freedom if it applies to a *collective group*, whether that is the university institution itself (freedom of the universities), or more narrowly, “the body of university academics” (the professors in general), in that this represents a professional corporation. On the other hand, it is an individual freedom if granted to all the individuals who may be considered members *ut singuli* of the university, through their being either teachers or students.

One way common to most authors of avoiding this dilemma is to see it as *both* an “individual” and an “institutional” freedom (pp. 13 and 17 in Prüm and Ergec 2010) by drawing attention to the overlapping of the two: the freedom of the body guarantees the freedom of the individuals, or possibly, the independence of the universities is the precondition for the independence of the individual members of the university. In other words, the two aspects are so indissociable from each other that academic freedom can be understood in both senses, which are the obverse and the reverse of one and the same coin. We, however, believe that the only way to see academic freedom realistically and usefully is to view it *from the point of view of the individual*. In our opinion it is a freedom granted to an individual because he or she is a member of a university. As soon as this is true, the individual's statutory condition retroacts

on this freedom, but is not identical to it. The reason is simple: academic freedom is freedom of thought (*liberty of thought*). Actually, people always think alone, as individuals, whatever the advocates of collective research may say. Furthermore, individuals—university members—can always be oppressed by the body to which they belong. It would be naïve in the extreme to think that academics, through their elected representatives, would not be able to threaten the freedoms of other academics, individuals who are also members of the university (see *infra*, II).

Finally, academic freedom, while being a freedom granted to an individual, the university professor,⁸ is not equivalent to a human right. This point should be stressed because of the frequent confusion occurring between academic freedom and freedom of expression, a confusion that comes from the United States due to the importance attached there to *Free Speech* (First Amendment). Actually—and this is now a truism—a human right is a right granted to an individual by the sole virtue of his being a man (in the generic sense, including women). This is not the case with academic freedom, which must be understood as a *privilege* reserved for those who have gained access to this profession through having obtained certain titles necessary for the exercise thereof.⁹ So, it is a privilege acquired, not inherited, which does not strive to achieve egoistic ends, but for the practice of the academic profession. However, this privilege does not signify in any way that academics are above the law or exempted from their deontological duties (Beaud 2010b).

This choice favouring an individualist conception of academic freedom leads us to adopt a strict, not a broad view of academic's freedoms (or if preferred, academic freedom). Let us begin with the *lato sensu* acceptance preferred by French juridical doctrine,¹⁰ according to which

⁸Our reasoning here does not apply only to France, which is why we employ the concept which prevails abroad: that university members are university professors. Here France distinguishes itself (sadly once again) through this duality, which is symptomatic of the declining status of our universities and our professors.

⁹See the corresponding definition provided by Edward Shils: "Academic freedom is a qualified right; it is a privilege enjoyed in consequence of incumbency in a special role, an academic role, and it is enjoyed conditionally on conformity with certain obligations to the academic institution and its rules and standards" (p. 189 in Shils 1993).

¹⁰From the article by Vedel (1960) on the above-mentioned theses of Bernard Toulemonde and Camille Fernandes.

the concept includes corporative rights. These are, for example, electoral rights, eligibility, the right to participate in university decisions, and especially cooptation in recruiting, as well as career evaluation by “peers”, it being understood, at least traditionally, that “peers” signifies colleagues in the same scientific field, and not all academics. This “institutional dimension” (see p. 64, tom. I, in Toulemonde 1971) appears to be the condition of the existence of university freedoms. Hence the broad definition of “university freedoms and privileges”: these are “guarantees and prerogatives granted to the public service of university teaching in order to allow it to perform the tasks assigned to it in the best possible conditions” (see p. 32, tom. I, in Toulemonde 1971). From this there emerges a definition of the freedoms that encompasses not only the positive freedoms that follow from it, but also the institutional guarantees of each separate country (status of state employee in France, *tenure* in the United States), the corporative rights that result from the idea of participation (collegial administration, cooptation etc.) as well as university privileges (see above, introduction).

On the other hand, there is also a strict definition (*stricto sensu*) of university freedoms (and therefore of academic freedom) where this is confined to the protection of individual university members, and to the enumeration of the positive freedoms they enjoy in order to be able to exercise their profession freely, and therefore correctly. Such a definition closely linked to the individual conception of this freedom, results in the removal of the institutional or juridical guarantees from its concept. It is this restrictive concept that we propose to adopt here, on the grounds that *freedom*—academic freedom—must not be confused with *guarantees of freedom*—in this case institutional guarantees which are both corporative rights (corresponding to the idea of *self-government* of the academic community), and, in France, the protective status of state employees. Let it be clearly understood: academic freedom without its institutional guarantees would amount to nothing, difficult as is, moreover, to dissociate the two in practice. We believe, however, that while guarantees of academic freedom form part of the juridical framework of academic freedom, they still do not define the essence, the notion of it. As has been explained in detail in the work quoted earlier (p. 53 and following in

Beaud 2010a), this essence is made up of a triptych: freedom of research, freedom of teaching, and freedom of expression.

Finally, the only way to overcome this dichotomy intellectually, between individual freedom and collective freedom, is to think of academic freedom as a professional freedom. Here, we are borrowing the idea of “*professional freedom*” from Robert Post in the sense in which it should be understood as “the liberty to pursue professional inquiry within a matrix of disciplinary norms defined and enforced by those who are competent to understand and apply such norms” (p. 72 in Post 2006).¹¹ Thus, it is a freedom granted to individuals by dint of their belonging to a certain group, the university community.

1.3 Another French Peculiarity: The Absence of Effective Juridical Protection of Academic Freedom

Sadly, we can still reiterate today Bernard Toulemonde’s observation (1971) that “the notion of university freedoms and privileges is characterized by an ineffective juridical framework. The texts alone are not sufficient to fully guarantee the exercise of university freedoms and privileges: the central authorities have at their disposal means of pressure in the face of which the protection of texts is often illusory. By contrast, universities have centralist and corporative traditions to which both they, and often public opinion, too, are profoundly attached: in these stand the strongest ramparts of university freedoms and privileges” (see p. 32, tom. I, in Toulemonde 1971). As we shall see later on, the situation has deteriorated even further.

It is true, they will say, that the orientation law of 12th November 1968 relating to Higher Education (known as the Edgar Faure law) and the law of 26th January 1984 “on Higher Education” (known as the Savary law)—which partially abrogates it—both contain dispositions concerning university freedoms and privileges which were not abrogated

¹¹ On Robert Post, see especially his book published in 2009 (Post and Finkin 2009) and our presentation of this book (Beaud 2010c).

by the two successive laws, the LRU law of 2007 and the subsequent law of 22nd July 2013 relating to higher education and research (called the Fioraso law). But anyone who knows the French State also knows that the legislator is ill-equipped to deal with the omnipotence of French administration. In this case, what happens elsewhere in France also happens in the universities i.e. “what the legislator gives with one hand, the administration can take back with the other” (see p. 41, tom. I, in Toulemonde 1971). There is a marked contrast between “the statements of principle of the legislator [...] and everyday reality” (see p. 35, tom. I, in Toulemonde 1971). Thus, reality is the impressive regulatory fabric that encases everyday life for academics, and restricts their freedoms, shrinking them more and more.

How then are we to reconcile this administrative control of the university teacher—who is a civil servant, let us not forget—with the affirmation of true university freedoms? For a long time, until the early 1960s, the contradiction was resolved by unwritten law prevailing over written law. In other words, university freedoms were merely the product of university customs and traditions. That is to say that these freedoms derived from unwritten laws which together made up what could be described as a “university constitution”, which those in power, and the Administration graciously recognized. These unwritten laws were still being invoked by the Council of State in the 1950s, featuring among them “the respect for independence and dignity which form part of the traditions of French universities”.¹² This lucid statement was made by Georges Vedel in his seminal article quoted earlier, on university freedoms (Vedel 1960). For him, the independence of the university body and the autonomous administration of higher education rest as much on a tradition and on mores as on texts.

However, today we can no longer maintain that university freedoms are protected by an unwritten law, or, alternatively, by university customs. Power now lies with the ministerial bureaucracy, which has increased its output of texts, encroaching upon this freedom and on the professors’ privileges. Such a “custom-based” guarantee of freedoms was fragile in any case, and for a very good reason: administrative tribunals

¹² See conclusions of Donnedieu de Vabres, Conseil d’État 13th March 1953, *Teissier*, D. 1953.737.

very rarely let custom prevail over regulations.¹³ Also, no custom is ever safe from possible suppression by a written norm, not only by a law, but also and above all, by a decree or even a ministerial order, the juridical instruments of rule by “bureaucrats”. This, broadly speaking, is what has been happening for decades in France.

So, the erosion of customs and university traditions is necessarily at the same time an erosion of freedoms, since the administration does not understand the universities, and worse still, it tends to treat the university professor as if he were any state employee, with the authoritarian connotations that implies. Bernard Toulemonde had already noticed this erosion in 1971, when he remarked that “the strongest rampart for university freedoms and privileges” (i.e. “the university traditions of corporatism and centralization”) “is also starting to be eroded away” (see p. 45, tom. I, in Toulemonde 1971). However, since university has become more and more bureaucratized owing to the increasingly petty interference of the central administration, the erosion continues, and the so-called “rampart” protects university freedoms against the regulatory verbosity about as much as the ramparts of a sandcastle protect it against the rising tide (Toulemonde, 197, I, 32).¹⁴ Below, we shall provide some more examples.

For a brief period of time, it was believed that constitutional jurisprudence, with the famous decision of the Constitutional Court of 20th January 1984, would protect academics’ independence. In fact, unlike in certain other countries where the constitution protects freedom of research, for example—the German instance of the *Grundgesetz* is always quoted (Art. 5 GG)—nothing in the French constitution allows the protection of academics’ freedoms. This is why it was necessary to invent an unwritten constitutional principle, namely that of professors’ independence, in the 1984 ruling, the scope of which, nevertheless, should not be

¹³ Conseil d’État 26th December 1930, *Chauveau, concl. Etori*, S. 1931.III.18.

¹⁴ This gradual erosion of university freedoms has not been slowed at all by the Council of State, which bears a heavy responsibility in the decline of the juridical framework of these freedoms, by refusing to take into consideration the audacious jurisprudence of the Constitutional Council (see below), and also by an equally systematic tendency to misjudge the particular nature of the status of academics by repeatedly including them in the category of ordinary state employees, which they obviously are not (see Chapter 4, pp. 149 and ff. in Beaud 2010a).

overestimated. Actually, on the one hand this principle of professors' independence concerns, above all, a right, which protects professors from assimilation with lecturers—a corporative right, it may be said—and on the other hand, the Constitutional Council has altered its jurisprudence by reducing this principle of independence to practically nothing.¹⁵ So, as we see, a positive law is of little help to French academics wishing to defend their professional freedom. This is hardly surprising in the context of an over-governed, centralized state: the universities are victims, as are the local communities, of centralist tropism and of the dominance of the senior branches of the Civil Service, first and foremost the Council of State. This is particularly worrying in our times because of the new threats to academic freedom in France.

2 The Various Threats to Academic Freedom in France: From National Exceptionalism to the Common Destiny of All Universities

Nowadays academic freedom is threatened all over the world, as is well demonstrated by the recent increase in international symposia on the subject. The fact that authoritarian regimes—from China to Hungary to Turkey—treat academic freedom with scant respect, to put it mildly, comes as no surprise. Even more surprising is the fact that academic freedom has been weakened under liberal regimes, too. From this point of view, the troubles occurring at present in universities in the United States, torn between the diametrically opposed currents of the “*patriotically correct*” on the one side, and the “*politically correct*” on the other, are worrying. They are especially so because what happens in American society “lands” in Europe a few years later. This will prove to be so in France.

However, it would be a mistake to assume that the question of academic freedom presents itself in the same way from one country to

¹⁵ See also here Beaud (2010a), and refer also to the chapter “Epilogue”, in which we allow ourselves a systematic criticism of the decision reached by the Constitutional Council on 10th August 2010 (pp. 287 and ff. *ibid.*).

another. In fact, if it is possible to identify the various threats to academic freedom everywhere, it is clear that these threats vary in their seriousness depending on the country. Evidently, the situation of public universities is different from that of private universities, and the dangers are not the same. In the case of France, a recurring threat is that posed by the State and its bureaucracy, something which does not apply to countries where the big universities are private or where federalism (as in Germany or Switzerland) limits the danger of intrusion by the state bureaucracy. So, one must distinguish between classical (historical) threats and the new threats. See my most recent book, written and published after this article (Beaud [2021](#)).

2.1 The Political and Administrative Threat, a Classical Threat

For a long time, the main threat to academic freedom in France was posed by the political authorities. This was particularly so in periods of authoritarianism. The case of the conflict between Ernest Renan and Louis-Napoléon Bonaparte is often cited. Those in power suspended Ernest Renan's course at the Collège de France following his inaugural lecture of 2nd February 1862, in which he presented the main theses of his book on *The Life of Jesus*, a "scientific" biography of Jesus Christ. Having suspended him, the Emperor (Louis-Napoléon Bonaparte) then dismissed him from the body of the Collège de France by a decision of 11th June 1864. He was accused of not having abided by his formal undertaking not to include in his teaching "any personal opinions not in keeping with the fundamental principles of the Christian religion" (see p. 63 in Simon-Nahum [2007](#)). The Vichy case is equally emblematic, with its dismissals of academics for political reasons, and above all, those of all the Jewish academics on racial grounds (victims of the status of Jews) (Singer [1992](#)). Since then, however, it has been rare to witness political interference undermining the principles of the three liberties, even if, here and there, some manifestations of political cronyism can be detected (pp. 21 and 22 in Beaud [2010a](#)). There has, however, been a recent and disturbing case of political interference. In March 2019, the

review *Afrique contemporaine* (Contemporary Africa) suspended the publication of a special edition dealing with France's intervention in Mali, in which there were some very critical articles by specialist academics. These were strongly objected to by the principal financial backers of this review, the French Development Agency (*l'Agence française de développement*, AFD), which employed various quibbles to prevent publication of this edition i.e. to "censor" it. Some of the editorial staff resigned as a reaction to this intrusion of political power, and a collective statement signed by almost two hundred researchers was published in the newspaper *Le Monde* to denounce this unacceptable attack on "academic freedom of expression on sensitive issues, in particular on the subject of a country, Mali, where the French army has been conducting large-scale operations since 2013." (see *L'indépendance des chercheurs n'est pas négociable* 2019). The signatories of this press forum statement go on, rightly, to point out "the significance of the suspension of the dossier on *Contemporary Africa* by the AFD" (see *ibid.*). Questions are asked. Such a reaction from a State agency also calls into question the government policy of mutualization of the means of foreign actions undertaken by France. "What would become of the research in social sciences on developing countries if it were placed under the supervision of a body accountable directly to the Elysée?" (see *ibid.*) In our view it is a question not so much of an attack on freedom of expression as on freedom of publication, which is a corollary of both freedom of research and freedom of expression. This case, which we feel did not receive the media attention it warranted, is an illustration of the resurgence, ever possible, of political censorship of academics' pronouncements on sensitive issues, of which the war in Mali is one.

Worrying in another way is the constant interference of the Civil Service, which takes on two forms in France. These are State administration (the burdensome supervision of the Ministry of Higher Education) and "close administration", which is the administration of universities endowed since 2007 with powers without opposition force. Our intention is to illustrate how these threaten freedom of research in various ways.

Freedom of Research Downgraded by the Ministry

For decades now, and due to the domination of the hard sciences over the humanities, official policy has been to give precedence to “collective research” over “individual research”. The latter is considered retrograde, the former progressive. The two institutional consequences of this new ministerial policy are on the one hand the structurization of research centred on teams, often called “laboratories”, again the domination of hard sciences in definitions—but which are in fact “collective research centres”—, and, on the other hand, the creation of doctoral schools to include the doctorands in a collective unit. We hold that this collectivization of research is a potential, and sometimes current, threat with regard to freedom of research.

It will suffice to illustrate this by citing only the case of *doctoral schools* which were made mandatory in French universities from 2000 on, which the LMD (*licence—master—doctorat*, Bachelor’s degree—Master’s degree—PhD) reforms. The 2006 law applying to research redefines the objectives of a new type of doctoral education by insisting on a “close link” between doctoral education and “laboratories or research teams whose quality is ascertained through periodic national evaluation procedures”, anticipating the need “for a scientific framework [...] of the highest quality”, as well as stressing the importance of a “collective training” of the students.¹⁶ The ministerial order of 7th August 2006 on doctoral studies (since modified by the ministerial order of 25th May 2016) tends in the same direction, by trying to dynamize collective research, to bring it closer to the world of work, and to act against the isolation of the doctorand. So, these schools call into question the *freedom to oversee theses*, which must be seen as the corollary to freedom of research. This link should be explained. If we consider that this freedom lies in the freedom to select one’s own subjects of research, then to this should be added the right of university professors to direct the students’ research projects, whether these be dissertations or, particularly, theses. The freedom to conduct research implies the freedom to “have” research carried out by

¹⁶ See Loi de programme n° 2006–450 du 18 avril 2006 pour la recherche, Article 41. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000426953>. Accessed 6 March 2021.

the youngest students wishing to follow the academic profession. Even where certain doctorands select their own subject for a thesis, they always do so with the approval of their supervisor. Furthermore, and above all, it often happens that the choice of subject for a thesis falls to the professor because he is bound to be more up to date with scientific developments, and so can better select which subjects are more promising from a scientific point of view. It is thus not unreasonable to see in the choice of subjects for theses and in the supervision of doctorands an essential prerogative of the university professor, requiring considerable freedom.

It is this fundamental freedom to supervise theses which calls into question the ministerial order of 7th August 2006 pertaining to doctoral studies. On the one hand, this stipulates that all doctorates should be undertaken within the framework of a doctoral school recognized by the Ministry. Furthermore, the thesis supervisor must be attached to the said school and to a recognized research team, for there is an organic connection between the doctoral school and the research laboratory. But what happens if a professor does not acknowledge being part of a doctoral studies team, or any research team whatsoever, for various reasons—even if these are merely personal conflicts with the head of the laboratory or of the doctoral school? Can this professor remain independent of these two types of “collective entities”? Or what if his attachment is refused? Once it is established that any teacher qualified to supervise theses may not set up his own research laboratory, and since the ministry is working energetically to achieve the “concentration” of doctoral studies within the universities, there is the danger, that certain academics who are marginal in their own departments (or UFR) belong neither to a research team nor to a doctoral school.

The consequences of this mechanism of the collectivization of research imposed by the dual interlocking of research teams and doctoral schools are absurd: in order to be in phase with a research team or a doctoral school corresponding to his own area of research, an academic must either find a base outside his own university, or else leave his original field.¹⁷ Quite apart

¹⁷In the above-mentioned book (Beaud 2010a) we sight the case of a female historian who was obliged to enrol in the doctoral school of a different university while her doctorate students had to be enrolled in the doctoral school of her own university, of which she was not a member. Absurdity reigns supreme, in absolute indifference, in French universities.

from the waste of time and energy this entails, there is above all an obvious contradiction between the freedom to be attached to a laboratory registered in the statutory decree of 23rd April 2009, and the bureaucratic reality of it i.e. this straitjacket. Would it not be simpler and more liberal—let us dare to say the word!—to make a special dispensation by which the principle of freedom of research authorizes an academic who so wishes, to remain outside a research team and doctoral schools, and supervise theses without being forced into membership of a collective? In other words, just as there are members of parliament who are not affiliated to any particular group (the independent members), who are still entitled to participate in the business of a Chamber, one should also recognize for every academic the *right of non-membership* of a research team or a doctoral school. This right would be more valuable in the humanities than in natural sciences, but it should be recognized as a right.

The present system resulting from the ministerial order of 2006, with interlocking research laboratories and doctoral schools all “accredited” by the state (i.e. by the Ministry of Higher Education) through a ratification process which is not always clear, shows, to the point of absurdity, how factitious is the autonomy of French universities and how far the freedom of academics is constantly eroded away by ludicrous regulations.

Academic Freedom under Threat in France from Close Administration

The term “close administration” has been suggested elsewhere to indicate this new threat to academic freedom (see p. 327 in Beaud 2010a). The LRU law of 2007 with its decrees for application reveals, as do further texts, the major problem that French academics face: *that of the domination enjoyed by representative bodies over academics* i.e. the problem of the pre-eminence of the so-called “university community” over the academics themselves. As any reasonably objective observer of university reality will be able to see, the *ordinary* academic is increasingly obliged to yield to obligations imposed on him by his representatives. In other words, even if elected by their peers, academics who head some institution within the university can find themselves in a position to “dictate” to

their colleagues, and in so doing, encroach upon their academic freedom. This is an experience that every academic has, sadly, to go through.

Here we would like to take up again the example of doctoral studies to illustrate the risk of academics being dominated by close administration. It actually emerges from the regulations currently in force that the president of the doctoral school council may decline to propose a subject proposed by a colleague for a thesis. This rule demonstrates a regrettable tendency towards petty “*authoritarianism*” in the university organization, and thus equally regrettable hierarchy between colleagues. These must be denounced as the end of a principle by which all the teachers in a university are one another’s peers. A university professor, aware of his own responsibilities and proud of his status, does not need to be placed under the supervision of the doctoral school council, and should be allowed to choose his own subjects for theses without interference from colleagues, however well-intentioned these may be. In other words, in the name of unfettered scientific research, a university teacher has, and must have the freedom to assign, within the boundaries of law, the subject which he considers pertinent seen from the angle of the relevant academic canons. Such an order contains the seeds of a “subtle form of hierarchization” (see p. 2242 in Legrand 2008) at the heart of university, which was once a world of equals. So, the reform of doctoral studies by the order of 7th August 2006 amounts to abandoning “the traditional concept of the doctorate, the preparation of which was founded largely on the principle of the guild, to stress the importance of the collective organization of research” (see p. 2238 in Legrand 2008). This exposes the new threat facing French academics, namely their domination by “close administration”, or “*university administration*”, i.e. the domination of certain academics (the Vice-chancellor of the university, and the elected members of the administrative council, or any other decision-making council) over other academics. Though elected by the teachers, even if only partly, and while often being academics themselves, most of these new executives see themselves, or soon will see themselves no longer as “peers” of their colleagues but as the “superiors” of their former colleagues. Unfortunately, there are also other threats to academic freedom, stemming not from political or administrative power, but from “civil society” (*lato sensu*).

2.2 The New Threats from Civil Society

France provides first of all an example of the instrumentalization of the law by persons who cannot tolerate the freedom of expression enjoyed by academics, most of whom retain free and critical minds. This is the first hypothesis we shall examine, and which corresponds to what may be referred to as French national exceptionalism.

The Threats to Freedom of Expression Originating in the Misuse of Actions for Defamation

Rather bizarrely, French academics have recently been subjected to court actions aimed at limiting their freedom of expression, since such actions—without any juridical foundation—are undertaken as means of exerting pressure on and of intimidating them. Equally strangely, the first academics to be targeted by what are now known as SLAPPs (Strategic lawsuit(s) against public participation) (a term used in Quebec, Canada, North America) were themselves jurists.¹⁸

These jurists refer to the opinion that they are induced to express in juridical matters as “doctrine”. This doctrine is generally assumed to be very free to comment on the justice not only of the laws, but also of the judgements pronounced. To sum up this idea it is stated that “*the professorial pen is free*” (see p. 273 in Letourneau 1995).

In any case this was the elegant formulation used by a law professor commenting on the first verdict, pronounced in 1994. In this particular case the civil law judge was asked by the plaintiff to express himself on the plaintiff’s action against a law professor who had strongly criticized the fiscal mechanism of tax exemption introduced by the law of 11th July 1986. The said mechanism was ruinous for the taxpayer and of little benefit to private individuals, while large corporations took highly lucrative advantage of it through purchasing ships, or parts of ships. In an article published in a specialist juridical review, this same law professor criticized

¹⁸ Here we will leave aside the actions brought against historians who do not submit to this logic. Thus, the great American historian, Bernard Lewis, was found to be at fault, in civil terms, for his tendency to deny the Armenian genocide.

these corporations which specialized in the sale and management of such ships. One of these companies, not named, brought a legal action against the professor on the basis of civil responsibility (Art. 1382 Code Civil), on grounds of prejudicial *defamation*. The Paris Magistrates' Court, in a judgement of 21st December 1994, rejected the suit on the grounds that in their research activities, the authors of juridical doctrine “*enjoy complete liberty of expression*” and that it is part of their mission “*to analyse and criticize laws, to denounce their limitations and harmful effects and to suggest ways of improving them.*”¹⁹ This was another way of recognizing freedom of expression as an integral part of academic freedom, in that it constitutes an indispensable means for an academic, a jurist, for the correct exercise of their profession.

Let us note in passing that the court did not pronounce on the foundation of such professorial freedom. It is traditionally accepted that this freedom of expression has its origin in Article 11 of the Declaration of the Rights of Man and of the Citizen. At any rate that is the deduction arrived at from the above-mentioned decision of the Constitutional Council of 20th January 1984, which specifically refers to this freedom as a constituent of academics' freedoms. In our view academics' freedom of expression necessarily follows from the academic freedom peculiar to this body. We hold that to resort to a human right such as freedom of expression negates the specific nature of the freedom concerned, which in this case is a precondition for the exercise of the academic's profession and cannot be reduced to the level of a human right to which a much larger group is entitled (see *supra*, I).

Since this first affair in 1994 the number of literally “fantastical” actions brought against academics has, regrettably, multiplied. In the above-mentioned work (p. 100 in Beaud 2010a) we referred to two quite remarkable cases of actions for defamation brought by individuals against academics who had criticized them. One of these, the most remarkable, was the case opposing Alain Garrigou, a professor of political science, and Nicolas Sarkozy's advisor, Patrick Buisson, extreme right-wing and also the wealthy director of a polling institute. This conflict is better known as “the Elysée poll”, for there were allegations of favouritism in the matter,

¹⁹TGI Paris 11 déc. 1994, *Rec Dalloz*, 1995, p. 511.

the lucrative contract assigning the market to M. Buisson's company, having been awarded without observance of the usual rules regarding public contracts. The professor, a political scientist, had sharply criticized the situation in a newspaper article. In retaliation M. Buisson, both a clear-sighted businessman and close personal adviser to the Head of State,²⁰ had not hesitated to bring an action against him for defamation, demanding astronomical sums of money from the poor academic. The magistrates' court obviously acquitted the academic. This case is a prime example of the technique of using a court action as a means of intimidation for the purpose of silencing academic expression. At the same time, the financial asymmetry between the two parties must be underlined. Indeed, an academic, unless supported financially by his or her university to pay the legal costs and lawyers' fees, is forced to spend considerable sums of money, to defend himself or herself in court against some insane accusation. This is evidently not the problem of the plaintiff—in this case the Chairman and Managing Director of a flourishing polling institute with all the accompanying financial resources.

We find exactly the same scenario in another affair, which received no attention in the press, but is also extremely instructive. This time it was an action for defamation brought by a rich Franco-Japanese foundation by the name of *Sasakawa*, which had been entrusted with the organization of a symposium on the 150th anniversary of diplomatic relations between France and Japan. This simple fact came as a shock to a specialist researcher on Asia, Karoline Postel-Vinay (Head of Research at CERI at Sciences-Po Paris), who protested strongly against what was to her a preposterous idea, for the said foundation bore the name of a Japanese war criminal who was a nationalist and a heretical character on the extreme right wing in post-war Japanese politics. In a email headed, "Sasakawa, un criminel de guerre pour célébrer 150 ans de diplomatie franco-japonaise?" (*Sasakawa, a war criminal to celebrate 150 years of Franco-Japanese diplomacy?*), together with a memorandum signed jointly with another academic, on "Sasakawa Ryôichi (1899–1995), the Sasakawa

²⁰The former President of the Republic (Sarkozy) and his adviser (Buisson) fell out after it was discovered that the latter was secretly (without the President's knowledge) recording their conversations at the Elysée.

empire, and the Sasakawa foundation”, in which the portrait was drawn of an unsavoury figure in twentieth century Japanese history, she requested the Ministry of Foreign Affairs to withdraw its patronage of this event. Following this e-mail circular, the symposium was not able to be held, which probably explains the reaction of the Sasakawa Foundation, which was to issue a writ on her on grounds of defamation. As was only to be expected, the 17th Magistrates’ Court in Paris non-suited her from the charge in a judgement of 22nd September 2010. The Court points out therein that even if the statements in the circular were, objectively speaking, libellous, then she could, in her capacity as a specialist researcher, benefit from the *bona fides* principle, which would exonerate her from the charge of libel.²¹ The court went on to relate with great precision all the facts gathered in the memorandum on the named Sasakawa who, billionaire that he now was, had nevertheless been a war criminal, imprisoned for three years after the war was over and who had miraculously avoided a penal sentence because the United States had revised its policy with regard to Japan and decided to cease trying war criminals. Without wishing to rewrite history for the historians, the court noted that the person being prosecuted was “a specialist researcher expressing herself within her own field”,²² a decisive factor in the establishment of her *bona fides* status, an essential element in acquittal on charges of defamation. The court also emphasized that it was absolutely legitimate for the defendant—in view of the subject of her research—“to draw the attention of the participants in the symposium (organized in the context of the 150th anniversary of relations between France and Japan), and that of the Foreign Ministry [...] to the potential problem in the fact that the principal financial backer of the event should be a foundation called by the name of a particularly controversial character in the history of Japan” (*ibid.*). When this verdict was returned, clearing the researcher, it was

²¹ The verdict is a reminder of the highly curious way, in which a foundation of this nature succeeded in being recognized as a state approved foundation when important politicians such as Michel Rocard and the Council of State were opposed to it in the initial stages. It was only intense lobbying by the Foundation that enabled it to obtain what it had at first been denied.

²² TGI (Tribunal de grande instance de Paris) 17th chambre, 20 September 2010 (petition 09/04019), *Franco-Japanese foundation named Sasakawa vs. K. Postel-Vinay*, p. 9. Our thanks go to Me. Thierry Marembert, defending counsel, for having informed us of this verdict.

welcomed by the head of CERI (Christian Lequesne), in surely a deliberate understatement: “*I find it regrettable that an action was brought against a researcher for simply expressing an opinion on historical events*”.²³ That is the least one can say.

Since then, a more recent case has provoked an unanimous reaction from the academics concerned, the jurists, and this is by far the most scandalous. It is the “*Laurent Neyret*” affair,²⁴ named after the professor of private law and environmental-law specialist. This professor had commented in a juridical review on the verdict of a magistrate’s court in Paris, by which a chemical company (the CHIMIREC group) and its chairman/managing director were sentenced for having set up a “waste-trafficking operation” completely circumventing the “anti-pollution” policy supposed to regulate the matter. This operation, which proved highly lucrative, had only been rendered possible through fraud and criminal “negligence” on the part of the regulatory services of the public authorities. In his commentary, of a purely academic nature, the professor confined himself to remarking on the gravity of the facts and to mentioning the link between the documentary fraud and environmental transgressions. He also stressed the incompetence of the authorities whose job it was to check on the implementation of the anti-pollution procedures, praising the role played by whistle-blowers, for this waste-trafficking operation was exposed by an employee. More subjectively, he expressed astonishment at the relative leniency of the sentences and proposed as a remedy more severe penalties for those committing environmental crimes “as organized crime”. As may be imagined, it was this last assertion which shocked CHIMIREC, who not only appealed against the verdict, but also brought an action against the law professor alleging “public defamation”, demanding that he pay vast compensation. So, the professor has to face this hearing, of which the outcome is already certain, as does the publishing manager. The court not only acquits the defendants, but also criticizes the plaintiffs for “*choosing to bring an action against a professor of law, who commented on a judicial verdict, when his*

²³ See “Déboutée”. 22 September 2010. <https://www.lesinfluences.fr/Deboutee.html>. Accessed 3 March 2021.

²⁴ It was the subject of an editorial in one of the two most important French weekly juridical reviews: Jamin (2017).

comments appear to have been based factually on the grounds for that decision, a situation which demonstrates particular rashness in their exercise of the right to bring an independent action for damages".²⁵ The court even permits itself the luxury of stressing "the *abusive nature*" of these accusations, and of ordering the plaintiffs to pay damages to the two defendants.²⁶

It is of little consequence, those who have never been subjected to such an action will say. However, as the individual concerned acknowledged, he went through a very difficult period, because, owing to a particularity of the law governing the press, the person accused of defamation is systematically investigated, has to appear before a judge, and has to await the end of the trial in order to be exonerated. All this costs considerable energy and occasions great stress. Furthermore, here again, there is the financial asymmetry between the two parties. The stakes involved in such a trial are by no means negligible, as was well summarized at the time: "What must not be forgotten is the subliminal message to all teacher-cum-researchers who are not afraid to upset people, who are not afraid to commit themselves, not afraid, when all is said and done, to do their job which is, when they take up the pen, to express their views uncompromisingly and passionately, completely freely, and independently, at the risk of displeasing anyone at all" (Mazeaud 2017). However that may be, as a result of this affair, which caused an understandable uproar among jurists, the Ministry of Higher Education set up a commission to examine possible ways of remedying these objectively unfair procedures. This commission submitted a "*Report on strategic lawsuits against public participation*" (SLAPP) (Rapport sur les procédures bâillons 2017), which details a large number of the actions brought against academics on grounds of defamation or denigration. Evidently it is one of the particularities of French penal law to allow an almost infinite number of lawsuits on an infinite number of issues. The commission proposed increasing the fines impossible on those who initiated "SLAPPs" as well as a declaration of immunity for proposals in favour of academics, equivalent to that enjoyed by members of Parliament (parliamentary delegates) making a

²⁵ CA Paris du 28 Sept. 2017.

²⁶ The private parties in the court action were ordered to pay € 3000 of damages plus interest to Laurent Neyret and € 2000 to the director of the Revue, i.e. a total of € 20,000.

statement to their court. According to the text, “*no action alleging defamation or offence shall be brought on the grounds of statements made or texts written in good faith by researchers or teacher-cum-researchers in the context of their teaching or research activities, in any form or on any pretext whatsoever*” (see p. 22 *ibid.*). Sadly, as is often the case, the political powers that be did not implement the conclusions of this report, the minister concerned having left office. So, it is to be feared that these SLAPPs will continue to multiply as a way of silencing academics who are trying to exercise their profession in the correct manner and have no legal protection against these intimidation actions. If one required additional proof of the French state’s total indifference to the question of the defence of academic freedom, none better could be found.

This is how laws governing the press are instrumentalized in France to intimidate those academics who wish to exercise their freedom of expression as experts in a given field. It is regrettable that the judges presiding over these cases do not make use of the principle of academic freedom in order to reject these unfounded demands by explaining to the plaintiffs that academics working within their own specialist fields enjoy greater freedom of expression than the ordinary citizen. In short, academic freedom is more than just freedom of expression: it is a professional freedom that the judge is duty-bound to defend against those who, for all the wrong reasons, wish to persecute academics. It is also to be feared that this threat of prosecution may be insignificant when compared to the other increasing threat of tyranny by minority groups in universities, reflecting the same tyranny of fanatical militants over public opinion.

The Activism of Certain Student Minorities Seen as a New Threat to Educational Freedom

Increasingly, with the United States in the forefront of this attack on freedom, certain groups of students, minority activists claiming “victimization”, presume to dictate to teachers what they may and may not say or teach in order not to give offence. According to this logic, *academics no longer have only to fear the State or the power of money, but also the new “forces for morality and Good.”* This has been referred to as “the

dictatorship of identities” (Dubreuil 2019), which is spreading like a plague over the whole planet. The phenomenon has become almost viral with the success of the *Me Too*-movement—for feminism—and “cancel culture” (*culture de l’effacement*) with its corollary, “woke ideology”, very much “in” this year (2020). In France, the phenomenon has already established itself throughout society, and the media are making a meal of it. Unsurprisingly, it is now also starting to take root in the universities. A first, spectacular manifestation occurred in 2019 at the Sorbonne, when the performance of a play by Aeschylus, “*The Suppliants*”, was prevented by militants of the pro-black movement, who also held some of the actors on the grounds that the play featured the wearing of masks evoking, according to them, the practice of *blacking up* followed by white racists in the United States. Scholars did not fail to notice the major historical contradiction behind the actions of these troublemakers. Above all it was an obvious attack on freedom of expression in its principal form, namely artistic freedom. This concerns universities because such “censure by violence” took place in a prestigious university location, the Sorbonne. Nevertheless, the question must be asked: is it really a question of academic freedom, given that it was merely an artistic performance staged in a university setting? We consider it an attack on freedom of expression itself. This case has nothing to do with what can happen in the United States, where students claim the right not to be taught on certain topics, or not to have to read certain books which might wound their sensibilities or “offend” their identity (the subject of *trigger warnings*).

By contrast, two other cases that occurred in 2020 really do belong in the field of academic freedom. The first took place in February 2020 at the University of Saint-Denis, formerly the University of Vincennes. The facts speak for themselves. A teacher of contemporary history is giving a pre-professionalization degree course on the public uses of history. She chooses as a subject the representations of the Dreyfus affair, which correspond to her field of research, since she is the co-author of a book on the subject. She warns her students that part of the course will deal with the interpretation of this affair featuring in the film *J’accuse* (I accuse), directed by Roman Polanski. From the beginning of the course two female students express their reservations on the choice of this film because of its director and the frequent accusation levelled at him by

feminists, that he was a “paedocriminal”, based on the trial that had taken place in the United States.²⁷ Following a discussion of this question with the students, the teacher informs them that those not wishing to discuss this film are not obliged to attend the course. One week before the planned course dealing with Polanski’s film, the students ask whether the session of 11th February devoted to this film will actually take place, and the teacher duly confirms that it will. On leaving the lecture theatre after this lecture of 4th February 2020, she is confronted by posters stuck up in the hall denouncing the holding of the course. They bear the words, “*Polanski paedocriminal. To study him = complicity*”. The teacher understands at this point that it is her educational freedom that is being challenged here, which only strengthens her determination to go ahead with the course. Then, on 11th February, her lecture is disrupted by about 15 people (not her students), accusing her of being an accomplice in the crimes of Polanski by studying his film in her course. These women, as numerous as the students themselves, then proceeded to intimidate the teacher, both verbally, and physically, surrounding her. Despite being invited by the teacher to discuss this idea, namely that studying Polanski’s film was equivalent to being an accomplice in his crimes, the activists refused any discussion and prevented the holding of the course. The historian thus taken to task had no choice but to break off the lectures and, shocked at such violence, reported this serious incident to the heads of her department of Social Sciences and to the university authorities. In this way militant activists, supposing that they really are all students, will impose their ideological and political preoccupations on others, and do not hesitate to openly undermine the educational freedom of a university teacher—a woman, probably an aggravating circumstance in their view. They make use of verbal and physical violence to enforce their demands and oppose the holding of a university course of lectures. The aggravating factor in this sad affair is that one of the ringleaders was herself a teacher at the same university.

Another, equally emblematic case concerns not a course, but a public conference organized around a book by an academic, Carole

²⁷It is well-known that this film provoked the anger of certain feminist groups, some of whom managed to prevent its being shown in certain Parisian cinemas.

Talon-Hugon, in a centre of learning, the Villa d'Arson in Nice. On the basis of the subject and of the author invited, it is a question of academic freedom here, in as far as the named philosophy professor comes to present her book to an audience invited specifically for this purpose. Her book, entitled "*Art under control*" (Talon-Hugon 2019), aims to demonstrate, with the aid of many examples, the increasing importance of ethics in art i.e. the return to a moral order, as conceived by the new censors, who, in the name of Good (the defence of allegedly oppressed groups in society) oppose the display of certain works of art in museums or elsewhere. Even before the conference took place, a former teacher at this Villa d'Arson who had become a lecturer at another university, launched a furious attack on the *Facebook* page of the Villa group, with the following comments on the notice announcing the aforementioned conference: "*Disgraceful [...] if you read of this book full of particularly homophobic prejudices attentively, you will observe in the footnote on the last page that the acronym LGBTQI has been extended with a +, which could include zoophiles and paedophiles. [...] I hope that vigilant people will point out the scandalous nature of this inference during the conference.*" So now the terrible accusation has been made: Carole Talon-Hugon is a homophobe, and her accuser, sure of being quite within his or her rights, calls for the disruption of the public meeting at which she is to present her book.

Before we examine the consequences of this denunciation, let us look more closely at the facts i.e. at what is actually stated in this work. In the passage censured, the author points out that "*the fragmentation of the claims made is indefinite*", that "*identity consciousness is tending to replace political consciousness*" (see Jourde 2020) and notes at the same time the effects of this identity politics on her academic field: History of Art in the United States, as it is practiced from now on, results in a history fragmented into subcategories. Now we have "*black aesthetics, decolonial aesthetics, feminism aesthetics, migratory aesthetics, queer aesthetics, prison aesthetics, etc.*" The problem for the denouncer lies in the footnote illustrating this endless fragmentation: "*LGBT (lesbian, gay, bisexual, transgender) has recently been extended to LGBTQIAT+ (Q for queer, I for intersexual, A for asexual). But the '+' leaves open the possibility that other sexual preferences (fetishism? zoophilia? paedophilia?) have a claim to equal legitimacy*" (see *ibid.*). For someone reading in good faith, this note makes use of

irony to stress the danger of intellectual drift inherent in this “identity” politics. To interpret this as indicating homophobia is singular, to say the least.

What followed was predictable: the call to arms from the “kind colleague” was heard, as was only to be expected. The lecturer arrived at the Villa d’Arson to see posters on the walls proclaiming, “*No to hate speech!*” The result: only half a dozen students out of 250 at the Villa Arson attended the lecture that evening, which was repeatedly interrupted by a feminist student in the front row, heckling the speaker with such subtle slogans as “*Stop! You support rape and paedophilia!*” “*The Villa Arson is now a den of the far right.*” This raving agitator should have been removed from the hall, of course, but the President of the institution merely uttered a banal call to order, terrified at the idea of censuring the student in the course of her own censure.

It is to be feared—alas!—that we may be just at the beginning of a wider process of “hysterization” of language, which will make it difficult for academics to exercise their academic freedom, whether that means the freedom to publish, educational freedom, or even freedom of expression. That students should be fanatical and intolerant is nothing new. Those who lived through May ‘68 might just smile at these new enthusiasts of “identity politics”, so modest are their claims compared to those of their predecessors, who set out to change society, but at least in the name of a libertarian slogan—“it is forbidden to forbid”—whereas our new critics content themselves with “thought police”, in the absence of any other prospect for society. In fact, the saddest thing about this state of affairs is probably the observation that certain university colleagues tend to support this new kind of witch hunt. How is it possible that universities have taken on self-proclaimed researchers who, without any sense of shame, call for the censure of their own colleagues?

* * *

We are well aware that the picture presented here is no cause for celebration. One could console oneself in the knowledge that the situation is far worse under authoritarian regimes or, even in the United States, where the conditions in universities are becoming ludicrous. However, this is no

great consolation. So, what is to be done? Perhaps the only solution would be to ask all academics who still realize what their profession represents, to offer progressive resistance in the face of these repeated attacks on academic freedom, to expect them to call upon political leaders and those in positions of authority in universities and remind them that they are the guardians of academic freedom. The worst reaction would be silence, withdrawal. It would even be scandalous if only a part of the university community were to prove incapable of reacting against this threat to the very essence of the academic profession.

References

- Beaud, Olivier. 2010a. *Les libertés universitaires à l'abandon? Pour une reconnaissance pleine et entière de la liberté académique*. Paris: Dalloz.
- . 2010b. Les libertés universitaires. In *Université, universités. Actes du colloque organisé les 22 et 23 octobre 2009 à Besançon, par le Centre de Recherches Juridiques de l'Université de Franche-Comté* (Thèmes et commentaires), ed. Charles Fortier, 315–346. Paris: Dalloz.
- . 2010c. Academic Freedom: Les chemins américains de la liberté universitaire. *Critique* 755 (4): 291–305.
- . 2019. La justice universitaire mise sous la tutelle du Conseil d'Etat. *Le blog de Jus Politicum*. Accessed 3 February 2021. <http://blog.juspoliticum.com/2019/07/05/la-justice-universitaire-mise-sous-la-tutelle-du-conseil-detat-le-coup-de-grace-donne-au-principe-constitutionnel-dindependance-d-es-universitaires-2-2-par-olivier-beaud/>.
- . 2020. Reflections on the Concept of Academic Freedom. *European Review of History: Revue européenne d'histoire* 27 (5): 611–627.
- . 2021. *Le savoir en danger. Menaces sur la liberté académique*, Paris, PUF.
- Beaud, Olivier, et al. 2010. *Refonder l'université. Pourquoi l'enseignement supérieur reste à reconstruire* (Cahiers libres). Paris: La Découverte.
- Beignier, Bernard, and Didier Truchet, eds. 2018. *Droit de l'enseignement supérieur*. Issy-les-Moulineaux: L.G.D.J.
- Delgrange, Xavier. 2007. La liberté académique. In *En hommage à Francis Delpérée. Itinéraires d'un constitutionnaliste*, ed. Robert Andersen, et al., 407–424. Bruxelles and Paris: Bruylant, L.G.D.J.

- . 2019. Doctrine: Qui la liberté académique délivre-t-elle de qui? *Journal des tribunaux* 6769: 293–305.
- Dubreuil, Laurent. 2019. *La dictature des identités* (Le débat). Paris: Gallimard.
- Engel, Pascal. 2020. L'idée d'une université et la liberté académique. *European Review of History: Revue européenne d'histoire* 27 (5): 598–610.
- Epistémon. 1968. *Ces idées qui ont ébranlé la France. Nanterre, novembre 1967–juin 1968*. Paris: Fayard.
- Fernandes, Camille. 2017. *Des libertés universitaires en France. Etude de droit public sur la soumission de l'enseignant-chercheur au statut général des fonctionnaires*. PhD thesis Université de Bourgogne Franche-Comté.
- Hook, Sydney. 1970. *Academic Freedom and Academic Anarchy*. 2nd ed. New York: Cowles Book Co.
- Jamin, Christophe. 2017. La doctrine baillonnée. *Recueil Dalloz* 8: 401.
- Jourde, Pierre. 2020. Tous ensemble contre le fascisme dans les écoles d'art. *Publié sur son blog de l'Obs*, le 13 février 2020. Accessed 3 February 2021. <https://www.nouvelobs.com/les-chroniques-de-pierre-jourde/20200213.OBS24809/tous-ensemble-contre-le-fascisme-dans-les-ecole-d-art.html>.
- L'indépendance des chercheurs n'est pas négociable. 2019. *Le Monde*, 27 March. Accessed 3 March 2021. https://www.lemonde.fr/afrique/article/2019/03/27/l-independance-des-chercheurs-n-est-pas-negociable_5442191_3212.html.
- Lami, Arnaud. 2015. *Tutelle et contrôle de l'Etat sur les universités françaises, mythe et réalité*. Préface de Jean-Marie Pontier (Bibliothèque de droit public 292). Paris: L.G.D.J.
- Legrand, André. 2008. L'indépendance des professeurs d'université face à la formation doctorale. *Actualité juridique, droit administratif* 40: 2238–2242.
- Letourneau, Philippe. 1995. La plume professorale est libre! *Recueil Dalloz* 35: 273–274.
- Mazeaud, Denis. 2017. Doctrine, sois serve et tais-toi! *La Gazette du Palais* (14 February) 7: 3.
- Post, Robert C. 2006. The Structure of Academic Freedom. In *Academic Freedom after September 11*, ed. Beshara Doumani, 61–106. Brooklyn, NY: Zone Books.
- Post, Robert C., and Matthew W. Finkin. 2009. *For the Common Good. Principles of American Academic Freedom*. New Haven: Yale University Press.
- Prüm, André, and Rusen Ergec. 2010. La liberté académique. *Revue du Droit Public et de la Science Politique en France et à l'Etranger* 1: 3–28.

- Rapport sur les procédures bâillons. 2017. Accessed 6 March 2021. https://cache.media.enseignementsup-recherche.gouv.fr/file/2017/50/2/Rapport_Commission_Mazeaud_754502.pdf.
- Ricœur, Paul. 1964. Faire l'Université. *Esprit. Nouvelle Série* 328 (5/6): 1162–1172.
- . 1968. Réforme et révolution dans l'Université. *Esprit. Nouvelle Série* 372 (6/7): 987–1002. Reprinted in Ricœur (1991), 380–397.
- . 1969. Trois ripostes à la crise universitaire (Préface). In *Conceptions de l'université (Citoyens 1)*, ed. Jacques H. Drèze and Jean Debelle, 8–22. Paris: Éditions universitaires.
- . 1991. *Lectures. Vol. 1: Autour du Politique (La couleur des idées)*. Paris: Seuil.
- Shils, Edward. 1993. Do We Still Need Academic Freedom? *The American Scholar* 62 (2): 187–209.
- Simon-Nahum, Perrine. 2007. Le scandale de la *Vie de Jésus* de Renan. Du succès littéraire comme mode d'échec de la science. *Mil neufcent. Revue d'histoire intellectuelle* 25 (1): 61–74.
- Singer, Claude. 1992. *Vichy, l'université et les Juifs. Les silences et la mémoire*. Paris: Les Belles Lettres.
- Talon-Hugon, Carole. 2019. *L'art sous contrôle. Nouvel agenda sociétal et censures militantes*. Paris: Presses Universitaires de France.
- Toulemonde, Bernard. 1971. *Les Libertés et franchises universitaires en France*. 2 Volumes, PhD thesis Université Lille II.
- Vedel, Georges. 1960. Les libertés universitaires. *Revue de l'enseignement supérieur* 3: 134–139.



Academic Freedom from the Perspective of the United Kingdom

Belen Olmos Giupponi

1 Introduction

The main aim of this chapter is to explore the concept of academic freedom as it is understood and used in the context of the United Kingdom (UK). In analysing the concept, first, the paper addresses the multiple definitions of academic freedom frequently used in the UK. The paper emphasises the differences in the regulation as observed across the regions within the UK.

Then, the chapter addresses the applicable legal and policy framework in the UK examining the evolution occurred over the previous decades. From a theoretical and a policy standpoint, the concept of academic freedom cannot be properly grasped without considering its evolution and the various stages it has gone through. Hence, the paper devotes a section to examining the various turning points observed in the higher education (HE) sector, ranging from the conception of academic leadership through

B. O. Giupponi (✉)

University of Portsmouth, Portsmouth, UK

e-mail: belen_olmos_giupponi@biari.brown.edu

professionalisation to managerialisation of the teaching provisions and research activities based on a concept of efficiency.

Finally, the paper examines different challenges posed to the concept and legal framework of academic freedom. As main challenges, the following are indicated and assessed: increasing standardization, mercantilisation, and introduction of academic benchmarks across the different areas of activity. Other looming challenges are further examined in the paper in terms of paradigm shifts due to external factors such as the fluctuating international context and Brexit. The paper concludes with remarks drawn upon the analysis, offering some insights into the future of academic freedom in the UK.

2 Defining Academic Freedom in the UK

Although there is no single and univocal definition of academic freedom in the UK and in the United States the term is often understood as the “freedom to teach or to learn without interference (by government officials)”.¹ The definition of academic freedom has different connotations in the UK and on the continent. On the continent, academic freedom is often guaranteed and protected in constitutions like in Germany, Italy or Spain.² Despite not having a formally written constitution, in the United Kingdom academic freedom is guaranteed by law.

Another important distinction to draw is that in the United Kingdom the concept of academic freedom embodies different dimensions. There are mainly two dimensions to the concept of academic freedom: one of the dimensions concerns the notion of autonomy in terms of independence of the scholars from any influences from the government. Another dimension of academic freedom relates to the right of academics or scholars to put forward their own thoughts where while they are teaching.

Then, from these different perspectives or dimensions, academic freedom boils down to freedom of speech: i.e. the freedom of academics and

¹ Merriam-Webster Dictionary (n.d.). Definition of “Academic freedom”. See, for instance, the use of the term to refer to freedom of speech in the US context: Korn (2020).

² See, for instance, the 1978 Spanish Constitution Article 27(10): Autonomy of the Universities and Article 1 of the Fundamental (Organic) Law of Universities.

also students to present a position on some issues, without any attempts of censorship or threats of being penalised for expressing their opinions. This definition covers both public statements and personal stances during lectures and personal positions presented in research publications.

This is in line with one definitions of the term academic freedom in the UK, provided in an amendment to the Education Bill of 1988, stating that academics must enjoy “[...] the freedom within the law to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions”.³

From a different perspective, other scholars interpret academic freedom differently as being equivalent to the professional autonomy of universities. Scholars like Haskell, underline that “[...] the heart and soul of academic freedom lie not in free speech but in professional autonomy and collegial self-governance” (p. 54 in Haskell 1996). Two different elements are present in this definition: the conceptualization of academic jobs as “profession” and self-governance and autonomy in the realms of research and teaching (Fish 2014). Similarly to what happens on the continent, under this perspective, academic freedom offers other two dimensions. First, it means autonomy vis-à-vis the Government, but also autonomy (discretion) of academics to perform their work (which includes freedom of speech). Although there are some common elements with the previous definitions, the consideration of academia as a “profession” resonates more with private sector considerations which implies more regulation and (up to a certain extent) less freedom.

Overall, four different aspects can be identified in the concept of academic freedom as it is conceptualised in the UK. First of all, academic freedom is linked to quality of education and quality assessment processes and control over academic decisions. Secondly, in the field of learning relates to the idea of allocating a reasonable workload. Third, it is connected to the protection of intellectual property and job security. Fourth, it also embodies the right to representation and to have a voice in the work environment and in the academic system. Finally, from the

³Education Reform Bill. House of Lords Debates. 18 April 1988. Volume 495. Columns 1211–1349, at 1284. See pp. 1–2 in Russell (1993).

perspective of the teachers' unions, academic freedom also means the right to elect representatives.

Academic freedom in the UK offers a fragmented scenario: there are different models across the country, with variations across universities. This segmentation of academic freedom in the United Kingdom is due to devolution and distinct policies applied in the different nations composing the UK. Whereas in Scotland the academic system resembles more the continental system, as some of the oldest universities have already provisions about academic freedom in their statutes. Also, in Scotland, the funding of public education differs from the rest of the UK and is less reliant on student fees (Scottish Funding Council [n.d.](#)). Although tuition fees were introduced across the entire United Kingdom in September 1998, the situation has changed rapidly and dramatically. Student tuition has led to a new system in which student satisfaction is a paramount value and a target per se. This is part of an overall process in which the universities focus on student satisfaction and on metrics. The impact on academic freedom has been significant. Thus, the question of academic freedom in the UK is represented by different models. There is a strong tendency to managerialisation of academia in England, which is in contrast with the model observed in Scotland. In a 2017 report on academic freedom issued for the University and College Union (UCU), the organization representing higher education faculty, Karran and Mallinson, identified the following elements:

- “Freedom to teach which includes: freedom to determine what shall be taught (course content); freedom to determine how it shall be taught (pedagogy); freedom to determine who shall teach (via transparent selection procedures); freedom to determine whom shall be taught (the right to determine and enforce entry standards); freedom to determine how students' progress shall be evaluated (assessment methods); freedom to determine whether students shall progress (via marking criteria and grade determination);
- Freedom to research which includes: freedom to determine what shall be researched; freedom to determine the method of research; freedom to determine the purpose of their research (and thereby refuse to undertake research considered unethical); freedom to determine the

avenues and modes (conference presentations, journal articles) of disseminating research findings to one's peers, and the wider world;

- Self-governance which consists of the following rights: to voice an opinion on the running of the university; to participate in decision-making within the university; to be able to appoint people to, and dismiss them from, positions of managerial authority within the university.
- Tenure which comprises the right to some form of job security within the university, via an agreed procedure involving a peer-reviewed assessment of academic accomplishments, following the successful completion of a probationary period of employment.”⁴

In the context of a financial crisis, there is yet another meaning of academic freedom which hints at a potential conflict between financial assistance and autonomy. The idea that universities, as autonomous institutions, enjoy academic freedom. That would explain why bailing universities out would clash with autonomy as “it means taking responsibility for your decisions” (Barber 2020).

3 Evolution

In the evolution of the concept of academic freedom in the United Kingdom it is worth mentioning the different universities or the differential stance taken at different universities (Traianou 2015). It seems that there is a divide between what are called traditional universities i.e. those universities founded in the nineteenth century, and universities which have gained their status as higher education universities only in the 1990s (often called ‘post-1992’ universities). This has created a differentiation (sometimes, also a divide) between traditional universities (ancient

⁴Academic Freedom and Internationalisation Working Group (AFIWG). Statement of Purpose. <https://hrc.sas.ac.uk/networks/academic-freedom-and-internationalisation-working-group> and https://www.ucu.org.uk/media/8614/Academic-Freedom-in-the-UK-Legal-and-Normative-Protection-in-a-Comparative-Context-Report-for-UCU-Terence-Karran-and-Lucy-Mallinson-May-17/pdf/ucu_academicfreedomstudy_report_may17.pdf).

foundations and nineteenth/twentieth centuries Universities “red brick”) and “new universities” (post-1992).

In the United Kingdom, the concept of academic freedom has been highly contentious in the last years, as is the case elsewhere. Devolution of academic freedom in the United Kingdom has seen different stages or faces. Another particular feature of the evolution of the concept of academic freedom is that in many cases academic freedom has been politicised. In the 1960s and 1970s, academic freedom was at the centre of heated controversies (Buchanan 2012). The 1960’s Higher Education landscape was defined by the Robbins Committee. The Committee was appointed to review the pattern of full-time higher education in Great Britain, giving rise to the Report of the Robbins Committee on Higher Education of 1963 (Committee on Higher Education 1963). The 1980s were highly contentious, in 1981 Vice Chancellors joined demonstrations against cuts to university funding, and in 1985, the Congregation of Oxford University refused to grant Margaret Thatcher an honorary degree.

The 1988 Education Act abolished academic tenure, introducing the idea of efficiency into the Higher Education context (which also led to cuts). The 1988 Education Reform Act introduced the legal concept of academic in the United Kingdom as part of an attempt to ward off the damaging effects on universities of this piece of proposed government legislation (which was eventually passed in modified form). From the perspective of the union, academic freedom include also the freedoms to conduct research, teach, freedom of speech, a freedom to publish without interference or penalty.

As next stage in this evolution, the Higher Education Act of 1992 granted university status to a group of polytechnics and, as a result, a considerable body of new universities emerged. The 1992 Act did not extend academic freedom to the new universities. In Scotland, academic freedom was addressed in 2005 in the Further and Higher Education (Scotland) Act by an amendment proposed by UCU (Further and Higher Education (Scotland) Act 2005).

After the introduction of student fees in England in 1998, the amount has gradually increased from £1000 to £9000 (after the 2008 crisis). This

new financial landscape has affected the autonomy of universities in terms of funding.

With education being a devolved competence, there are some differences between the manner in which the nations across the UK address the question. Against this backdrop, there is a specific Scottish definition of academic freedom which includes the rights to “(a) hold and express opinions, (b) question and test established ideas or received wisdom, (c) develop and advance new ideas or innovative proposals, (d) present controversial or unpopular points of view” which applies to “staff in all further and higher education institutions who are engaged in teaching, the provision of learning, or research”.⁵

In an increasing competitive context, academic freedom is under threat. The threat arises from different features of the current environment. Notably, the increasing assessment of the academic activity which is creating internal pressure. In terms of the assessment of research activity, Universities, Faculties, Departments, and individual scholars must achieve an adequate level of performance at the Research Assessment Exercise (RAE) before, termed now as Research Excellence Framework (REF). Furthermore, with regard to research funding and outreach activities there are growing pressures on scholars to strike partnerships or commercial sponsorship (Sayer 2015). This has led to new research funding schemes which emphasise research in certain national priority areas and, at the same time, to the commercialisation of research that is seen as a threat to the appropriate dissemination of research findings into the public domain.

The current scope of academic freedom responds more to the definition provided by UCU, which draws upon the 1997 UNESCO recommendation on the status of higher education teaching personnel. According to UCU, scholars must enjoy academic freedom: “in teaching and discussion; in carrying out research without commercial or political interference; to disseminate and publish one’s research findings; freedom from institutional censorship, including the right to express one’s

⁵Further and Higher Education (Scotland) Act (2005), Article 26(4). Reformed by the Higher Education Governance (Scotland) Act (2016), Section 23(2), Substitution to 26(2); Scottish Statutory Instruments 2016/382, Regulation 2(1).

opinion publicly about the institution or the education system in which one works; and to participate in professional and representative bodies, including trade unions” (UCU Scotland [n.d.](#)).

As regards the specific impact on individual academic freedom, on the whole, the move from a collegial system to a managerial system has had an impact on individual careers as well. This is evidenced by changes in the internal organisation (flexibility in the contracts) and by the adoption of a more managerial model based upon functional control.

4 The Legal and Policy Framework

Like in other regulatory areas, the legal framework applicable to Higher Education carries a significant weight in the definition of the rights and also the obligations in the context of academic freedom. In addition to national legislation in the United Kingdom, international and European norms are influencing the concept of academic freedom. The aspect of devolution internally places a stronger emphasis on the power of the nations to underline certain elements of academic freedom. As a consequence, the scope of academic freedom may vary across the country.

From an international human rights perspective, academic freedom is informed by the protection of civil liberties and human rights under the European Convention on Human Rights and, in the specific case of the UK, by the Human Rights Act. In this vein, higher education staff members enjoy the right to freedom of thought, conscience, religion, opinion, expression, association, and assembly. These rights and liberties stem from the status as citizens and should be also protected in the academic context. However, in practice, this is controversial on occasions. Infringements of the freedom to expression as guaranteed by Article 10 of the Human Rights Act 1998 and Article 19 of the Universal Declaration of Human Rights have occurred, generating an interesting case law.

Academic freedom entails a collective dimension as well, which refers to the possibility to participate in open, democratic, and collegial forms of institutional governance. This collective dimension of academic freedom seems to be currently at stake. From the perspective of certain academic groups, the excessive managerialisation of institutional governance

has curtailed academic freedom. Decisions pertaining to the content of the curriculum, assessment processes, and the definition of specific research priorities are often made, this is the claim, without consulting academics before. This has become increasingly controversial as in many instances, decisions are being imposed in a top-down manner. Hence, from a legal perspective the collective dimension of academic freedom should be respected in a way that academic staff members have the possibility to participate in the discussion taking place in the governing bodies. The question of collegial decision-making holds the key to more inclusive governing frameworks for the universities. Ideally, collegial decision-making shall cover decisions on teaching, research, administration, outreach, and community and public engagement, work allocation, allocation of resources and in all related decision-making processes.

Despite the legal framework being unaltered, policy making in higher education has introduced several changes that are considerably modifying the content of academic freedom. It is fair to say that in certain respects, academic freedom as it was understood some years ago has been completely modified. A specific modification in the conceptualization of academic freedom concerns allocation of funding linked to performance. These processes represent a shift in the manner in which academic freedom traditionally operated. Various manners of assessing academic activity and quality are currently in place in the whole UK and, in particular, in England. Clearly, quality assurance is a paramount objective nowadays in academic institutions. In itself, quality assurance and quality standards of the teaching provided by universities are worth pursuing and facilitate an informed decision by students. This is so because these processes offer a guarantee that the education provided is of a certain quality and increases the transparency and accountability of higher education institutions. The downside of this process, if wrongly understood, is that it might align with the essential mission and values of academic institutions.

The introduction of the National Student Survey (NSS) in 2005 represented a turning point (Higher Education Funding Council for England 2004). Student satisfaction became in some institutions the main objective, leading to different types of practices which do not necessarily foster excellence in teaching. On the positive side, the NSS increased

transparency and made visible different criteria considered essential in terms of quality of teaching.

In turn, the REF implied the assessment of research based on star-ratings, ranging from * to **** (see Table 1). The intricacy of how the metrics are built goes beyond the purposes of this paper, suffice to say that this has created a complex system in the various areas of assessment (34 subject-based units of assessment—UOAs) (Research Excellence Framework 2019).

As the equivalent process of assessment, in what regards the quality of teaching, the TEF—Teaching Excellence Framework measures the performance of universities with regards to the quality of the education provided. The TEF was introduced by the government in England to acknowledge excellent teaching in universities and colleges. One of the main ideas behind this process is to increase transparency and to assist students by making explicit information about teaching provision and student outcomes. Here there is another differentiation amongst the nations in the UK. TEF is currently implemented for universities and colleges in England, although, those in Scotland, Wales, and Northern Ireland are equally able to decide to participate in this scheme.

In TEF terms, institutions can be awarded Golden, Silver, or Bronze status. There is also the possibility for institution to be awarded a provisional rating. The participation in the TEF is voluntary, however, the

Table 1 REF—Overall quality profile: definitions of starred levels

| | |
|--------------|--|
| Four star | Quality that is world-leading in terms of originality, significance and rigour. |
| Three star | Quality that is internationally excellent in terms of originality, significance and rigour but which falls short of the highest standards of excellence. |
| Two star | Quality that is recognised internationally in terms of originality, significance and rigour. |
| One star | Quality that is recognised nationally in terms of originality, significance and rigour. |
| Unclassified | Quality that falls below the standard of nationally recognised work. Or work which does not meet the published definition of research for the purposes of this assessment. |

Source: REF 2014. <https://www.ref.ac.uk/2014/panels/assessmentcriteriaandleveldefinitions/>

award of a good TEF rating would attract more students. Clearly, the robustness of the quality assurance procedures is better guaranteed through independent assessments. Across the different regions quality assessment frameworks are in place. Interestingly enough, well reputed research universities have scored lower in the TEF than in the REF. In practice, one possible reading is that this is creating a differentiation between Universities which are more orientated towards teaching and those which are considered research universities (Table 2).

Some qualitative studies have also examined the impact of TEF on academic identity within the context of the UK focusing on research-intensive higher education institutions. Based on the evidence collected, some of these studies have yielded findings individualising TEF impacts. Overall, even if TEF would not modify the substance of the identity of academics in the different areas (research, education, and citizenship activities), it may accentuate conflicts within identity (Perkins 2019). In other words, this would imply fitting within a particular profile (being a “good teacher” over being an “excellent researcher”), instead of a balanced approach covering all the different areas of academic activity.

This could militate against the idea of institutions of higher education as being comprehensive environments in which both teaching and research find a place and where the interactions and synergies between teaching and learning on the one side and research on the other side take place. The widespread denomination of teaching institutions or teaching universities is reinforced. The former polytechnics also known as

Table 2 Teaching Excellence and Student Outcomes Framework (TEF)

| TEF rating | Meaning |
|------------|---|
| Gold | Delivering consistently outstanding teaching, learning, and outcomes for its students. It is of the highest quality found in the UK |
| Silver | Delivering high quality teaching, learning, and outcomes for its students. It consistently exceeds rigorous national quality requirements for UK higher education |
| Bronze | Delivering teaching, learning, and outcomes for its students that meet rigorous national quality requirements for UK higher education |

Source: UCAS. <https://www.ucas.com/advisers/guides-resources-and-training/guides-and-resources/guide-teaching-excellence-framework-tef>

‘post-1992’ universities are faced with the challenge of sustaining adequate levels of research of a certain quality whereas offering learning opportunities to the community and students who are coming to the University for the first time.

Another initiative is the Knowledge Exchange Framework (KEF) which measures the impact of research beyond the academic realm. In the words of UKRI, the aim of this process is “to increase efficiency and effectiveness in the use of public funding for knowledge exchange (KE)” (UK Research and Innovation 2020). The efforts to establish the KEF started in 2017, when the Minister of State for Universities, Science, Research and Innovation commissioned the Higher Education Funding Council for England (HEFCE) to gather information about the role and achievements of Higher Education in the economy and society to benefit the public, business and communities.⁶

In a multicultural setting, other concomitant processes have emerged. Initiatives to foster gender equality and to guarantee diversity are also permeating the content of academic freedom. Another process to foster diversity in Higher Education, which deserves mention is Athena Swan (concerning gender equality in academia). In line with this, it is worth noting that according to the rule 6.1 of the UNESCO recommendation all members should refrain from all forms of harassment prejudice and unfair discrimination whether on the grounds of sex, race, ethnic or original national origin, religion, colour, class, caring responsibilities, marital status, sexuality, disability age or other status or personal characteristic (UNESCO 1974).

In some cases, the legal and policy framework are shaping the content of academic freedom adjusting it to different circumstances. At the same time, there are several policy changes introduced which seem to have redefined the scope of academic freedom. Approaches, such as TEF, that favor the use of standards and achieving good quality, even at the expense of academic rigour. Other legislative and policy frameworks have offered a counterweight to the initial approach.

⁶Research England assumed responsibility to report on this and under the wider KE policy and funding remit in April 2018.

5 Current Challenges

In the current context, main challenges remain the excessive standardization, up to a certain extent the mercantilisation of university studies and the loss of proper academic benchmarks. Limitations and constraints were introduced due to student population numbers. The various processes introduced have generated the risk of excessive control over academics. New forms of public management have been imposed, managerialist in character, designed to establish 'transparent' accountability regimes which require members continually to demonstrate that what they do is effective and efficient (Pollitt 1990; Ward 2012).

Other concerns are those derived from the 'war on terror' since 9/11. This so-called War on Terror started after 9/11 and posed challenges to academic freedom as well. This is the case because of the introduction of anti-terrorism legislation which places a growing pressure on the content and the critical analysis of certain topics. This has allegedly provoked a climate of self-censorship on campus, as there are topics which cannot be freely addressed particularly those concerning anti-terrorism and gender which have been increasingly controversial.

Brexit represents another major challenge for British Higher Education institutions, as it will bring a new scenario for research and reduced academic mobility. In the aftermath of Brexit, the study of EU law is not guaranteed, as illustrated by a letter sent to Vice-Chancellors by Conservative MP Heaton-Harris requesting access to university course documents as well as the names of professors involved in "the teaching of European affairs, with particular reference to Brexit" (Wesemann 2017). In terms of academic mobility, there is no clear response from the government with some pilot projects concerning the Higher Education sector (complex and uncertain). The financial challenge is not a minor one, the changing environment and the mounting pressure on institutions in terms of resource allocation as demonstrated by the reports produced on the occasion of legislative changes (Education Reform Act 1988; Further and Higher Education Act 1992; Higher Education Act 2004). At the same time, White Papers published during the same period have followed a tendency to increase efficiency, looking for new sources of income and

seeking to improve performance across different activities (DES 1987, 1991; DfES 2003).

The breadth of the reforms has brought in difficult choices for Higher Education institutions which are then reflected in academic freedom. Confronted with these challenges, several Higher Education institutions have made drastic decisions in an attempt to survive and then thrive in an ever-competitive environment, trying to reconcile the different aims pursued.

6 Conclusions

Traditionally academic freedom has been interpreted in the context of a system that departs from continental Europe. Academic freedom in the UK is a concept that has gone through several challenges. Seen from this perspective, the scope of academic freedom in the UK has notably varied over the years. Narrowing the scope of academic freedom makes it a less stringent concept than in the original meaning. Universities in the UK have traditionally pursued a vocational function with the aim of providing a liberal education like in the case of Oxford, Cambridge, and Aberdeen. This aim was also extended to universities founded in the nineteenth and early twentieth centuries anchored in the idea of university autonomy. Different processes and legislative reforms have had an impact on the relationships between universities and the state in a complex and challenging environment in which they struggle to exercise meaningful autonomy from several considerable pressures.

References

- Barber, Michael. 2020. Bailouts for 'Autonomous' Universities? That's Rich, Says Barber. *Times Higher Education*. Accessed 10 December 2020. <https://www.timeshighereducation.com/news/bailouts-autonomous-universities-thats-rich-saysbarber>.
- Buchanan, Raymond. 2012. Day Queen Boomed at Stirling University Remembered. *BBC Scotland Political Correspondent*, October 12. Accessed 21

- December 2020. <https://www.bbc.co.uk/news/uk-scotland-tayside-central-19922678>.
- Committee on Higher Education. 1963. *Higher Education. Report of the Committee Appointed by the Prime Minister under the Chairmanship of Lord Robbins 1961–63* (Cmnd. 2154). London: Her Majesty's Stationery Office. Accessed 21 December 2020. <http://www.educationengland.org.uk/documents/robbins/robbins1963.html>.
- DES (Department of Education and Science). 1987. *Higher Education: Meeting the Challenge* (Cm 114). London: Her Majesty's Stationery Office.
- . 1991. *Higher Education: A New Framework* (Cm 1541). London: Her Majesty's Stationery Office.
- DfES (Department for Education and Skills). 2003. *The Future of Higher Education* (Cm 5735). London: Her Majesty's Stationery Office.
- Education Reform Act. 1988. UK Public General Acts c. 40. Accessed 8 January 2021. <https://www.legislation.gov.uk/ukpga/1988/40/contents>.
- Education Reform Bill. House of Lords Debates. 18 April 1988. Volume 495. Columns 1211–1349. Accessed 8 January 2021. <https://api.parliament.uk/historic-hansard/lords/1988/apr/18/education-reform-bill>.
- Fish, Stanley. 2014. *Versions of Academic Freedom. From Professionalism to Revolution*. Chicago: The University of Chicago Press.
- Further and Higher Education (Scotland) Act. 2005. Acts of the Scottish Parliament asp. 6. Accessed 21 December 2020. <https://www.legislation.gov.uk/asp/2005/6/contents>.
- Further and Higher Education Act. 1992. UK Public General Acts c. 13. Accessed 8 January 2021. <https://www.legislation.gov.uk/ukpga/1992/13/contents>.
- Haskell, Thomas L. 1996. Justifying the Rights of Academic Freedom in the Era of 'Power/Knowledge'. In *The Future of Academic Freedom*, ed. Louis Menand, 43–91. Chicago and London: The University of Chicago Press.
- Higher Education Act. 2004. UK Public General Acts c. 8. Accessed 8 January 2021. <https://www.legislation.gov.uk/ukpga/2004/8/contents>.
- Higher Education Funding Council for England (HEFCE). 2004. National Student Survey 2005. Outcomes of Consultation and Guidance on Next Steps. Accessed 10 December 2020. https://dera.ioe.ac.uk/4972/1/04_33.pdf.
- Higher Education Governance (Scotland) Act. 2016. Acts of the Scottish Parliament asp. 15. Accessed 8 January 2021. <https://www.legislation.gov.uk/asp/2016/15/contents>.

- Korn, Melissa. 2020. Education Department Blasts 'Culture of Censorship' at Colleges, Sets Up Free-Speech Email Hotline to Report Violations. Officials Say Sensitivity Over Potentially Offensive Views Is Stifling Free Speech and Academic Inquiry. *Wall Street Journal*, December 8. Accessed 21 December 2020. <https://www.wsj.com/articles/education-department-blasts-culture-of-censorship-at-colleges-sets-up-free-speech-email-hotline-to-report-violations-11607467380>.
- Merriam-Webster Dictionary. n.d. Definition of 'Academic Freedom'. Accessed 21 December 2020. <https://www.merriam-webster.com/dictionary/academic%20freedom>.
- Perkins, Graham. 2019. The Teaching Excellence Framework (TEF) and Its Impact on Academic Identity within a Research-Intensive University. *Higher Education Policy* 32 (2): 297–319.
- Pollitt, Christopher. 1990. *Managerialism and the Public Services: The Anglo-American Experience*. Oxford: Blackwell.
- Research Excellence Framework (REF). 2019. Guidance on Submissions (2019/01). Accessed 10 December 2020. <https://www.ref.ac.uk/publications/guidance-on-submissions-201901/>.
- Russell, Conrad. 1993. *Academic Freedom*. London and New York: Routledge.
- Sayer, Derek. 2015. *Rank Hypocrisies: The Insult of the REF*. London: Sage Publications.
- Scottish Funding Council. n.d. Universities and Higher Education Institutions We Fund. Accessed 10 December 2020. <http://www.sfc.ac.uk/funding/universities-we-fund.aspx>.
- Traianou, Anna. 2015. The Erosion of Academic Freedom in UK Higher Education. *Ethics in Science and Environmental Politics* 15: 39–47. <https://doi.org/10.3354/esep00157>.
- UCU Scotland. n.d. Charter on Academic Freedom. Accessed 1 March 2020. https://www.ucu.org.uk/media/4160/Scottish-Charter-on-Academic-Freedom/pdf/Academic_Freedom_charter.pdf.
- UK Research and Innovation (UKRI). 2020. Knowledge Exchange Framework (KEF). Accessed 20 December 2020. <https://re.ukri.org/knowledge-exchange/knowledge-exchange-framework/>.
- UNESCO. 1974. Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms. Accessed 20 December 2020. http://portal.unesco.org/en/ev.php-URL_ID=13088&URL_DO=DO_TOPIC&URL_SECTION=201.html.

- Ward, Steven C. 2012. *Neoliberalism and the Global Restructuring of Knowledge and Education*. Routledge Advances in Sociology 60. London: Routledge.
- Wesemann, Anne. 2017. *Brexit, Academic Freedom and Where the Law Stands on Universities Being Quizzed about What They Teach*. The Open University. Accessed 20 December 2020. <http://www.open.ac.uk/research/news/brexit-academic-freedom>.



The Darkest Hour: Private Information Control and the End of Democratic Science

Roberto Caso

An earlier Italian version of this paper entitled “L’ora più buia: controllo privato dell’informazione e valutazione della ricerca” was presented at the AISA Conference “La scienza come ignoranza degli esperti e il governo del numero”, held in Pisa at the University of Pisa on March 16, 2018 (http://aisa.sp.unipi.it/longo2018_testi/; <http://aisa.sp.unipi.it/video-pisa2018/>) and was later published (2018) in *Rivista Critica del Diritto Privato* 36 (3): 383–418 (preprint available at ZENODO: <https://doi.org/10.5281/zenodo.1228056> and at IRIS Unitn: <http://hdl.handle.net/11572/208881>). The author is grateful to all the conference participants, particularly to Maria Chiara Pievatolo of the University of Pisa, Paolo Rossi of the University of Pisa, and Giuseppe Longo of the École Normale Supérieure of Paris for discussing with him the interplay between science and democracy. Later version of the paper (preprint available at ZENODO: <https://zenodo.org/badge/DOI/10.5281/zenodo.1244537.svg>) was presented at “Private Law Consortium” (PLC) 2018 edition held in Cambridge (MA) at the Harvard Law School on May 14, 15 2018. The author is grateful to Rachel Bayefsky, Helge Dedek, John C.P. Goldberg, Miriam Marcowitz-Bitton, Gideon Parchomovsky, Stephen A. Smith, Geir Stenseth, David Waddilove, and all the PLC 2018 participants for their invaluable comments, criticisms, and questions. This version was presented and discussed at the conference “Academic Freedom Today. Insights from Law, Philosophy, and Institutional Practice” held in Bolzano at Libera Università di Bolzano on December 6, 7 2018. The author is grateful to all the participants and in particular to Maurizio Borghi, Ivo De Gennaro, Giuseppe De Nicolao, Susanna Terracini, and Gino Zaccaria for their questions and remarks. The author is also thankful to Giulia Dore of the University of Trento for the English translation of the original text.

R. Caso (✉)
University of Trento, Trento, Italy
e-mail: Roberto.caso@unitn.it

1 Democratic Science, Public Dialogue, and Intellectual Property

Can the scientific community be defined as democratic? Does science thrive only in a democratic society? To answer these questions properly, it becomes essential to provide a definition of democracy, which is what two foremost scholars in this subject, Robert Merton and Michael Polanyi, have done.

Merton elaborated his renowned theory on norms of science since the late 1930s, a period when totalitarian regimes were evident (Merton 1938, 1942, 1957, 1968, 1973, 1988). The main concept underlying it is that science flourishes in a democratic system and echoes some of its characteristics. In his important 1942 study, Merton describes the norms of science (see p. 270 in Merton 1973): universalism, communism (and originality), disinterestedness and organized skepticism. Universalism, which is a feature of democracy, requires scientific truth to result from the application of established impersonal criteria (see pp. 270 ff. in Merton 1973). It is not personal status that defines the truthfulness of someone's statements, but the fact that scientists respect some predetermined criteria. Race, nationality, religious beliefs, and social status are all irrelevant. A scientific career is open to anyone who can undertake it. Regardless of how imperfectly it is practiced, universalism is one of the fundamental principles of democracy.

Impersonal criteria of accomplishment and not fixation of status characterize the open democratic society. Insofar as such restraints do persist, they are viewed as obstacles in the path of full democratization. Thus, insofar as *laissez-faire* democracy permits the accumulation of differential advantages for certain segments of the population, differentials that are not bound up with demonstrated differences in capacity, the democratic process leads to increasing regulation by political authority. Under changing conditions, new technical forms of organization must be introduced to preserve and extend equality of opportunity (p. 273 in Merton 1973).

Communism, in its non-technical and wide meaning of communal property of goods, means that scientific progress results from social collaboration and belongs to the community.

The communal character of science is further reflected in the recognition by scientists of their dependence upon a cultural heritage to which they lay no differential claims. Newton's remark—"If I have seen farther it is by standing on the shoulders of giants"—expresses at once a sense of indebtedness to the common heritage and a recognition of the essentially cooperative and selectively cumulative quality of scientific achievement. [...].

The communism of the scientific ethos is incompatible with the definition of technology as 'private property' in a capitalistic economy. Current writings on the 'frustration of science' reflect this conflict. Patents proclaim exclusive rights of use and, often, nonuse. The suppression of invention denies the rationale of scientific production and diffusion [...]. Responses to this conflict-situation have varied. As a defensive measure, some scientists have come to patent their work to ensure its being made available for public use. (pp. 274–275 in Merton 1973)

Peer acknowledgment is equally important for scientists. This explains well the norm on originality that drives the scientist to assert the priority of his contribution to the progress of science. Disputes over priority indeed originate from the institutional relevance of originality. Disinterestedness implies that scientists are only driven by the aim of searching for the truth. Organized skepticism leads to the abeyance of any actual judgment on published results and to the critical evaluation, through logical and empirical criteria, of certain beliefs in a given time. The communitarian aspect depends on the institutional imperative of public communication of scientific research outputs. There is some sort of balance between the originality, on the one hand, and the communism, on the other. "Competitive cooperation" of scientists precisely moves around this delicate balance.

In other words, Merton finds in universalism a principle that is shared by democratic politics and the scientific community. Merton refers to a socialist idea of democracy, which is aimed at promoting substantial equality. Another fundamental aspect of Mertonian thought is represented by the peculiar emphasis on the public nature of science. Publicity

is key to the pooling of scientific research, but it also represents the prerequisite for originality. There cannot be originality unless there is memory and awareness of the state of the art. Finally, publicity becomes the vehicle to carry out organized skepticism.

From a liberal perspective, Michael Polanyi offers his own vision of scientific community and its interaction with the State (Polanyi 1962). In similar vein to the Mertonian reasoning, there is a clear connection between the way science is organized and the political structure of society. However, in Polanyi the main idea is that the best possible organization hinges on the spontaneous coordination of individuals who autonomously choose what problems they want to solve. In Polanyi's analysis, science and the market—archetype of an organization based on spontaneous individual initiatives—well exemplify the existence of a superior principle that imposes the respect of individuals' freedom.

What I have said here about the highest possible coordination of individual scientific efforts by a process of self-coordination may recall the self-coordination achieved by producers and consumersConsumer operating in a market. It was, indeed, with this in mind that I spoke of 'the invisible hand' guiding the coordination of independent initiatives to a maximum advancement of science, just as Adam Smith invoked 'the invisible hand' to describe the achievement of greatest joint material satisfaction when independent producers and consumersConsumer are guided by the prices of goods in a market. I am suggesting, in fact, that the coordinating functions of the market are but a special case of coordination by mutual adjustment. In the case of science, adjustment takes place by taking note of the published results of other scientists; while in the case of the market, mutual adjustment is mediated by a system of prices broadcasting current exchange relations, which make supply meet demand.

But the system of prices ruling the market not only transmits information in the light of which economic agents can mutually adjust their actions; it also provides them with an incentive to exercise economy in terms of money. We shall see that, by contrast, the scientist responding directly to the intellectual situation created by the published results of other scientists is motivated by current professional standards (p. 56 in Polanyi 1962).

In science, every scientist should be free to choose which problem he wants to solve. The Republic of Science therefore appears like a system characterized by an indisputable association of independent initiative and this aims at an unspecified goal (Polanyi 1962). Spontaneous coordination requires scientific publications, where each scientist takes account of his peers' publications and reacts with his own publications (Polanyi 1962).

No single scientist is personally responsible for the progress of science, which is conversely the result of many contributions from distinct areas of research (Polanyi 1962).

The Republic of Science is governed and justified by the inherent respect for tradition and value of scientific contribution, but at the same time it remains dynamic because existing knowledge may be challenged by new, original results. Respect for authority and tradition and for the value of scientific contributions is counterbalanced by the wish for originality that drives progress (Polanyi 1962).

No external authority can take the place of science in deciding its aims. Science only responds to its own authority, which arises from the mutual acknowledgement of peers. Such authority is transmitted informally from one generation to another, through participation in the scientific community. In other words, scientific method may not find an explicit explanation—as it is not entirely codified—and can be only transmitted through the apprenticeship of a pupil following the lead of his master (Polanyi 1962).

Although there are differences in terms of prestige among scientists, the authority of science really depends on the reciprocal acknowledgment of the members of its community and not on a mere hierarchical order. Public or private funding for science should be only guided by merit, determined by the scientists themselves, diverting research funds to the most prestigious areas of research (Polanyi 1962). Universities should be left free to compete and choose the best scientists. Universities, therefore, become the best place for scientists to assemble in secluded communities and conduct research without any actual contribution by the public, which does not have the necessary knowledge to take part in this process.

In Polanyi's metaphor, the Republic of Science is extraterritorial, as it must guarantee that its set of rules is based only on scientific merit

(Polanyi 1962). The Hungarian scientist moved his criticism to the politics of science being outlined in the United Kingdom at that time. These politics wished the State to guide scientific research for social aims (what today is known as “third mission”) particularly when, after the end of the Second World War, the expansion of universities was essentially driven by public funds (Polanyi 1962).

The liberal approach of Polanyi rotates around the principle of autonomy. Autonomy of the individual scientist, who is free to determine his own lines of research, and autonomy of universities from the State, which merely had the role of funding the institutions that deserved it. Polanyi does not mention the word “democracy” but uses instead the term “republic”. Consequently, science only responds to science.

Despite the obvious differences in terms of ideological perspective and understanding of democracy, Merton and Polanyi’s theories share some important similarities.

- (a) Norms of science are informal.
- (b) There is a tension between the esteem for consolidated knowledge and criticism of it, which is aimed at targeting new and original results.
- (c) Scientific dialogue is public.

This last statement requires further analysis. The public nature of scientific dialogue is a fundamental aspect of the scientific community. From Gutenberg onwards, talking about public dialogue means publishing printed works. Printing reduces time and distance; it also helps accumulating scientific knowledge. Moreover, publicity through printing is an essential element of modern democracies. The democratic or republican nature of science is intimately linked to the practice of printing the outputs of scientific research.

Besides, modern science has historically developed by promoting public scientific dialogue and the printing press has played a fundamental role in the process of institutionalizing this public nature of science.

A historian of science, Paolo Rossi, effectively portrayed the progressive affirmation of the public and universal aspect of science.

Theories had to be fully communicable and experiments continually repeatable. [...].

In this ‘darkness of life,’ believed Leibniz, it was necessary to walk together because scientific method was more important than individual genius and the goal of philosophy was not to improve the intellect of the individual but that of all men. [...].

It was inevitable that over the course of the seventeenth century the battle in favor of a universal knowledge that could be comprehended by everyone [...] shifted from the level of the ideas and projects of the intellectual to those of the institution. [...] (pp. 24–25 in Rossi 2001)

Among the richest analyses of this process of institutionalization, in which scientific academies flourished, the one by Adrian Johns deserves to be mentioned (Johns 2009). With respect to the practices of the Royal Society and the activities of printing and editing the first modern scientific periodical—the *Philosophical Transactions* was first published in 1665—Johns describes the following.

In practice, every experiment was a nexus between the reading of some texts and the writing and printing of others. [...].

Experimenting with print as well as with nature, the experimentalists created the distant origins of peer review, journals, and archives—the whole gallimaufry that is often taken as distinctive of science, and that is now in question once again in the age of open access and digital distribution. Above all, they gave rise to the central position that scientific authorship and its violation would hold in the enterprise. [...].

For facts to count, they supposedly had to be witnessed by an audience—ideally on repeated occasions. Their registration was therefore part and parcel of learned sociability. And their reading too was consequently not a private act, in principle, but a social gesture. [...].

In the Society itself, however, four relatively discrete stages characterized and shaped the conduct of reading, I have called these presentation, perusal, registration, and publication (which might well take place via correspondence rather than print). (pp. 59–61 in Johns 2009)

Therefore, the printing press as an instrument of public dialogue also had its effects on the intellectual property of scientists. On the one hand,

the press reinforced the demands for textual appropriation (Ong 2005; Woodmansee and Jaszi 1994), while on the other hand it limited the exclusive control over the scientific results obtained by the scientist. Concerning the former aspect, the words of Walter Ong may be recalled here.

Print encourages a sense of closure, a sense that what is found in a text has been finalized, has reached a state of completion. This sense affects literary creations and it affects analytic philosophical or scientific work. [...].

Print culture gave birth to the romantic notions of 'originality' and 'creativity', which set apart an individual work from other works even more, seeing its origins and meaning as independent of outside influence, at least ideally. (pp. 129–131 in Ong 2005)

Regarding the latter aspect, when scientists publish a book or a scientific article, they want to establish priority on the theory described in the text, which can be roughly defined in terms of claiming the paternity of the theory itself.

[...] after the first Scientific Revolution, there was not, nor could there have been, *praise* for or a positive view of dissimulation in the scientific literature or literature about science (an observation which, for example, still does not apply to the world of politics). To dissimulate, or not make public one's own opinions, simply implies trickery or betrayal. Scientists working as a community may indeed pledge secrecy, but the pledge is usually imposed upon them. And when such restrictions are imposed, scientists inevitably protest against them or, as has occurred in more recent times, rebel outright. The fact that 'Kepler's laws' are called 'Kepler's' has nothing to do with possession, and simply serves to perpetuate the memory of a great figure. For science itself, and within the scientific world, secrecy became a liability. (p. 28 in Rossi 2001)

Exclusive control on information (paternity over the theory) is the result of an inevitable interaction of technology (the printing press), informal norms of the scientific community, and formal rules of the laws on intellectual property (copyright and patents).

Informal norms of science essentially target acknowledgment among peers. Naming a certain theory after a scientist, winning a scientific prize (such as the Nobel), and being cited in others' works are all forms of peer acknowledgement. Mario Biagioli underlines the differences between scientific authorship according to informal norms of science and intellectual property as formally regulated by the law (copyright and patents).

Because it is not clear what axioms one could use to define credit and responsibility in science and to determine how they should be related, it appears that those categories can be defined only in the negative, as categories that are complementary to their counterparts in IP: scientific authorship is not like IP authorship, scientific credit is not like IP rights, scientific responsibility is not like financial liability, scientific credit cannot be transferred like IP rights, and so on. [...] Of course I am not saying that the people who practice science are not legal subjects, but simply that, in so far as they work as scientists, they operate in a peculiar economy in which what matters is their name (and the fact that there is a real person behind that name), not the rest of the 'bundle of rights' that, as legal subjects or citizens of specific nations, they may have attached to their names (pp. 260–261 in Biagioli 2003).

The theory, following the analysis offered by Merton, is that scientific authorship, according to the informal norms of science, does not concern rights but rewards, namely scientific acknowledgments (especially in terms of citations). A claim of scientific authorship is a declaration that concerns nature, not a personal utterance of the scientist. For this reason, it is not his property. The rewards connected to such claim do not originate from the State (as it is for intellectual property rights) but from a global community (science).

The formal norms of copyright impede exclusive control (monopoly) over ideas, fact, and mere data of the scientific text. The laws on copyright, in fact, only afford exclusive control over the expression of the idea that flows into an original work of intellectual creation, while ideas, fact, and mere data remain in the public domain. They may freely circulate and be used by many (see pp. 313 ff. in Boyle and Jenkins 2018). The law on patents impedes exclusive control over scientific discoveries and

theories, as well as mathematical methods which do not have industrial application (see pp. 667 ff. in Boyle and Jenkins 2018).

The printing press guarantees a potential devolution of sources of knowledge. It creates not only the conditions for copyright but also for piracy. Indeed, it may lend itself to massive reproduction that is not authorized by copyright owners.

Its success may well have depended, in fact, on the unauthorized reprints that Oldenburg ostentatiously sought to suppress. Continental philosophers responded, both to them and to his original. They embraced the initiative, and their contributions sustained the Society itself as the fervor of its local membership inevitably waned. In those terms the *Philosophical Transactions* proved astoundingly successful (p. 63 in Johns 2009).

The mechanisms for copyright protection have always been only partially effective, also due to their territorial nature. International intellectual property treaties may help, but they do not really impede unauthorized reproduction.

Besides, copyright law engages with printing technology through the principle of exhaustion (the right of distribution being exhausted after the first selling) (Perzanowski and Schultz 2016). According to this principle (also known as “first sale doctrine”), when the copy (material embodiment) of the intellectual work is sold, the right of its owner to control any further distribution (e.g. a subsequent selling) is exhausted and cannot be exercised any longer on that copy. This principle allows second-hand markets to exist, for instance for used books, but also more generally justifies the legitimacy of lending books or donating them to a library. Property over the material object that embodies the intellectual work is however the prerequisite of secluded reading, a fundamental aspect of privacy and self-determination in the individual cultural education (see p. 128 in Ong 2005).

The interaction of technology (the printing press), informal norms of science, and intellectual property law change the way public debate over how science may evolve and how knowledge may pass from one generation to another.

The pressure to publish, driven by the priority rule, does not entirely extinguish the trend of private control over knowledge. As a scientist I

should be able to decide whether I want to publish only some of my research results and keep other research data secret or, in the alternative, to postpone publication to obtain a competitive advantage among peers. However, I may not turn down publication entirely. Since the printing revolution, dialogue among scientists and between scientists and citizens is essentially of a public nature.

“Academic copyright”, to be understood not as a prerogative conferred by the State, but as an interaction of technology, informal norms of science, and formal copyright law, is the prerequisite for public dialogue in the scientific community and democratic society. Their interaction is clearly complex and the friction between norms of science and copyright is often inevitable. However, copyright law may foster the free development of public debate over science. It does this by conferring an exclusive right to the author and not to the institution to which he belongs: the scientist speaks for science and not on behalf of his employer. And he does it by leaving ideas in the public domain.

The stringent relationship that connects copyright, freedom of expression, public dialogue, and democracy is endorsed by both jusnaturalistic theories that justified copyright (Drassinower 2003) and theories that justify copyright protection, based on the effects that it has on society (Netanel 1996; Fisher 2001).

In Italy, Maria Chiara Pievatolo has promoted a Kantian vision of copyright and public dialogue in science (Pievatolo 2003, 2009; Di Donato 2009).

“According to Kant, the *ius reale* cannot be applied to ideas, or, better, to thoughts, because they can be conceived by everyone at the same time, without depriving their authors. Surprising as it may seem, the *ius reale* protects the freedom to copy, if it is taken seriously. If a thing has been purchased in a legal transaction and the purchasers copy it by their own means, they are simply working on their legitimate private property. For the very principle of private property, it is not fair to restrain the ways in which its legitimate purchaser may use it.

For this reason, no *ius reale* can be opposed to the reprinter. If we see the book as a material thing, whoever buys it has the right to reproduce it: after all, it is his book. Furthermore, in Kant’s opinion, we cannot derive any affirmative personal obligation from a *ius reale*: a *ius personale*

on someone cannot be claimed by simply purchasing some related things without obtaining his or her expressed consent.

Kant, by conceiving the book as an action, adopts a strategy based on the *ius personale* only. By using such a strategy, he concludes that the unauthorized printer has to be compared to an unauthorized spokesperson rather than to a thief. Therefore, it is not necessary to go beyond the Roman law tradition, by inventing a new *ius reale* on immaterial things” (Pievatolo 2009).

The author makes public use of reason asking the publisher to represent him in his debate with the public (Kant 1784). Only the public use of reason may enlighten people and create a community of knowledge. Socratic philosophy and modern science share the idea that a community grows and prospers by building on knowledge through public dialogue (see pp. 35 ff., and pp. 80 ff. in Pievatolo 2003).

2 Private Control of Information and Authoritarian Evaluation of Science

When Merton and Polanyi discussed the democratic nature of science, the latter was evolving considerably. It was turning from small science to “big science”. The deployment of large public funds, the increased circulation of researchers and the greater reach of publications became an important feature of big science. At the same time, intellectual property started to become increasingly relevant to scientific research (see pp. 40 ff. in Johns 2009). Universities were becoming more organized and started to resemble enterprises, even engaged in legal battles over patent protection. There were years in which the boundaries between public and private, basic research and applied research started to fade. This phenomenon was even more obvious in the United States. In such context bibliometrics turned out to be an extraordinary profitable deal.

Eugene Garfield, a scientist but also a businessman, founded the Institute of Scientific Information (ISI) in the 1960s—now property of Clarivate Analytics, a private company, destined to play a fundamental role in the governance of science.

What were the theoretical premises that brought about the foundation of the ISI enterprise? Garfield wanted to build a system of bibliographical search that would allow scientists to locate the most relevant and reliable sources, namely scientific articles and other important publications from the past (Garfield 1955). The idea was to measure to what extent an article could be a potentially relevant source to be cited in other papers. It was necessary to build a citation index which could determine the “impact factor” of each article that appeared in a closed list of scientific journals. This idea was supported by the sociology of science and in particular by Derek De Solla Price, who measured the citation of journals to determine their importance (De Solla Price 1965).

The theoretical premise of these studies was the Mertonian theory of scientific peer acknowledgment and the fact that citations do not uniformly circulate, as they only focus on some authors who, for this reason, acquire a competitive advantage over their peers, inducing the so-called “Saint Matthew effect”, which recalls the verse of the New Testament (Matthew 13:12) that says: “For unto every one that hath shall be given, and he shall have abundance: but from him that hath not shall be taken away even that which he hath” (Merton 1968, 1988). It appears pertinent to note that one of the sources used by Garfield was Shepard’s Citations, the citation index used by US lawyers to get a first look at the judicial precedents and understand whether a given case was followed or alternatively questioned by subsequent case law.

Among the reasons behind this idea there was the identification of a list of “core journals” to Science Citation Index (SCI). According to Jean Claude Guédon:

Garfield’s pragmatic solution to a thorny problem—namely finding ways to manage the tracing of thousands upon thousands of citations—carried with it a very large theoretical consequence. In merging all sorts of little specialty cores that had been culled from the coverage of leading bibliographies, and from interviews of many key scientists, Garfield, in effect, gave substance and reality to a new notion, that of ‘core journals’ for ‘core science’. What used to be a useful tool to assist in making difficult choices had become a generic concept with universal claims. ‘Core science’ suddenly

existed and it could be displayed by pointing to a specific list of publications. (p. 20 in Guédon 2001)

The ISI developed some of the criteria to identify this list, but most of all it created a new index that made the concept of “impact factor” official, which Garfield had already mentioned in 1955. Garfield defines the Impact Factor (IF) as the measure of the frequency of citation of the “average article” in a journal in a particular year or period (Garfield 1994).

Identifying the journals considered to be core has also had an impact on the choices of libraries which may not buy all sources of literature for obvious reasons of limited budget. The ISI played a fundamental role in influencing the library choices on subscriptions depending on the SCI or IF.

According to classic heterogenesis of intents, universities and research centers started using IF to evaluate their own researchers (see p. 21 in Guédon 2001).

They began evaluating researchers who published in journals with a high IF and consequently researchers reacted by publishing in these journals too. Bibliometrics had at that time become an instrument of evaluation, a rule, rather than an instrument of research. A rule characterized by mathematics and statistics.

Bibliometrics is the apparently ‘democratic’ analogue of the Church’s dominating metaphysics in the seventeenth Century or the Party’s truth in the Soviet Union. These rulers were not elected, but other majority rulers were elected, such as Hitler or Salazar. It suffices then to kill the opposing ideas and democracy loses its meaning, and science disappears, as in Germany after 1933. The majority vote per se is not democracy. Democracy also crucially requires the enablement or even the promotion of a thinking and active minority. Bibliometrics forbids minority thinking, where new scientific ideas always occur by definition, as history teaches us. If a scientist has to write his/her bibliometric indices on top of his/her CV, that is, the evaluation by the majority of scientists of his/her work, and present it on all occasions, this will prevent the search for a different approach, the courage to explore a new path that may require 60, 20 or 10 years to be quoted. (p. 13 in Longo 2014)

The inner mechanism of citation databases and the measures associated with them has given considerable power to ISI in terms of evaluation, only recently joined by other similar companies. Furthermore, core journals made the market in scientific publications essentially an oligopoly. The oligopolistic structure of this market depends on the fact that researchers want to publish in journals with higher IF and libraries, also under pressure from researchers (who are not directly responsible for their cost) tend to buy such subscriptions. This inevitably renders demand inelastic, which means that it does not increase or decrease according to a rise or fall in price, consequently creating barriers to entering the market and favoring mainly the big players in the publishing market (Dewatripont et al. 2006; Ramello 2010). These big publishers are clearly aware of the desirability of such a market and their profits have objectively proved to be increasing, which also facilitated mergers and acquisitions which considerably augmented their economic power. The market in scientific publications, in other words, is less than competitive and is marked instead by a high level of confluence.

During the 1960s, an era still dominated by traditional printing press, the power of evaluation became concentrated in the hands of a small number of private companies, which built a complex system of secrecy and intellectual property protection around their business of distributing digital databases (Larivière et al. 2015). Private control over scientific databases is essentially characterized by the interaction of intellectual property law, contracts, and technological protection measures (TPMs).

Since the 1990s, in particular, there has been an unprecedented extension of copyright law and related rights protecting both literature and collections of data into the realm of basic science, with no adequate exceptions for research as such. [...] For example, global copyright laws automatically confer exclusive proprietary rights on authors of scientific literature, who routinely transfer those rights to commercial publishers. Database protection laws, now enacted in more than fifty-five countries, simultaneously endow compilers and publishers (as assignees) with exclusive rights to the very data that copyright laws traditionally left unprotected. Publishers, in turn, surround both scientific data and literature with a variety of technological protection measures (TPMs)—so-called electronic fences and digital locks—that cannot be penetrated or pried

open even for purposes of scientific research without violating global norms rooted in an array of multilateral, regional, and bilateral treaties, as well as in a host of national legislative and regulatory instruments (p. 1369 in Reichman and Okediji 2012).

Because of this control over information, big oligopolistic enterprises based their commercial models on “bundling” subscriptions and “price discrimination”. Indeed, the consequences of such centralized power of controlling sources of information and evaluation based on bibliometrics do not merely have an economic effect. The whole infrastructure of sources of scientific information is moving from the hands of scientific institutions and libraries into the hands of big market players.

However, this power of evaluation would not have existed without an alliance with some members of the scientific community, also known as the “gatekeepers”, namely members of scientific boards, editors, and reviewers of the journals who are mostly playing the game of evaluations (see p. 32 in Guédon 2001).

Subsequently, this game started to exert leverage on the anonymous nature of peer review and, later, essentially filtered scientific publications (see pp. 15 ff., and pp. 27 ff. in Fitzpatrick 2011; p. 5 in Biagioli 2002; pp. 20–22 in Russo 2008; pp. 52–53 in Israel 2008). In its many variables, anonymous peer review clashes with the public nature of scientific dialogue, conversely creating a strict hierarchy. Essentially, oligopolies which go hand in hand with oligarchies.

In closing this paragraph, it seems useful to draw some conclusions. Private control over information is, within the system of research evaluation, the instrument to concentrate “governance” powers and, consequently, lessen the democratic value of science.

In the market environment, private control of information endorses oligopolistic powers. Whether following in the footsteps of ISI or concerning the new Internet intermediaries such as Google, or scientific social networks like Academia.edu and ResearchGate—which sell private information in exchange for personal data—what really matters is to maintain exclusive control over data that measure the indexes of evaluation.

3 Authoritarian Science and Private Control of Information: The Italian Experience of the Italian National Agency for the Evaluation of Universities and Research Institutes (ANVUR)

The Italian National Agency for the Evaluation of Universities and Research Institutes (Agenzia Nazionale di Valutazione del sistema Universitario e della Ricerca, or ANVUR) carries out competencies related to research assessment imposed by the Italian Government (Baccini and De Nicolao 2018). Such assessment system has a different nature from the evaluation process that is managed informally and independently by peers (see p. 12 at n. 65 in Pievatolo 2019, 2017).

[ANVUR] oversees the national quality evaluation system for universities and research bodies. It is responsible for the quality assessment of the activities carried out by universities and research institutes, recipients of public funding. It is also entrusted with steering the Independent Evaluation Units' activities, and with assessing the effectiveness and efficiency of public funding programmes or incentive programmes for research and innovation activities. Namely, ANVUR carries out the following tasks:

1. Evaluating procedures, results and outputs of institutions' management, teaching, research and technological transfer activities;
2. Defining criteria and methodologies for the assessment of institutions and programmes (including PhD, Master and Post-graduate medical programmes) with a view to their periodic accreditation by the Ministry;
3. Steering the assessment activities undertaken by universities' Independent Evaluation Units;
4. Drawing up the procedures for collecting and evaluating students' satisfaction with programmes (in cooperation with universities' Evaluation Units);
5. Developing and proposing to the Ministry quantitative and qualitative requirements for the purpose of universities' establishment,

- merger, federation or closure, and of study programmes' activation, merger or closure;
6. Providing benchmarks for public funds allocation at the request of the Minister. It includes the definition of minimum performance levels and standard unit costs for specific services;
 7. Assessing the results of program agreements between MIUR and individual institutions and their contribution to the overall improvement of the evaluation system quality, based on expected results and pre-defined benchmarks;
 8. Assessing the effectiveness and efficiency of public funding programmes and incentive programmes for teaching, research and innovation activities;
 9. Undertaking further assessment exercises, defining standard parameters and providing technical regulations at the request of the Minister. (See the ANVUR web site: <https://www.anvur.it/en/agency/mission>. Accessed 27 December 2020)

Italian law establishes that “the results of the evaluation activities of the ANVUR are reference criterion for the allocation of state funding to universities and research bodies” (see art. 2, par. 138–141, L. 24 November 2006, n. 286). As Maria Chiara Pievatolo argued in a recent paper:

The backwardness of research assessment in Italy—centralized, controlled by the government, enchained to rigid quantitative parameters—is an extreme instance of the administrative authoritarianism that is stiffening, globally, an activity for whose freedom the natural philosophers of the early modern age had to fight. (p. 14 in Pievatolo 2019)

This is not the place to narrate the history of the ANVUR, nor to argue for a complete criticism of it (Borrelli 2015; Pinto 2012). Instead, it is important to note that the agency, in order to distribute public funds, imposes anonymous peer review and uses proprietary and secret data in its research evaluation activities. The Italian performance-based research funding system claims to determine what is “better” science by contradicting two cornerstones of science: publicity and reproducibility of scientific results.

What I criticize is indeed how the ANVUR research evaluation system destroys the public and democratic nature of peer review. To validate these assumptions, it is worth discussing one example of its evaluation exercise: the “Research Quality Assessment” (Valutazione della Qualità della Ricerca or VQR 2011–2014) (Abramo et al. 2018).

- A. “Anonymous peer review”. According to the VQR (2011–2014) rules, ANVUR appointed the evaluation panels (Gruppi di Esperti della Valutazione or GEVs) (Abramo et al. 2018).

The evaluation panels (GEVs) in turn appointed external experts to the anonymous peer review of the “research products”. More in detail, the peer review is entrusted to “independent” external experts selected by the GEV, normally two for each “research product”, which are delegated to evaluate, anonymously, the quality of the selected research products. In the so-called scientific “bibliometric sectors” the informed peer review is based on bibliometrics (Grisorio and Prota 2020).

To summarize, the evaluators are appointed by the ANVUR, that is, indirectly, by Italian Government (more precisely, by the Ministry of Education, Ministero dell’Istruzione della Università e della Ricerca, or MIUR). The evaluators knew the identity of the authors of the research products who did not know the identity of the evaluators. Furthermore, the minutes of the GEVs selection procedures were not public.

- B. “Proprietary and secret data”. The evaluation exercises carried out by the ANVUR are mainly based on bibliometrics and lists of journals compiled by the same agency (see p. 13 in Pievatolo 2019). In particular, most of its evaluation activities are based on closed databases of the big commercial companies like Clarivate Analytics and Elsevier. For example, according to the VQR (2011–2014) rules, the only “official” databases were Clarivate’s ISI Web of Science and Elsevier’s Scopus.

Therefore, the Italian governmental agency (ANVUR) relies on bibliometric data that are calculated by private commercial entities using proprietary data. Moreover, the calculations made by the ANVUR are based on secret data and are not replicable (Baccini and De Nicolao 2017, 2018).

The most curious aspect of Italian government evaluation, essentially centered on secret data and anonymous peer review, is that it claims to present itself as a science (see pp. 52–57 in Israel 2008).

In Italy, the most systematic and at the same time bizarre attempt to argue in favor of the scientific character of the governmental evaluation is a recent book by Andrea Bonaccorsi (Bonaccorsi 2015; see also Bonaccorsi 2018). On the one hand, it is systematic because the author has written a book of two hundred pages, citing sociologists, philosophers, mathematicians, and democracy theorists, to try elaborating a general theory of research evaluation based on administrative authorities. On the other hand, it is bizarre because the book wants to be neutral (mirroring the Mertonian norm of disinterestedness), although it was written by someone who has been member of the ANVUR's Governing Board for years (Baccini and De Nicolao 2018). Moreover it is also bizarre because the whole theoretical effort intends to gravitate on the Mertonian theory of science as a democratic community in a democratic society (see pp. 13 ff. in Pievatolo 2019).

In my theory [...] evaluation is an exercise of explication, formalization and aggregation of judgments already present in the competent communities. Judgment always arises as a qualitative judgment, as an appreciation of the way in which other members of the community contribute to knowledge. The degree to which this judgment can subsequently be aggregated depends on the diffusion of a common language.

It is a theory of evaluation that uses all the knowledge available at all times. It is also a theory adapted to democratic societies, in which scientific research has a constitutional or de facto autonomous status, and it requires that every public procedure be rationally justifiable (see p. 89 in Bonaccorsi 2015, translated by author).

However, democracy is not reduced to the burden of rationally justifying choices through public dialogue. Democracy is a system in which, as Merton reminds us, there are no differences in status among members of the democratic community. Exactly the opposite of what happens in a governmental evaluation system that is in the hands of public functionaries. The status of the governmental evaluators is not only hierarchically

overarching to that of the evaluated scientists but also of a different nature. Evaluators are government officials with administrative power, not scientists.

Furthermore, to rationally justify the choices through public dialogue, it is essential to access public data and replicate calculations. A condition that, on the contrary, is not achieved by the Italian research evaluation system. The traditional academic power is not exempt from the burden of rationally justifying its choices by using natural non-formalized language. Governmental evaluation speaks a different and more formal language—based on algorithms and indicators—that yet refers to proprietary and secret data. Both powers are subject to distortion. From this point of view, the governmental evaluation does not however offer any specific and strong guarantee. Indeed, the fact that power is more centralized and based on private information increases the risk of infringement of scientific integrity and reduces the possibility of control by other powers and citizens.

4 Open Science as Public and Democratic Science

Open Science (OS) is an umbrella term which encompasses many phenomena, including open software, open access publications, open research data, and research reproducibility, open education (open access to educational resources), open peer review (namely the set of procedures that, in different ways, affirms the principle of public peer review), and the use of evaluation metrics based on open data, the process of engaging citizens in obtaining scientific results (“citizen science”) (Caso 2020; Pievatolo 2019; Rentier 2018; Leonelli 2018; Kapczynski 2017; Gold 2016; Fecher and Friesike 2014; Suber 2012; The Royal Society 2012; Nielsen 2011; Willinsky 2006).

The foundations of OS can be identified in two aspects of the process of public creation of science. The former is the free and open access, through the Web, to scientific and educational resources. Open access means granting the public some rights, such as the right of reproduction,

the right to create derivative works, the right of distribution, and the right of communication to the public. The latter is the transparency, through the Web, of the evaluation procedure and of the control over the production of scientific output.

In modern times, a fortunate concurrence of political, economic, and technological factors has made the emergence of public (open) science possible. However, the institutional structure of public science—which features the interaction of technology, informal norms, and formal norms—has been very fragile since the outset.

Considered at the macro-level, ‘open science’ and commercially oriented R&D based upon proprietary information together form a complementary pair of institutionally distinct sub-systems. The public policy challenge that needs to be faced, consequently, is to keep the two sub-systems in proper productive balance, so that the special capabilities of each may amplify the productivity of the other. But the former of these sub-systems, being based on cooperative behavior of researchers who are dependent on public and private patronage support for their work, is the more fragile of the pair; and the more likely to be undermined by the incursion of information disclosure restrictions motivated by the goal of privately appropriating rents from possession of new scientific and technical information. The ‘balancing act’ for public policy therefore requires more than maintenance of adequate public funding for open science institutions and programs. It may call for deliberate measures to halt, and in some areas even reverse excessive incursions of claims to private property rights over material that would otherwise remain in the public domain of scientific data and information—in other words, for the protection of an ‘open science domain’ from the regime of legal protections for intellectual property rights. (p. 1 in David 2007)

As illustrated in the previous paragraphs, private control over information may downsize or even destroy public and democratic science.

In this period of history, private control over information strongly prevails and the actual survival of Open Science (i.e., public and democratic science) is at risk. This is confirmed by the fact that large commercial databases have invaded a considerable part of Open Access (OA).

Elsevier, for instance, not only charges for OA, but is currently buying some repositories and digital infrastructure of OA such as the “Social Science Research Network” and “bepress”. At the same time, scientific commercial social networks like Academia.edu appear to be increasingly aggressive players in the market (Pooley 2017). Scientific researchers, on the contrary, seem more interested in choosing commercial platforms rather than using the infrastructures that exists in the academic institutional or nonprofit world. This is the case, even though scientific social networks share the same negative aspects shared by any other social networks, for example regarding the appropriation and exploitation of personal data of users (Fortney and Gonder 2015).

These instances prove that, in contrast to what many think of Open Science (i.e. public and democratic science) as an inescapable destiny, there are some counteracting forces at work.

1. “Centralization of the private control of information on the Web”. The dream of an open and democratic Web clashes with the reality of today’s Web, which is dominated by big commercial platforms and public agencies which do not really operate for the sake of the public good (Berners-Lee 2010).
2. “Automated decisions and dataism”. Centralization of the private control of information matches the idea of substituting human decisions with algorithms and software. In its most extreme form this paradigm predicts the substitution of human science with the science of machines. Applying mathematics and statistics to large quantity of data (“big data”) would allow identifying correlations among different phenomena, with no need to turn to the classical scientific method based on hypothesis and theoretical models that can be subject to falsifiability (see Anderson 2008; for some fundamental criticisms on Anderson’s perspective see Calude and Longo 2017). Moreover, according to some scholars we would be facing a new conception of the world (a new religion) that revolves around data (so-called: dataism). According to Israeli historian Yuval Noah Harari: “[...] Dataists believe that humans can no longer cope with the immense flows of data, hence they cannot distil data into information, let alone into knowledge or wisdom. The work of processing data should therefore

- be entrusted to electronic algorithms, whose capacity far exceeds that of the human brain. In practice, this means that Dataists are sceptical about human knowledge and wisdom, and prefer to put their trust in Big Data and computer algorithms.” (p. 744 in Harari 2017).
3. “Increasingly wide intellectual property laws” (see p. 1477 in Reichman and Okediji 2012). In particular, databases protection laws and TPMs distort copyright and make it closer to a perilous ownership of information.
 4. “Commercialization of science and university or academic capitalism”. The transformation of universities into enterprises dates back to the past few decades. However, this process has recently accelerated greatly (see, e.g., Schrecker 2010; Radder 2010). Universities make strategic use of intellectual property and behave as the main actors in the technology market. The distinction between basic research and applied research seems to fade. Research funding appears to be often project-based and linked to short term results. Further, research funding becomes temporary and unstable, which reduces the autonomy and the freedom of researchers, particularly younger researchers whom we should expect to pursue new ideas. Informal norms of science change, their operational relevance is reduced, and they are replaced by formal norms of different kinds. Language and categories of the institution change, together with the dominion of “quality assurance” and performance-based research funding. Commercialization is accompanied by competition to the detriment of cooperation among scientists. One of the collateral effects of this exacerbation of competition is the exponential grow of scientific misconduct (Edwards and Roy 2017).
 5. “A less democratic society”. The transition from the government by laws to the governance of numbers describes the crisis of Western democracy well (Supiot 2017). What seems to be a relentless transformation of democracy into a “soft authoritarianism”, namely the compression of the autonomy of science and academic freedom, is indeed a fundamental aspect of this process. As history has clearly demonstrated, authoritarianism fears democratic science because it is the perfect environment for the critical thought to develop.

To survive and hopefully further develop, Open Science must fight against all these forces.

Regarding intellectual property law, to date the petitions of Open Science have not really found their own space. On the contrary, it is unlikely that they will. This is well explained by the fact that part of the OS movement chose civil disobedience instead, seeking a circumvention of copyright law to release scientific knowledge from exclusivity. In his famous post of 2008 titled “Guerrilla Open Access Manifesto”, Aaron Swartz urged people to exchange passwords to access proprietary databases, to share papers downloaded for a fee using the peer-to-peer (P2P) technology (Swartz 2008). Swartz’s message found some systematic fulfillment in platforms like Sci-Hub, where an enormous quantity of scientific publications is available.

Civil disobedience diminishes private control over information but does not really solve the problem. It is necessary rather to discuss the predicament of the evaluation systems that are currently ruling.

Open Science may help in hindering the centralization of evaluation powers only if it becomes aware of the fact that, in the digital age, it has inherited all the values and principles that public and democratic science traditionally fostered in the analogue age. This also means that Open Science represents one of the most important strongholds of a truly democratic society.

References

- Abramo, Giovanni, Ciriaco Andrea D’Angelo, and Flavia Di Costa. 2018. *When Research Assessment Exercises Leave Room for Opportunistic Behavior by the Subjects under Evaluation*. arXiv:1810.13216. Accessed 1 June 2020. <https://arxiv.org/ftp/arxiv/papers/1810/1810.13216.pdf>
- Anderson, Chris. 2008. The End of Theory: The Data Deluge Makes the Scientific. *Wired*. Accessed 1 June 2020. <https://www.wired.com/2008/06/pb-theory/>
- Baccini, Alberto, and Giuseppe De Nicolao. 2017. Errors and Secret Data in the Italian Research Assessment Exercise. A Comment to a Reply. *RT. A Journal*

- on *Research Policy and Evaluation* 5 (1): 1–11. <https://doi.org/10.13130/2282-5398/8872>.
- . 2018. *How Pseudoscientific Rankings Are Distorting Research*. Institute for New Economic Thinking. Accessed 1 June 2020. <https://www.ineteconomics.org/perspectives/blog/how-pseudoscientific-rankings-are-distorting-research>.
- Berners-Lee, Tim. 2010. Long Live the Web: A Call for Continued Open Standards and Neutrality. *Scientific American*. Accessed 1 June 2020. <https://www.scientificamerican.com/article/long-live-the-web>.
- Biagioli, Mario. 2002. From Book Censorship to Academic Peer Review. *Emergences. Journal for the Study of Media & Composite Cultures* 12 (1): 11–45.
- . 2003. Rights or Rewards? Changing Frameworks of Scientific Authorship. In *Scientific Authorship. Credit and Intellectual Property in Science*, ed. Mario Biagioli and Peter Galison, 253–280. London and New York: Routledge.
- Bonaccorsi, Andrea. 2015. *La valutazione possibile. Teoria e pratica nel mondo della ricerca* (Studi e ricerche 700). Bologna: Il Mulino.
- . 2018. Towards an Epistemic Approach to Evaluation in SSH. In *The Evaluation of Research in Social Sciences and Humanities: Lessons from the Italian Experience*, ed. Andrea Bonaccorsi, 1–29. Cham: Springer.
- Borrelli, Davide. 2015. *Contro l'ideologia della valutazione. L'ANVUR e l'arte della rottamazione dell'università*. Milano: Jouvence.
- Boyle, James, and Jennifer Jenkins. 2018. *Intellectual Property: Law & The Information Society. Cases and Materials*. 4th ed. Durham: CreateSpace Independent Publishing Platform.
- Calude, Cristian S., and Giuseppe Longo. 2017. The Deluge of Spurious Correlations in Big Data. *Foundations of Science* 22 (3): 595–612.
- Caso, Roberto. 2020. *La rivoluzione incompiuta. La scienza aperta tra diritto d'autore e proprietà intellettuale*. Milano: Ledizioni. Accessed 1 June 2020. <https://www.ledizioni.it/download/26281>.
- David, Paul A. 2007. *The Historical Origins of 'Open Science'. An Essay on Patronage, Reputation and Common Agency Contracting in the Scientific Revolution*. Stanford SIEPR Discussion Papers 06-38. Accessed 1 June 2020. <http://www.siepr.stanford.edu/papers/pdf/06-38.pdf>.
- De Solla Price, Derek J. 1965. Networks of Scientific Papers. *Science* 149 (3683): 510–515. <https://doi.org/10.1126/science.149.3683.510>.
- Dewatripont, Mathias, et al. 2006. *Study on the Economic and Technical Evolution of the Scientific Publication Markets in Europe*. Accessed 1 June 2020. http://ec.europa.eu/research/science-society/pdf/scientific-publicationstudy_en.pdf.

- Di Donato, Francesca. 2009. *La scienza e la rete. L'uso pubblico della ragione nell'età del Web* (Strumenti per la didattica e la ricerca 93). Firenze: Firenze University Press. Accessed 1 June 2020. <http://www.fupress.com/archivio/pdf/3867.pdf>.
- Drassinower, Abraham. 2003. A Rights-Based View of the Idea/Expression Dichotomy in Copyright Law. *Canadian Journal of Law and Jurisprudence* 16 (1): 3–21. <https://doi.org/10.1017/S0841820900006603>.
- Edwards, Marc A., and Siddhartha Roy. 2017. Academic Research in the 21st Century: Maintaining Scientific Integrity in a Climate of Perverse Incentives and Hypercompetition. *Environmental Engineering Science* 34 (1): 51–61. <https://doi.org/10.1089/ees.2016.0223>.
- Fecher, Benedikt, and Sascha Friesike. 2014. Open Science: One Term, Five Schools of Thought. In *Opening Science. The Evolving Guide on How the Internet is Changing Research, Collaboration and Scholarly Publishing*, ed. Sönke Bartling, and Sascha Friesike, 17–47. Cham: Springer. Accessed 1 June 2020. https://link.springer.com/chapter/10.1007%2F978-3-319-00026-8_2.
- Fisher, William W. 2001. Theories of Intellectual Property. In *New Essays in the Legal and Political Theory of Property*, ed. Stephen R. Munzer, 168–199. Cambridge: Cambridge University Press. Accessed 1 June 2020. <https://cyber.harvard.edu/people/tfisher/iptheory.pdf>.
- Fitzpatrick, Kathleen. 2011. *Planned Obsolescence. Publishing, Technology, and the Future of the Academy*. New York: New York University Press.
- Fortney, Katie, and Justin Gonder. 2015. *A Social Networking Site Is Not an Open Access Repository*. Accessed 1 June 2020. <http://osc.universityofcalifornia.edu/2015/12/a-social-networking-site-is-not-an-open-access-repository>.
- Garfield, Eugene. 1955. Citation Indexes for Science: A New Dimension in Documentation through Association of Ideas. *Science* 122 (3159): 108–111. <https://doi.org/10.1126/science.122.3159.108>.
- . 1994. The Impact Factor. *Current Contents* 25: 3–7. Accessed 1 June 2020. <https://clarivate.com/essays/impact-factor>.
- Gold, E. Richard. 2016. Accelerating Translational Research through Open Science: The Neuro Experiment. *PLoS Biol* 14 (12). <https://doi.org/10.1371/journal.pbio.2001259>.
- Grisorio, Maria Jennifer, and Francesco Prota. 2020. Italy's National Research Assessment: Some Unpleasant Effects. *Studies in Higher Education* 45 (4): 736–754. <https://doi.org/10.1080/03075079.2019.1693989>.

- Guédon, Jean-Claude. 2001. *In Oldenburg's Long Shadow: Librarians, Research Scientists, Publishers, and the Control of Scientific Publishing*. Washington, DC: Association of Research Libraries.
- Harari, Yuval Noah. 2017. *Homo Deus. A Brief History of Tomorrow*. New York: HarperCollins.
- Israel, Giorgio. 2008. *Chi sono i nemici della scienza? Riflessioni su un disastro educativo e culturale e documenti di malascienza*. Torino: Lindau.
- Johns, Adrian. 2009. *Piracy. The Intellectual Property Wars from Gutenberg to Gates*. Chicago and London: The University of Chicago Press.
- Kant, Immanuel. 1784 [1996]. An Answer to the Question: What is Enlightenment? In *Practical Philosophy. The Cambridge Edition of the Works of Immanuel Kant*, trans. and ed. Mary J. Gregor, 11–22. Cambridge: Cambridge University Press.
- Kapczynski, Amy. 2017. Order Without Intellectual Property Law: Open Science in Influenza. *Cornell Law Review* 102 (6): 1539–1648. Accessed 1 June 2020. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3066162.
- Larivière, Vincent, Stefanie Haustein, and Philippe Mongeon. 2015. The Oligopoly of Academic Publishers in the Digital Era. *PLoS ONE* 10 (6). <https://doi.org/10.1371/journal.pone.0127502>.
- Leonelli, Sabina. 2018. La ricerca scientifica nell'era dei Big Data. In *Cinque modi in cui i Big Data danneggiano la scienza, e come salvarla (Filosofia delle scienze e dintorni)*. Milano: Meltemi.
- Longo, Giuseppe. 2014. Science, Problem-Solving and Bibliometrics. In *Bibliometrics: Use and Abuse in the Review of Research Performance*. Proceedings from a Symposium Held in Stockholm, 23–25 May 2013 (Wenner-Gren International Series Volume 87), ed. Wim Blockmans, Lars Engwall, and Denis Weaire, 9–15. London: Portland Press.
- Merton, Robert King. 1938. Science and the Social Order. *Philosophy of Science* 5 (3): 321–337.
- . 1942. Science and Technology in a Democratic Order. *Journal of Legal and Political Sociology* 1: 115–126. Reprinted as 'The Normative Structure of Science' in Merton (1973), 267–278.
- . 1957. Priorities in Scientific Discovery: A Chapter in the Sociology of Science. *American Sociological Review* 22 (6): 635–659.
- . 1968. The Matthew Effect in Science. *Science. New Series* 159 (3810): 56–63.
- . 1973. *The Sociology of Science. Theoretical and Empirical Investigations*. Ed. Norman W. Storer. Chicago and London: The University of Chicago Press.

- . 1988. The Matthew Effect in Science, II: Cumulative Advantage and the Symbolism of Intellectual Property. *Isis* 79 (4): 606–623.
- Netanel, Neil Weinstock. 1996. Copyright and a Democratic Civil Society. *The Yale Law Journal* 106 (2): 283–387.
- Nielsen, Michael. 2011. *Reinventing Discovery. The New Era of Networked Science*. Princeton, NJ: Princeton University Press.
- Ong, Walter Jackson. 2005. *Orality and Literacy. The Technologizing of the Word*. London and New York: Routledge.
- Perzanowski, Aaron, and Jason Schultz. 2016. *The End of Ownership. Personal Property in the Digital Economy*. Cambridge, MA: The MIT Press.
- Pievatolo, Maria Chiara. 2003. *I padroni del discorso. Platone e la libertà della conoscenza* (Methexis 2). Pisa: Edizioni PLUS. Accessed 1 June 2020. <http://bfp.sp.unipi.it/ebooks/mcpla.html>.
- . 2009. *Freedom, Ownership and Copyright: Why Does Kant Reject the Concept of Intellectual Property?* Archivio Marini. Accessed 1 June 2020. <http://archiviomarini.sp.unipi.it/209>.
- . 2017. La bilancia e la spada: scienza di stato e valutazione della ricerca. *Bollettino Telematico di Filosofia Politica*. Accessed 1 June 2020. <https://btfp.sp.unipi.it/it/2017/05/libric>.
- . 2019. Open Science: Human Emancipation or Bureaucratic Serfdom? *Zenodo*. Accessed 1 June 2020. <https://zenodo.org/record/3569970>.
- Pinto, Valeria. 2012. *Valutare e punire. Una critica della cultura della valutazione*. Napoli: Cronopio.
- Polanyi, Michael. 1962. The Republic of Science: Its Political and Economic Theory. *Minerva* 1 (1): 54–73.
- Pooley, Jefferson. 2017. *Scholarly Communications Shouldn't Just Be Open, but Non-Profit Too*. Accessed 1 June 2020. <http://blogs.lse.ac.uk/impactofsocialsciences/2017/08/15/scholarly-communications-shouldnt-just-be-open-but-non-profit-too>.
- Radder, Hans, ed. 2010. *The Commodification of Academic Research. Science and the Modern University*. Pittsburgh, PA: University of Pittsburgh Press.
- Ramello, Giovanni Battista. 2010. Copyright & Endogenous Market Structure: A Glimpse from the Journal Publishing Market. *Review of Economic Research on Copyright Issues* 7 (1): 7–29. SSRN: Accessed 1 June 2020. <http://ssrn.com/abstract=1646643>.
- Reichman, Jerome H., and Ruth L. Okediji. 2012. When Copyright Law and Science Collide: Empowering Digitally Integrated Research Methods on a Global Scale. *Minnesota Law Review* 96: 1362–1480. Accessed 1 June 2020. https://scholarship.law.duke.edu/faculty_scholarship/2675/.

- Rentier, Bernard. 2018. *Science Ouverte, le défi de la transparence*. Préface de Philippe Busquin. Académie Royale de Belgique. Accessed 1 June 2020. <https://orbi.uliege.be/handle/2268/230014>.
- Rossi, Paolo. 2001. *The Birth of Modern Science*. Trans. Cynthia De Nardi Ipsen (The Making of Europe). Oxford: Blackwell Publishers.
- Russo, Lucio. 2008. *La cultura componibile: Dalla frammentazione alla disgregazione del sapere*. Napoli: Liguori Editore.
- Schrecker, Ellen. 2010. *The Lost Soul of Higher Education. Corporatization, the Assault on Academic Freedom, and the End of American University*. New York: The New Press.
- Suber, Peter. 2012. *Open Access*. Cambridge, MA: The MIT Press. Accessed 1 June 2020. https://mitpress.mit.edu/sites/default/files/9780262517638_Open_Access_PDF_Version.pdf.
- Supiot, Alain. 2017. *Governance by Numbers. The Making of a Legal Model of Allegiance*. Hart Studies in Comparative Public Law. London: Hart Publishing.
- Swartz, Aaron. 2008. *Guerrilla Open Access Manifesto*. Accessed 1 June 2020. https://archive.org/stream/GuerrillaOpenAccessManifesto/Goamjuly2008_djvu.txt.
- The Royal Society. 2012. *Science as an Open Enterprise*. Accessed 1 June 2020. <https://royalsociety.org/-/media/policy/projects/sape/2012-06-20-saoe.pdf>.
- Willinsky, John. 2006. *The Access Principle. The Case for Open Access to Research and Scholarship*. Cambridge, MA: The MIT Press. Accessed 1 June 2020. <http://wiki.lib.sun.ac.za/images/0/03/The-access-principle.pdf>.
- Woodmansee, Martha, and Peter Jaszi, eds. 1994. *The Construction of Authorship. Textual Appropriation in Law and Literature*. Post-Contemporary Interventions. Durham: Duke University Press.



The Protection of Scientific Freedom Under the European Charter of Fundamental Rights: A Critical Analysis

Hannes Hofmeister

1 Introduction

Scientific freedom is a cornerstone of western civilisation. Indeed, since the age of enlightenment scholars have fought vigorously to defend this fundamental freedom. While defending academic freedom has never been easy, recent attacks on it—particularly in the ‘nascent’ democracies of Eastern Europe—confront academia with challenges of an unprecedented nature.

The most striking example is Hungary, where one of the country’s leading universities—the Central European University (CEU)—announced on 25 October 2018 that it has no choice but to move a large part of its academic activities out of Hungary. In an official statement, the university said that “incoming students for its US-accredited masters and doctoral programs will study at a new campus in Vienna

H. Hofmeister (✉)

Faculty of Economics & Management, Free University of Bozen-Bolzano,
Bolzano, Italy

e-mail: hannes.hofmeister@unibz.it

beginning in the academic year 2019-20”.¹ Yet what forced CEU to take this drastic measure?

In April 2017 the Hungarian government began to amend higher education legislation. “The amendments required a university issuing foreign degrees (such as CEU) to establish educational activities in its country of origin. To meet the conditions, CEU set up programmes at Bard College in New York. Despite being in compliance, the Hungarian authorities are delaying their decision on whether to accept the agreement, forcing CEU to make this difficult decision. The announcement comes against the backdrop of serious and growing concerns about the negative trajectory of university autonomy and academic freedom in Hungary, as evidenced by a recent government ban on gender studies programmes, an unusually high tax on programmes for refugees and asylum seekers and the intimidation of academics in the Hungarian media”.² According to the European Association of Universities “these developments represent violations of academic freedom ... that are unprecedented in the European Union”.³

So is academic freedom the next victim on Hungary’s way towards an illiberal state? The answer to this question depends to a large extent on the role the Hungarian judiciary takes in this human rights drama. It could give full effect to Article X of the Hungarian Constitution, which provides that “Hungary shall ensure the freedom of scientific research and ... the freedom of teaching”.⁴ However, any hopes that the Hungarian constitutional court will act as the guardian of academic freedom are

¹ Press release by CEU, ‘CEU to Open Vienna Campus for U.S. Degrees in 2019; University determined to uphold Academic Freedom’, 25 October 2018, available online at <https://www.ceu.edu/article/2018-10-25/ceu-open-vienna-campus-us-degrees-2019-university-determined-uphold-academic>. Accessed 27 January 2021.

² Statement by the European University Association: ‘EUA denounces dismantling of university autonomy in Hungary’, 28 October 2018, available online at https://eua.eu/news/182:eua-denounces-dismantling-of-university-autonomy-in-hungary.html?wt_zmc=nl.int.zonaudev.zeit_online_chancen_cb.m_29.10.2018.nl_ref.zeitde.bildtext.link.20181029&utm_medium=nl&utm_campaign=nl_ref&utm_content=zeitde_bildtext_link_20181029&utm_source=zeit_online_chancen_cb.m_29.10.2018_zonaudev_int. Accessed 27 January 2021.

³ Ibid.

⁴ Article X of the Fundamental Law of Hungary (2011) provides:

- (1) Hungary shall ensure the freedom of scientific research and artistic creation, the freedom of learning for the acquisition of the highest possible level of knowledge and, within the framework laid down in an Act, the freedom of teaching.

naïve, given the “Gleichschaltung” of the judiciary under the last Orbán government. The recent suspension of proceedings against the “Lex CEU”⁵ is a case in point (see Halmai 2018).⁶ The European Commission has therefore initiated an infringement procedure against Hungary alleging not only the violation of internal market freedoms, but also for the first time, the violation of Article 13 of the European Charter of Fundamental Rights⁷ (“Freedom of the arts and sciences”).⁸ This Article,

-
- (2) The State shall have no right to decide on questions of scientific truth; only scientists shall have the right to evaluate scientific research.
- (3) Hungary shall protect the scientific and artistic freedom of the Hungarian Academy of Sciences and the Hungarian Academy of Arts. Higher education institutions shall be autonomous in terms of the content and the methods of research and teaching; their organisation shall be regulated by an Act. The Government shall, within the framework of the Acts, lay down the rules governing the management of public institutes of higher education and shall supervise their management.

⁵As well as the Act on the Transparency of Organizations Receiving Foreign Funds.

⁶Halmai points out:

The handling of these two petitions by the Constitutional Court was odd in more than just one respect. The Court hasn’t held a single hearing in either case in the almost one year passed since the filing of the petition. For the first time of its more than quarter century history, without any legal or internal regulatory basis, it has established a ‘scientific’ committee to help the judges to prepare to decide the cases.

... But Viktor Orbán, ... has once again demonstrated that he can always rely on his packed Constitutional Court when it comes to ducking his obligations to comply with EU values. Paradoxically and cynically the same judges who defended the Hungarian historic constitution against the EU Treaty, this time based the suspension of their review on ‘constitutional dialogue’ with the ECJ, and the possible enforcement of EU law. These judges, most of them university professors, have abandoned their constitutional duties to decide cases brought before them, and instead once again came to the rescue of their lord and commander, the Prime Minister, this time betraying their fellow professor’s academic freedom, and freedom of association of their fellow lawyers working as human rights defenders.

⁷Hereinafter CFR.

⁸Today, the European Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that its Higher Education Law as amended on 4 April 2017 disproportionately restricts EU and non-EU universities in their operations and needs to be brought back in line with EU law. The Commission has made this referral on the grounds that the law as amended is not compatible with the freedom for higher education institutions to provide services and establish themselves anywhere in the EU. In addition, the Commission also remains of the opinion that the new legislation runs counter to *the right of academic freedom*, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union and the Union’s legal obligations under international trade law (the General Agreement on Trade in Services, **GATS**, in the framework of the World Trade Organisation,

which became binding law only in 2009 with the entry into force of the Lisbon Reform Treaty, so far remained a legal terra incognita. This paper will therefore attempt to shed some light on this new provision. Before doing so, however, I will (1) briefly set out the general background against which the current erosion of scientific freedom takes place. Having done so, I will then (2) analyse the material and personal scope of Article 13 CFR. Subsequently (3), I will examine the limits of scientific freedom. Last but not least (4), I will subject Article 13 CFR to a critical analysis, followed (5) by a short conclusion.

2 The Erosion of Scientific Freedom

The erosion of scientific freedom has occurred in many different shapes and stages. For instance, in western democracies a significant paradigm shift took place after the end of the Cold war. The early 1990ies saw the rise of the global economy with its concomitant phenomenon of shareholder-value capitalism.⁹ Focused on short term profits, it brought about a significant cultural change: Mathematical risk models and rating agencies replaced the experience-based intuition of the traditional salesman.¹⁰ These new approaches had one common focal point—the market. It became the overarching concept.¹¹ The market was neoliberals' paradise: a space of rational choices, quick decisions and self-regulation.¹² Regulation by the market, instead of regulation for the market was the

WTO) ... Following the assessment of all Hungarian replies, the Commission upholds its view that the modified law violates the freedom to provide services (Article 56 TFEU); the freedom of establishment (Article 49 TFEU); *Directive 2006/123/EC* on services in the internal market (Article 16); *the right of academic freedom*, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union (*Articles 13, 14, 16* respectively); as well as the Union's legal obligations under international trade law (the General Agreement on Trade in Services—GATS—in the framework of the World Trade Organisation, WTO)', European Commission, Press release, Commission refers Hungary to the European Court of Justice of the EU over the Higher Education Law, 7 December 2017, available online at http://europa.eu/rapid/press-release_IP-17-5004_EN.htm.

⁹p. 108 in Rödder 2016.

¹⁰Ibid., 109.

¹¹Ibid., 109.

¹²Ibid., 109.

motto. Even society itself was seen through the lens of the market (Rodgers 2012):¹³ In a sort of spillover-effect, originally non-economic fields, such as the arts, sport as well as education and the sciences were subjected to the logic and mechanisms of the market.¹⁴

At the centre of the market-based restructuring of society were education and the sciences. This is hardly surprising given their pivotal role for the development of society. So how did the subjection of academia to market principles turn out in practice? For instance, performance was to be enhanced by means of competition, faculties were to be led by “academic managers”, and universities were obliged to develop a brand image. The underlying role model was that of the entrepreneurial university with its focus on employability.¹⁵ Gone was the Humboldtian ideal of the duality of “Bildung und Menschenbildung”. It was scrapped for a more utilitarian approach focusing on apparently economically more relevant skills such as employability.

This commercialisation of the sciences led to a serious erosion of academic freedom. Instead of selecting research topics and degree courses on the basis of scientific merit, universities increasingly had to consider the economic relevance of both. Moreover, universities were obliged to subject new degree programmes to a rigorous process of accreditation by external agencies—a process that is not very different from an audit of a private company. Where once mutual trust and respect were the key concepts, control and surveillance became the new paradigm. This was further exacerbated by installing “academic managers”, who controlled the administrative activities (and in particular the research budget) of individual faculties, thereby significantly undermining the traditional concept of academic self-governance. The latter was further eroded by the increasing presence of external representatives in other university governance bodies. These external representatives were mostly industry CEOs. It goes without saying that their interest in exotic subjects, such as archaeology, classics, philosophy and sociology was of a limited nature, while economics, law and engineering—the supposedly “hard subjects”—were

¹³ p. 10 et seq. in Rodgers 2012.

¹⁴ p. 108 in Rödder 2016.

¹⁵ *Ibid.*, 109.

high on their agenda. Whether the closure of chairs in these exotic subjects is due to the above-mentioned changes in the composition of university governing bodies—one can only speculate.

Just like private companies, universities also began to introduce performance-based salary components. But how do you measure performance in academia? The new gold standard for measuring academic quality became the acquisition of external funding. This focus on the acquisition of external funding further eroded what little was left of academic freedom. It led to academics choosing topics or research projects that promised a high chance of being successful rather than choosing a research topic on the basis of its scientific merit or originality.¹⁶

In short, the market-orientation of academia thus led to a loss of critical potential and to a significant erosion of scientific freedom.

In the nascent democracies of Eastern Europe the situation is slightly different. While economic considerations do play a role in restricting academic freedom there as well, ideological motives are much more important. Universities are widely regarded as liberal bastions, that threaten governmental policies by critically questioning their rationales and implications. Viktor Orbán's ideological fight against the Central European University (CEU) and its founder George Soros is a case in point. "Originally established in Prague in 1991, CEU was built to assist the former Soviet bloc in its transition from communism to liberal democracy through a revival of the social sciences and humanities in Central and Eastern Europe. It was to be a place that would train future civil servants, challenge existing orthodoxies and nurture those habits of mind and reason that are characteristic of liberal democracy" (Daniels 2019).¹⁷ It is hardly surprising that CEU—the natural breeding-ground for liberals—would sooner or later clash with a government that had solemnly

¹⁶Truly original or unconventional research projects hardly stand a chance of being selected. Evaluators simply shy away from unconventional projects that might in the end go wrong. They are afraid that they might be associated with such failures and that their academic reputation might suffer accordingly.

¹⁷Daniels, Ronald J. 2019. Central European University is a remarkable school. It should stay in Hungary. *The Washington Post*, January 22. https://www.washingtonpost.com/opinions/central-european-university-is-a-remarkable-school-it-should-stay-in-hungary/2019/01/22/518a2fc6-1e61-11e9-9145-3f74070bbdb9_story.html?noredirect=on&utm_term=.92b252d50c87. Accessed 23 January 2021.

declared its vision of an “illiberal democracy”. The university’s eventual ouster is another “manifestation of the government’s relentless quest to defang any institution that could check its illiberal agenda”.¹⁸

The implementation of this illiberal agenda has affected other universities as well. Starting in 2011, the Hungarian government “fast-tracked several pieces of legislation that have chipped away at public universities’ autonomy. One of the most pernicious of these reforms occurred in 2014, when the government radically restructured the financial powers of university officials by transferring them to newly created chancellors—appointed, of course, by the prime minister. Until 2017, CEU, as a private university, had remained immune from these attacks”.¹⁹ Yet its positive attitude towards migration and its concomitant criticism of the government’s handling of the migration crisis brought CEU back in the line of fire. In April 2017 the Hungarian government introduced amendments to higher education legislation that specifically targeted CEU. These amendments ‘required a university issuing foreign degrees (such as CEU) to establish educational activities in its country of origin. To meet the conditions, CEU set up programmes at Bard College in New York. Despite being in compliance, the Hungarian authorities were delaying their decision on whether to accept the agreement’,²⁰ until CEU had no choice but to relocate its activities to Vienna.

The ideological nature of the government’s battle is evidenced by another legal act that eroded academic freedom. In August 2018, a ministerial regulation deleted gender studies from the list of university degree courses. This de facto abolition of gender studies at universities in Hungary, also seems to be inspired by ideological motives. While the ministerial regulation itself did not contain an explanation of the

¹⁸Ibid.

¹⁹Ibid.

²⁰Statement by the European University Association: ‘EUA denounces dismantling of university autonomy in Hungary’, 28 October 2018, available online at https://eua.eu/news/182:eua-denounces-dismantling-of-university-autonomy-in-hungary.html?wt_zmc=nl.int.zonaudev.zeit_online_chancen_cb.m_29.10.2018.nl_ref.zeitde.bildtext.link.20181029&utm_medium=nl&utm_campaign=nl_ref&utm_content=zeitde_bildtext_link_20181029&utm_source=zeit_online_chancen_cb.m_29.10.2018_zonaudev_int.

underlying motives,²¹ senior Fidesz politicians were quick to provide them. Under-secretary of state Rétvári, for example, described gender studies—in response to a parliamentary request—not as science but as an ideology akin to Marxism (Varszegi 2018).²² Its tenets are incompatible with the value system represented by this government (Verseck 2018).²³ The president of the Hungarian Parliament Kövér went even further: Genderism, he claimed, is the theoretical basis for a human experiment, which is worse than eugenics.²⁴ While the practical impact of this specific act will be comparatively low—only two universities offered degrees in gender studies—the symbolic impact should not be underestimated: Anything that stands in the way of the illiberal agenda—so the underlying message—will be ruthlessly removed.

In summary, the erosion of academic freedom is a multifaceted phenomenon which goes way beyond the scope of this paper. Two particular trends²⁵ that restrict academic freedom can be discerned though: First, the increasing market-orientation of academia, which led to a loss of critical potential. Second, ideological motives, which experienced a revival as of late and seriously undermine academic freedom in some European states.

²¹ See Varszegi, Mark. 2018. Gender Studies und die starken Männer von der Donau—Vorgehen gegen einen unliebsamen Studiengang in Ungarn. *JuWissBlog* Nr. 78/2018, September 13. <https://www.juwiss.de/78-2018/>. Accessed 23 January 2021.

²² Ibid.

²³ Verseck, Keno. 2018. Warum Ungarn das Fach Gender Studies an Unis abschafft. *Spiegel Online*, August 21. <http://www.spiegel.de/lebenundlernen/uni/ungarn-gender-studies-soll-an-unis-verschwinden-warum-a-1223688.html>. Accessed 23 January 2021.

²⁴ Ibid.

²⁵ There are, of course, many more but to provide a comprehensive analysis of them all would be beyond the scope of this paper.

3 The Legal Protection of Scientific Freedom Under Article 13 of the European Charter of Fundamental Rights (CFR)

3.1 The Scope of Article 13 CFR

Article 13 CFR, which is entitled “Freedom of the arts and sciences”, provides:

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 13 CFR thus combines in a single article²⁶ both the protection of the arts and the sciences. This combination of freedom of the arts and sciences is not coincidental; it goes back to the idea that both the arts and the sciences are based on a creative act. While art is a form of creative self-fulfillment and hence of human individuality, science equally depends upon the creativity of mankind to solve academic questions (Frenz 2009).²⁷ Many national constitutions, too, combine these two freedoms in a single article.²⁸ Given the focus of this edited volume, I will, however, concentrate on scientific freedom only.

²⁶Just like its putative role model (i.e. Article 5(3) of the German Grundgesetz).

²⁷See p. 2325 in Frenz 2009.

²⁸See, for instance, Article 33(1) of the Italian Constitution (1949) which provides:

The arts and sciences as well as their teaching are free. (source: Chamber of Deputies; available online at www.legxven.camera.it/cost_reg_funz/345/346/listaArticoli.asp).

See also Article 5(3) of the German Grundgesetz, which provides:

Kunst und Wissenschaft, Forschung und Lehre sind frei. Die Freiheit der Lehre entbindet nicht von der Treue zur Verfassung. (source: Bundesministerium der Justiz und für Verbraucherschutz, available online at https://www.gesetze-im-internet.de/gg/art_5.html).

Scientific Freedom: Material Scope

Article 13 CFR is officially entitled “Freedom of the arts and sciences”. But what precisely is science within the meaning of this article?

The meaning of “science” needs to be ascertained by way of interpretation. The rules on the interpretation and scope of charter rights are laid down in Article 52 CFR.²⁹ Of particular relevance is Article 52(3) CFR which provides that “in so far as this Charter contains rights which correspond to rights guaranteed by the ... [ECHR], the meaning and scope of those rights shall be the same as those laid down by the said Convention”.³⁰ While the ECHR does not contain an explicit corresponding provision on scientific freedom, certain aspects of scientific freedom are nonetheless covered by Article 10 of the ECHR (Seidel 1996),³¹ which protects freedom of expression. This is confirmed by the presidency’s explanations on the Charter,³² which stipulate that scientific freedom needs to be seen in the tradition of freedom of expression and thought.³³ Scientific freedom indeed has its historical roots in the concept of tolerance. Since the eighteenth century, scientific freedom in the form of the *libertas philosophandi* has been regarded as the intellectual flipside of freedom of conscience and expression (Schmidt 1929).³⁴ Article 13 CFR thus finds itself in a close historic and systematic relationship with freedom of expression and thought. From this it follows that

²⁹ See the reference in Article 6(1) EU. According to Article 52(2) CFR, ‘the rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties’. Yet academic freedom is not explicitly dealt with in the Treaties. There is no indication that such a subjective guarantee is enshrined anywhere in the Treaties. Hence Article 52(2) CFR is not of much help in the case under consideration.

³⁰ Article 52(3) CFR.

³¹ See p. 137 et seq. in Seidel 1996.

³² These explanations also need to be taken into account when interpreting Charter rights, see Article 52(7) CFR.

³³ See *Explanation relating to the charter of fundamental rights*, Official Journal of the European Union, 14 February 2007, C 303/17: ‘Explanation on Article 13—Freedom of the arts and sciences: This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR’.

³⁴ See p. 25 et seq. in Schmidt 1929.

Article 13 CFR protects, first and foremost, scientific *communication*, i.e. any activity aimed at exchanging scientific information.

However, scientific freedom as enshrined in the Charter goes beyond this ‘communication’ guarantee. It contains further guarantees—that extend well beyond the scope of Article 10 ECHR. This is fully in line with Article 52(3) CFR, which stipulates that “... this provision shall not prevent Union law providing more extensive protection [than the ECHR]”.³⁵ In this vein, Article 13 CFR also protects academic *research* (Article 13(1) CFR) and academic *teaching* (Article 13(2) CFR). I will now analyse these two aspects in greater detail.

While the official heading of Article 13 CFR only refers to ‘freedom of the sciences’, the text of the article subdivides the term science into two major components: research³⁶ and academic teaching.³⁷ This conception is in line with the constitutional traditions of most European countries where ‘science’ is regarded as the generic term covering both research and teaching.³⁸

These common constitutional traditions play an important role in interpreting charter rights, see Article 52(4) CFR. Interpretative guidance may be sought in particular from Article 5(3) of the German Grundgesetz, whose wording and structure are similar to those of Article 13 CFR.³⁹ The materials of the Charter convention also reveal that Article 13 CFR goes back to the proposal of the German representative (in cooperation with the Austrian and Dutch representative). Hence a closer analysis of the conception of science under Article 5(3) GG is in order. The

³⁵ Article 52(3) CFR.

³⁶ Article 13(1) CFR.

³⁷ Article 13(2) CFR.

³⁸ See, for instance, Article 16(1) of the Greek Constitution (1975) which provides:

Art and science, research, and teaching are free and their development and promotion constitutes a state obligation. Academic freedom and the freedom to teach do not override the duty to obey the Constitution. (translated by George Katrougalos, available online at www.servat.unibe.ch/icl/gr00000_.html).

³⁹ See Article 52(4) CFR.

German Constitutional Court defined the term ‘science’ as a never-ending, structured and serious pursuit of truth:

(Wissenschaft ist) ... alles, was nach Inhalt und Form als ernsthafter, planmäßiger Versuch zur Ermittlung der Wahrheit anzusehen ist.⁴⁰

This rather pathetic conception of science goes back to the age of German idealism and does not necessarily resemble a pan-European understanding of the term. In particular, this idealistic conception of science does not properly reflect the paradigm shift from a truth-seeking pursuit to a mere application-oriented approach. Technological research, for example, does not claim to seek truth, but rather to shape reality.⁴¹ Instead of focussing upon the pursuit of truth, it seems more appropriate—on a European level—to concentrate upon the methodical generation of new knowledge.⁴² This is also in line with the ECJ’s jurisprudence, according to which the scope of fundamental rights needs to be ascertained by way of a broadly based comparative analysis. In this way, the essence of the common constitutional traditions of the Member States can be distilled—a difficult task given the diverse nature of protection that scientific freedom enjoys in the 27 EU Member States (Table 1).⁴³ Regardless, of the difficulties involved in this endeavour, there appears to be agreement that the methodical and systematic generation of new knowledge belongs to this essence/concentrate. This concentrate further covers all research related activities, including preparatory and supportive activities.

This common constitutional tradition also includes *academic freedom*, as evidenced by Article 13 (s.2) CFR. Academic freedom has two dimensions: An individual and an institutional dimension.

Academic freedom means, first and foremost, freedom of teaching by the *individual* professor. This follows from the presidency’s reference to

⁴⁰ BVerfG NJW (1994), 1782.

⁴¹ See, for example, p. 65 et seq. in Dickert 1991.

⁴² See pp. 600–603 Augsberg, in von der Groeben, Schwarze, Hatje (eds.) 2015.

⁴³ For an overview of the various degrees of protection of academic freedom in the EU, see p. 10 in Karran, Mallinson 2017.

Table 1 Constitutional protection for freedom of speech and academic freedom

| Nation | Is freedom of speech/ expression protected in the Constitution? | Are any elements of academic freedom protected in the Constitution? |
|-------------------|---|---|
| Austria | Yes | Yes—research and teaching |
| Belgium | Yes | Yes—teaching |
| Bulgaria | Yes | Yes—autonomy and research |
| Croatia | Yes | Yes—autonomy and research |
| Cyprus | Yes | Yes—freedom of research and university autonomy |
| Czech Republic | Yes | No protection |
| Denmark | Yes | Yes—freedom of research and artistic creation |
| Estonia | Yes | No protection |
| Finland | Yes | Yes—freedom of research and teaching, university autonomy |
| France | Yes | No protection |
| Germany | Yes | Yes—freedom of research and teaching |
| Greece | Yes | Yes—freedom of teaching and research, tenure |
| Hungary | Yes | Yes—freedom of research and teaching |
| Ireland | Yes | No protection |
| Italy | Yes | Yes—freedom of research and teaching |
| Latvia | Yes | No protection |
| Lithuania | Yes | Yes—freedom of research and teaching, university autonomy |
| Luxembourg | Yes | Yes—academic freedom mentioned specifically |
| Malta | Yes | No protection |
| Netherlands | Yes | No protection |
| Poland | Yes | Yes—freedom of research and teaching |
| Portugal | Yes | Yes—freedom of teaching |
| Romania | Yes | Yes—university autonomy |
| Slovakia | Yes | Yes—freedom of research and teaching |
| Slovenia | Yes | Yes—freedom of research and university autonomy |
| Spain | Yes | Yes—academic freedom mentioned specifically |

(continued)

Table 1 (continued)

| Nation | Is freedom of speech/ expression protected in the Constitution? | Are any elements of academic freedom protected in the Constitution? |
|--------|---|---|
| Sweden | Yes | Yes—freedom for research |
| U.K. | No protection | No protection |

Source: p. 10 in Karran, Mallinson 2017

freedom of expression and thought.⁴⁴ Teaching within the meaning of Article 13 CFR is commonly understood as the transfer of knowledge gained through research.⁴⁵ It can take the shape of a university lecture, seminar, tutorial or presentation. Professors are free in their methodical approach and choice of substantive content. Academic freedom thus includes the free choice of form, subject and method of a course. Given that academic freedom has its historical roots in freedom of expression,⁴⁶ it is hardly surprising that it also includes the right to articulate scientific doctrines. This implies not only the communication of one's own scientific views but also the critical discussion of doctrines developed by other scientists.⁴⁷ In short, academic freedom within the meaning of Article 13(s.2) CFR primarily means freedom of teaching.

At the same time, however, it also provides a degree of *institutional* protection. In other words, it contains an institutional guarantee without which scientific freedom simply would not be possible.⁴⁸ A case in point is the autonomy of universities. This institutional dimension of Article 13

⁴⁴ See *Explanation relating to the charter of fundamental rights*, Official Journal of the European Union, 14 February 2007, C 303/17: 'Explanation on Article 13—Freedom of the arts and sciences: This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR'.

⁴⁵ p. 31 et seq. in Knemeyer 1969.

⁴⁶ See *Explanation relating to the charter of fundamental rights*, Official Journal of the European Union, 14 February 2007, C 303/17.

⁴⁷ See p. 156 in Jarass 2013.

⁴⁸ AG Trabucchi underlined in his opinion in *Kley* (1973) the special requirements for the functioning of a research institution and asked the ECJ in a case like the one under consideration 'to make a suitable modification so as to ensure both respect for the individual's right and at the same time *the autonomy necessary for the institution*', Opinion of AG Trabucchi delivered on 5 April 1973, EU:C:1973:40, 693.

CFR can be deduced from the terminology used in s.2: The adjective “academic” is derived from the noun academy⁴⁹—the name of Plato’s school, which was located in the garden of Akademos in Athens. To this very day, the term academy is used for places of higher education.

Last but not least one may wonder, why academic freedom within the meaning of Article 13(s.2) CFR is only to be “respected”, while scientific research is “free”. Does this mean that academic freedom enjoys a lower level of protection? The better arguments clearly speak against such an interpretation: This wording has rather been used to show respect for the competences of the individual Member States⁵⁰ and is therefore not meant to reduce the level of protection.⁵¹

In summary, there appears to be agreement that “scientific freedom” within the meaning of Article 13 CFR protects the following activities:

- any activity that aims at generating new knowledge in a methodical and systematic way
- the communication of scientific results
- the individual freedom of teaching and
- the institutional autonomy of universities.

Scientific Freedom: Personal Scope

The personal scope of scientific freedom under Article 13 CFR covers both natural and legal persons.

It covers *natural persons* irrespective of their nationality, who engage in scientific activity.⁵² Whether these persons work for the state (e.g. at state universities) or in the private sector does not matter.⁵³

⁴⁹ Or academia.

⁵⁰ See, for instance, p. 2801 in Streinz 2012.

⁵¹ Why ‘academic freedom’ has been outsourced to s.2. leaves room for speculation: The most likely reason is that freedom of research within the meaning of s.1 is broader than academic freedom. It covers not only academic research, but also industrial research.

⁵² Even students can invoke Article 13 CFR, if they engage in scientific activity.

⁵³ Provided said persons are granted a sufficient degree of scientific independence, see p. 179 in Ruffert 2006.

Article 13 CFR also covers *legal persons*, such as universities, even if there are public institutions. While Charter rights principally only protect private individuals⁵⁴ against state measures, it is recognised that in exceptional circumstances even public institutions are protected under the Charter.⁵⁵ This is the case, for instance, when public institutions find themselves exposed to similar threat scenarios. This holds true for academic freedom where public universities find themselves in a “grundrechtstypischen Gefährdungslage” analogous to that of natural persons.

3.2 The Limits of Scientific Freedom

Article 13 CFR itself does not lay down any limitations of scientific freedom. Hence recourse to Article 52 CFR is necessary, which contains the general provisions on the restriction of charter rights, including scientific freedom.

Article 52(1) CFR

Pursuant to Article 52(1) CFR “any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others”. Hence a limitation of Article 13 CFR is only possible if the following conditions are met:

First, the restriction must be “*provided for by law*”. What this phrase means, is disputed though. Some argue that only “formal” laws fulfil this condition. This means, for instance, that at EU level only so-called legislative acts, i.e. measures that have been adopted under a legislative

⁵⁴ As well as legal persons established under private law.

⁵⁵ See p. 155 et seq. in Jarass 2013.

procedure (Article 289(3) TFEU) can restrict fundamental rights.⁵⁶ At national level, only parliamentary acts are deemed to have the necessary democratic legitimisation to restrict fundamental rights. This seems to be going too far, though. While parliamentary participation is desirable, it should not be regarded *conditio sine qua non*.⁵⁷ Hence a more convincing approach is to differentiate between Union acts on the one hand and Member State acts on the other:⁵⁸ Measures by the EU generally require a formal law. All legislative acts (i.e. measures that have been adopted by means of a legislative—ordinary or special—procedure) meet this requirement. If measures by the Member States are concerned, then a material understanding of the term law is in order. This would also cover unwritten rules of customary law so characteristic of common law jurisdictions. This approach—already common practice under the ECHR—has the advantage of taking into account the diverse legal traditions in the EU.⁵⁹

Second, the restrictive measure must “*respect the essence of the Charter right*”. This criterion was established by the ECJ early on in its jurisprudence and is now codified in Article 52(1) CFR. However, the court has so far failed to define the term “essence”. The Convention of the CFR did not elaborate on this issue either. The fact, that the ECJ now examines this aspect under a separate heading⁶⁰ (and no longer as an integral part of the proportionality test), might indicate an absolute understanding of the concept in the sense of an inviolable core content.⁶¹

Third, the measure in question must pursue a *legitimate objective*. Article 52(1) CFR differentiates between objectives serving the general interest and those serving individual interests (“rights and freedoms of others”). Among the first group are the values and objectives mentioned in Article 2 and 3 EU as well as any interests protected by special treaty provisions (e.g. consumer protection). The second group mainly covers

⁵⁶ See Art. 52 at 35 in Tettinger, Stern 2006.

⁵⁷ See, for instance, Art. 52 GRC at 25 in Streinz 2012.

⁵⁸ See Art. 52 at 20 in Meyer 2014.

⁵⁹ See *ibid.*, Art. 52 at 20.

⁶⁰ See Judgement of 8 April 2014, Digital Rights Ireland and Seitlinger, C -293/12 and 594/12, ECLI:EU:C:2014:238, para. 39 et seq.

⁶¹ See § 14 at 109 in Ehlers 2014.

colliding fundamental rights of other persons (e.g. freedom of expression under Article 11 CFR).

Fourth, the restrictive measure must be *proportional* within the meaning of Article 52(1) CFR. Here the court examines whether the measure is suitable to achieve the legitimate objective. The court derives this requirement, inter alia, from the wording of Article 52(1) CFR (“genuinely meet”). The court then goes on to analyse the necessity of the measure. Necessity means that if there are other equally suited measures, the least onerous one must be chosen. The court oftentimes combines the ‘necessity analysis’ with an overall analysis of the conflicting interests of the parties. Here “the interests involved must be weighed having regard to all the circumstances of the case in order to determine whether a fair balance was struck between those interests”.⁶²

In short, if the above-mentioned criteria are met, then a measure can be justified under Article 52(1) CFR.

Article 52(3) CFR and Article 10(2) ECHR

Yet it is questionable whether the general provision of Article 52(1) CFR is applicable at all in the case under consideration. Some claim that Article 52(3) CFR is *lex specialis*⁶³ and hence precludes the application of Article 52(1) CFR in the case of scientific freedom. This Article provides:

⁶²Judgement of 12 June 2003, Schmidberger, C-112/00, ECLI:EU:C:2003:333 para. 81.

⁶³The *lex specialis* principle has a long history in international jurisprudence. Hugo Grotius, for example, aptly summarised its rationale in the following terms:

‘What rules ought to be observed in such cases [i.e. where parts of a document are in conflict]. Among agreements which are equal...that should be given preference which is most specific and approaches most nearly to the subject in hand, for special provisions are ordinarily more effective than those that are general. (Book II, Sect. XXIX in Grotius 1646)

According to Grotius, the key rationale for the widespread acceptance of the *lex specialis* principle is that a ‘special rule is more to the point (approaches more nearly to the subject in hand) than a general one and that it regulates the matter more effectively (‘are ordinarily more effective’) than general rules do’.

In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.⁶⁴

Since certain elements of scientific freedom are covered by Article 10 ECHR, proponents of this view argue that the restrictions envisaged by Article 10(2) ECHR must also apply to scientific freedom under Article 13 CFR. The limitations foreseen by Article 10(2) ECHR include "... such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".⁶⁵ In other words, under Article 10(2) ECHR a violation of Article 13 CFR can only be justified on the basis of a legal act, which pursues one of the legitimate objectives mentioned in said Article and which is proportional. While this view is generally convincing, there is one caveat, though: The limitations of Article 10(2) ECHR are applicable only in so far as the Charter right (i.e. Article 13) contains rights which correspond to rights guaranteed by the ECHR. This means that the restrictions of Article 10(2) ECHR apply only when the 'communication guarantee' is concerned, i.e. any action aimed at exchanging scientific information. If other aspects of scientific freedom are concerned, then recourse to the general provision of Article 52(1) CFR is possible.⁶⁶

In short, the limitations of Article 13 CFR are regulated both by Article 52(3) CFR (if the "communication guarantee" is concerned) and by Article 52(1) CFR (if other aspects are concerned).⁶⁷

⁶⁴ Article 52(3) CFR.

⁶⁵ Article 10(2) ECHR.

⁶⁶ See Art. 13 at 13 in Meyer 2014.

⁶⁷ Some claim that Article 52(4) CFR is applicable, according to which the interpretation of fundamental rights has to be consistent with the common constitutional traditions of the Member States,

3.3 Addressees of Article 13 CFR

Article 13 CFR is addressed to the institutions, bodies and agencies of the EU, see Article 51(1) CFR. Institutions within the meaning of said Article are the ones listed in Article 13(1) EU, i.e. the European Parliament, the European Council, the Council of Ministers, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors. The other bodies or offices referred to in Article 51(1) CFR are those entities, established either by the treaties themselves or on their basis.⁶⁸ The specific designation of the entity is irrelevant for the question of whether or not an entity is bound by the CFR. Moreover, the EU as a legal person is also bound by the CFR, even though Article 51 (1) CFR is not quite clear on this. In sum, any action on the part of the Union or its subdivisions is therefore bound by Article 13 CFR to ensure a comprehensive degree of protection.

Yet the scope of Article 13 CFR is not confined to EU institutions; it also binds the Member States when they *implement* Union law. The meaning of the term *implement* is heavily disputed though. This aspect will be dealt with *en detail* in the next chapter.⁶⁹

3.4 Critical Analysis

The Binding Effect of Article 13 CFR

Whether or not Article 13 CFR will make an impact, crucially depends on the extent to which it has binding effect. Under Article 51(1) CFR it is primarily the EU organs that are bound by charter rights. Yet since the EU has only limited competences in the field of science and education, violations by the latter are likely to play a marginal role only.

Much more important is therefore the extent to which the Member States—the more likely violators of scientific freedom—are bound by

see for instance, p. 2361 in Frenz 2009. However, given the diverse protection of scientific freedom in the 27 EU MS, this approach is not convincing.

⁶⁸ I.e. on the basis of EU secondary law.

⁶⁹ I.e. under point III.4.a.

charter rights. Article 51 CFR binds the Member States when they “implement” Union law. The meaning of the term ‘implement’ is heavily disputed, though.

aa) Prior to the entry into force of the CFR, the ECJ assumed that Member States were bound by EU fundamental rights, whenever the respective rule fell into the field of application of EU law (“*in the field of Community law*”).⁷⁰ The Court was not very consistent in the use of its terminology, though: For instance, the ECJ used the phrases “*in the field of Community law*”⁷¹ and “*when implementing Union law*”⁷² interchangeably. In line with this jurisprudence, national measures, such as restrictions of the four fundamental freedoms, had to be analysed in the light of EU fundamental rights, even though the Member States did not act here on behalf of the Union, but rather to protect their own national interests. In short, in the pre-Lisbon era, the ECJ had adopted a broad interpretation holding that Member States were bound by EU fundamental rights,⁷³ whenever the respective rule fell ‘into the field of Community law’.⁷⁴

bb) Following the entry into force of the CFR in 2009, the new Article 51(1) CFR with its narrow wording (“... *only* when they are implementing ...”) gave rise to a more restrictive interpretation. Some claimed that this new wording implied a deliberate restriction of those bound by the CFR as compared to the pre-Lisbon jurisprudence of the ECJ.⁷⁵ In particular, from now on, Member States should only be bound by the CFR when either transposing or executing EU law. In other words, only when they act as “agents” of the Union should the Member States be bound by the CFR.⁷⁶ On that basis, mere restrictions of the four fundamental freedoms could no longer be regarded as an “implementation” of EU law.⁷⁷ In support of this view, they point to the wording of Article 51(1) CFR, which provides: “The provisions of this Charter are addressed ... to the

⁷⁰ Judgement of 18 June 1991, ERT, C-260/89, EU:C:1991:254, para. 42.

⁷¹ Judgement of 18 June 1991, ERT, C-260/89, EU:C:1991:254, para. 42.

⁷² Judgement of 13 July 1989, Wachauf, C-5/88, EU:C:1989:321, para. 19.

⁷³ *Unwritten* fundamental rights as they were back then.

⁷⁴ Judgement of 18 June 1991, ERT, C-260/89, EU:C:1991:254, para. 42.

⁷⁵ See, for example, p. 551 in Cremer 2011.

⁷⁶ See p. 680 et seq. in v.Bogdandy, Bast 2009.

⁷⁷ See Art. 51 at 29 in Meyer 2014.

Member States *only* when they are implementing Union law”.⁷⁸ The German wording is even stronger employing the term “ausschließlich”, i.e. “exclusively”, instead of “only”. Moreover, they also point to the discussion in the convention to support their view.

cc) This restrictive approach is not convincing, though. Both the wording and the drafting history as well as teleological considerations militate against such an interpretation. I will deal with all three aspects in turn.

First, the use of the term “implementation” does not necessitate a narrow interpretation. A comparative analysis of the other language versions (e.g. the Portuguese version reads: “... *quando apliquem o direito da União*”) rather implies a broad interpretation. Moreover, the ECJ has used the terms ‘implementation’ and ‘application’ interchangeably in its jurisprudence.⁷⁹

Second, the drafting history of Article 51 CFR supports the notion that the pre-Charter jurisprudence of the ECJ was meant to continue. Of particular importance in this context are the official explanations attached to the charter of fundamental rights, which need to be taken into account when interpreting the charter, see Article 6(1) EU and Article 52(7) CFR. The explanations to the charter also use the wider term “binding on the Member States when they act within the scope of Union law”⁸⁰—just like the ECJ did in the pre-Lisbon era.

⁷⁸ Article 51(1) CFR.

⁷⁹ See point III.4.a.

⁸⁰ *Explanation relating to the charter of fundamental rights*, Official Journal of the European Union, 14 February 2007, C 303/32:

Explanation on Article 51—Field of application

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by the Cologne European Council. The term ‘institutions’ is enshrined in the Treaties. The expression ‘bodies, offices and agencies’ is commonly used in the Treaties to refer to all the authorities set up by the Treaties or by secondary legislation (see, e.g., Articles 15 or 16 of the Treaty on the Functioning of the European Union).

As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, Case C-260/89 ERT

Third, the preamble of the Charter provides that it is necessary to *strengthen* the protection of fundamental rights. A narrow interpretation would, however, achieve the opposite result, i.e. a weakening of the protection of fundamental rights, by restricting its scope of application.⁸¹

In summary, the term “implementing EU law” needs to be interpreted broadly so as to encompass all situations governed by EU law. This interpretation has also been confirmed by the ECJ in *Akerberg Fransson* (2013),⁸² where the Court held:

The Court’s settled case-law indeed states, in essence, that the fundamental rights guaranteed in the legal order of the European Union are applicable *in all situations governed by European Union law*, but not outside such situations. In this respect the Court has already observed that it has no power to examine the compatibility with the Charter of national legislation lying outside the scope of European Union law. On the other hand, if such legislation falls within the scope of European Union law, the Court, when requested to give a preliminary ruling, must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights the observance of which the Court ensures (see inter alia, to this effect, Case C-27/11 *Vinkov* [2012] ECR, paragraph 58). Since the fundamental rights guaranteed by the Charter must therefore be complied with where national legislation *falls within the scope of European Union law*, situations cannot exist which are covered in that way by European Union law without those

[1991] ECR I-2925; judgment of 18 December 1997, Case C-309/96 *Annibaldi* [1997] ECR I-7493). The Court of Justice confirmed this case-law in the following terms: ‘In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ...’ (judgment of 13 April 2000, Case C-292/97 [2000] ECR I-2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

⁸¹The preamble of the Charter of fundamental rights provides: ‘...To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter’.

⁸²Judgement of 26 February 2013, *Akerberg Fransson*, C-617/10, ECLI:EU:C:2013:105.

fundamental rights being applicable. *The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter.*⁸³

dd) Yet what are the consequences of this broad conception of the term “implementation”? It will lead to an increasingly important role of charter rights—a welcome development as it will render Article 13 CFR an important instrument in the fight against potential violations of scientific freedom. With the ECJ interpreting the scope of the four fundamental freedoms very broadly, basically all national regulating measures, that potentially have an international dimension, fall within the scope of application of the former, and hence are ‘governed by EU law’ and thus need to be analysed in light of the CFR.⁸⁴ This development also has far-reaching implications for the judicial system: For example, in the future it will not only be ordinary courts making preliminary references to the ECJ but also increasingly supreme courts that will be under an obligation to make such references to have the compatibility of national measures with the CFR clarified. This might lead to a “dethronement” of national supreme courts by the ECJ and a concomitant loss of importance of national fundamental rights.⁸⁵ This proves once more the validity of the traditional dictum, that those who “sow multilevel protection of fundamental rights, will in the end reap centralisation and unitarization”.⁸⁶

⁸³Judgement of 26 February 2013, Akerberg Fransson, C-617/10, ECLI:EU:C:2013:105, para. 19 and 21.

⁸⁴This broad conception will lead to a marginalisation of national fundamental rights, whose application is—by and large—excluded once a situation is governed by EU law. And since ever more situations are ‘governed by Union law’, this development has far-reaching implications. For instance, with the ECJ interpreting the scope of the four fundamental freedoms very broadly, basically all national regulating measures, that potentially have an international dimension, fall within the scope of application of the former, and hence are ‘governed by EU law’. And even in the few cases, in which national fundamental rights are still applicable, care must be taken not to infringe the supremacy and effectiveness of EU law. For instance, the degree of protection afforded by national fundamental rights to one person must not exceed the EU standard, when in this way the degree of protection afforded to another person falls below the CFR-standard. This development also has wide-reaching implications for the judicial system as outlined above.

⁸⁵§189, at 37 et seq. Gärditz, in: Isensee/ Kirchhof (eds.) 2011.

⁸⁶p. 1015 in Steiner 2001.

The Clarifying Effect of Article 13 CFR

The codification of scientific freedom in Article 13 CFR also has a “clarifying effect”,⁸⁷ i.e. it makes clear that a right to scientific freedom does indeed exist at Union level. In this way, Article 13 CFR contributes to strengthening the fundamental principle of legal certainty. To better understand the significance of this aspect, a brief historical overview of fundamental rights protection at EU level is in order.

In the pre-Charter era, only unwritten fundamental rights existed at Union level. These were developed by in the ECJ in its jurisprudence and enjoyed the status of general principles of EU Law.⁸⁸ While the ECJ recognized the existence of a fundamental right to freedom of speech in *Cwik* (2001)⁸⁹ or the right to property in *Generics* (1998),⁹⁰ the Court refrained from doing so in the case of scientific freedom. This reluctance of the court to acknowledge the existence of an ‘independent or stand-alone’ Union right to academic freedom resulted, inter alia, from the following consideration: The ECJ derived these unwritten fundamental rights primarily from the common traditions of the Member States.⁹¹ When analysing these constitutional traditions it became clear, though, that not all Member States did indeed recognise a constitutional right to academic freedom. And even those which did recognise such a right, did so to a varying extent: Some only acknowledged a guarantee of freedom of scientific research, but not freedom of teaching. In light of these considerations, the ECJ thus remained extremely hesitant to acknowledge the existence of a comprehensive “stand-alone” Union right to academic freedom.⁹² Accordingly, the ECJ⁹³ derived the right to a discrimination-free access to universities exclusively from the

⁸⁷ Depending on the perspective one adopts, one could even argue that it created an EU right to scientific freedom and hence had a ‘creative effect’.

⁸⁸ See Article 6(3) EU.

⁸⁹ Judgement of 13 December 2001, *Cwik*, C-340/00, EU:C:2001:701.

⁹⁰ Judgement of 3 December 1998, *Generics*, C-368/96, EU:C:1998:583.

⁹¹ As well as from the ECHR, see Article 6(3) EU.

⁹² For a different view, see, inter alia, p. 84 et seq. in Demuro 2010.

⁹³ Judgement of 13 February 1985, *Gravier*, C-293/83, EU:C:1985:69, para. 15 et seq.

non-discrimination principle⁹⁴ without mentioning academic freedom at all.⁹⁵

The approach of the ECJ contrasts starkly with the view of the Advocate Generals who oftentimes supported the notion of an EU fundamental right to scientific freedom.⁹⁶ A case in point is the opinion of Advocate General Trabucchi in *Kley* (1973)⁹⁷ and in *Guillot* (1974).⁹⁸ In the former, AG Trabucchi emphasised the relevance of scientific freedom. Just like the German Constitutional Court, AG Trabucchi underlined the special requirements for the functioning of a research institution and asked the ECJ in a case like this “to make a suitable modification so as to ensure both respect for the individual’s right and at the same time the autonomy necessary for the institution”.⁹⁹ At the end of his opinion AG Trabucchi concluded that scientific freedom—important as it is—is not without limits: “Freedom in the scientific world does not exclude the scientist’s duties in the world of organization”.¹⁰⁰ The German version of the AG’s opinion is even clearer, referring explicitly to “Freiheit der Wissenschaft”, i.e. scientific freedom.¹⁰¹

Some aspects of scientific freedom, such as the right to publish scientific results, were later derived by the ECJ from freedom of speech, which had been recognised as an unwritten fundamental right earlier on by the court.¹⁰² In order to protect a further aspect of scientific freedom—the economic utilisation of scientific results—the ECJ invoked the right to

⁹⁴ Read together with the right to free movement.

⁹⁵ What is important here is that court did not even address the applicability of academic freedom, because this would have presumed the existence of such a right in the first place. The applicability of scientific freedom in this case would have been problematic anyway, as access to universities is more an issue under Article 14 CFR (‘right to education’) than Article 13 CFR (‘scientific freedom’). The exception might be access to PhD degrees, where the scientific aspects play a crucial role.

⁹⁶ See, for instance, AG Trabucchi in his opinion delivered on 21 June 1974, EU:C:1974:67.

⁹⁷ Opinion of AG Trabucchi delivered on 5 April 1973, EU:C:1973:40.

⁹⁸ Opinion of AG Trabucchi delivered on 21 June 1974, EU:C:1974:67.

⁹⁹ Opinion of AG Trabucchi delivered on 5 April 1973, EU:C:1973:40, 693.

¹⁰⁰ Opinion of AG Trabucchi delivered on 5 April 1973, EU:C:1973:40, 702.

¹⁰¹ ‘Die Freiheit der Wissenschaft schließt nicht aus, dass dem Wissenschaftler auch auf organisatorischem Gebiet Aufgaben gestellt sind’, Opinion of AG Trabucchi delivered on 5 April 1973, EU:C:1973:40, 702.

¹⁰² See Judgement of 13 December 2001, Cwilk, C-340/00, EU:C:2001:701, para. 14 and 23.

property, which again had been recognised as a general principle of EU law.¹⁰³

In summary, the codification of scientific freedom in Article 13 CFR eventually ended this state of uncertainty and made it clear that a comprehensive, “stand-alone” right to scientific freedom exists at Union level.

The Protective Effect of Article 13 CFR

The fact that scientific freedom has now been codified in Article 13 of the CFR¹⁰⁴ allows for a better judicial protection of this fundamental right. In particular, its protection no longer depends on the national judicial system. Legal action can now be initiated on the European level by independent institutions. For instance, the Commission—the guardian of EU law (which *now* undoubtedly includes scientific freedom)¹⁰⁵—can initiate infringement proceedings under Article 258 TFEU if it believes that a Member State fails to comply with its obligations. The significance of such independent supervision is underlined by the situation in Hungary, where the national judicial system failed to adequately protect academic freedom in the case of the ‘lex CEU’. Gabor Halmai aptly summarized this failure in the following terms:

On 5 June [2018] the Hungarian Constitutional Court issued two injunction decisions, almost identical in their texts, which suspend the constitutional review procedures against two laws enacted in early April, 2017, by the Hungarian Parliament, outside the normal legislative process. The first, an amendment to the Act on National Higher Education known as “Lex CEU” was challenged by a constitutional complaint, the second, the Act of the Transparency of Organizations Receiving Foreign Funds by 60 opposition MPs of the Hungarian Parliament with an abstract norm control motion. The handling of these two petitions by the Constitutional Court was odd in more than just one respect. The Court hasn’t held a single hearing in either case in the almost one year passed since the filing of the

¹⁰³ Judgement of 3 December 1998, *Generics*, C-368/96, EU:C:1998:583, para. 77 et seq.

¹⁰⁴ And thereby turned into EU primary law, see Article 6(1) EU.

¹⁰⁵ For the disputed status of scientific freedom before the entry into force of the charter see point III.4.b.

petition. For the first time of its more than quarter century history, without any legal or internal regulatory basis, it has established a ‘scientific’ committee to help the judges to prepare to decide the cases. After the European Commission initiated infringement procedures based on Article 258 TFEU in each case against Hungary before the European Court of Justice, and more than half a year into the procedure, all of a sudden the Constitutional Court decided to suspend their (in practice not even started) review procedure and wait for the judgment of the ECJ, thereby de facto helping the government to force the Central European University (CEU) out of the country. ... This is the cynical political game the packed Constitutional Court is part of with its decision to refuse its duty to decide a case brought before it (Halmai 2018).¹⁰⁶

In the absence of Article 13 CFR, the Commission’s role would be reduced to that of a passive bystander. Following the entry into force of the CFR, however, it can take on a proactive role and initiate infringement proceedings under Article 258 et seq. TFEU. These proceedings might ultimately lead to the imposition of a lump sum or a penalty payment or even a combination thereof.¹⁰⁷ The threat of such sanctions proved to be an effective instrument in enhancing compliance, as the recent infringement procedure against Poland shows. In this case, looming sanctions eventually made Poland bow to a ruling of the ECJ, “ordering it to suspend a law that had lowered the retirement age of its Supreme Court judges amid concerns about judicial independence”.¹⁰⁸

¹⁰⁶ Gabor Halmai, The Hungarian Constitutional Court betrays Academic Freedom and Freedom of Association, *Verfassungsblog*, 8 June 2018, available online at <https://verfassungsblog.de/the-hungarian-constitutional-court-betrays-academic-freedom-and-freedom-of-association/>.

Halmai goes on to argue: ‘But Viktor Orbán, ... , has once again demonstrated that he can always rely on his packed Constitutional Court when it comes to ducking his obligations to comply with EU values. Paradoxically and cynically the same judges who defended the Hungarian historic constitution against the EU Treaty, this time based the suspension of their review on ‘constitutional dialogue’ with the ECJ, and the possible enforcement of EU law. These judges, most of them university professors, have abandoned their constitutional duties to decide cases brought before them, and instead once again came to the rescue of their lord and commander, the Prime Minister, this time betraying their fellow professor’s academic freedom, and freedom of association of their fellow lawyers working as human rights defenders’.

¹⁰⁷ See Article 260(2) TFEU.

¹⁰⁸ Euractiv, Poland bows to EU Court reversal of Supreme Court retirements, 18 December 2018, available online at <https://www.euractiv.com/section/future-eu/news/poland-bows-to-eu-court-reversal-of-supreme-court-retirements/>.

In monitoring compliance with the CFR, the Commission is now supported by the European Agency for Fundamental Rights. This Agency, which was established in 2007, has the task of providing the relevant institutions of the Union and its Member States when implementing Union law “with assistance and expertise relating to fundamental rights in order to support them when they take measures ... within their respective spheres of competence to fully respect fundamental rights”.¹⁰⁹

The European Parliament, too, can now take action in response to petitions, in which citizens complain about the violation of EU fundamental rights. Moreover, the European Parliament also has the right initiate proceedings under Article 7(1) EU, if it believes that there is a clear risk of a serious breach of the values listed in Article 2 EU. These values include, inter alia, the respect for human rights. It is therefore hardly surprising that in September 2018 the the European Parliament called on the Council to determine, in accordance with Article 7(1) EU, whether Hungary is at risk of breaching the EU’s fundamental values.¹¹⁰ The European Parliament’s key concerns relate to some 12 aspects, one of them is academic freedom.¹¹¹

¹⁰⁹ Article 2 of Council Regulation 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights.

¹¹⁰ European Parliament Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)), available online at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0340+0+DOC+XML+V0//EN&language=EN#BKMD-10>.

¹¹¹ The annex to the European Parliament’s resolution of 12 September 2018 then goes on to specify Parliament’s concerns regarding academic freedom:

(33) On 6 October 2017, the Venice Commission adopted its Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. It concluded that introducing more stringent rules without very strong reasons, coupled with strict deadlines and severe legal consequences, for foreign universities which are already established in Hungary and have been lawfully operating there for many years, appears highly problematic from the standpoint of the rule of law and fundamental rights principles and guarantees. Those universities and their students are protected by domestic and international rules on academic freedom, the freedom of expression and assembly and the right to, and freedom of, education. The Venice Commission recommended that the Hungarian authorities, in particular, ensure that new rules on the requirement to have a work permit do not disproportionately affect academic freedom and are applied in a non-discriminatory and flexible manner, without jeopardising the quality and international character of education already provided by existing universities. The concerns about the Amendment of Act CCIV

4 Conclusion

Writing about the “lex CEU”, Professor Ronald Daniels of Johns Hopkins University argued that “universities—particularly ones as accomplished and as independent as CEU—unnerve authoritarian rulers because a core commitment to truth and to unfettered intellectual inquiry threatens the authoritarian state’s belief in its own infallibility and its bid to

of 2011 on National Tertiary Education have also been shared by the UN Special Rapporteurs on the freedom of opinion and expression, on the rights to freedom of peaceful assembly and association and on cultural rights in their statement of 11 April 2017. In the concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of such constraints on the freedom of thought, expression and association, as well as academic freedom.

(34) On 17 October 2017, the Hungarian Parliament extended the deadline for foreign universities operating in the country to meet the new criteria to 1 January 2019 at the request of the institutions concerned and following the recommendation of the Presidency of the Hungarian Rectors’ Conference. The Venice Commission has welcomed that prolongation. Negotiations between the Hungarian Government and foreign higher education institutions affected, in particular, the Central European University, are still ongoing, while the legal limbo for foreign universities remains, although the Central European University complied with the new requirements in due time.

(35) On 7 December 2017, the Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that the Amendment of Act CCIV of 2011 on National Tertiary Education disproportionately restricts Union and non-Union universities in their operations and that the Act needs to be brought back in line with Union law. The Commission found that the new legislation runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union (the “Charter”) and the Union’s legal obligations under international trade law.

(36) On 9 August 2018, it became public that the Hungarian government plans to withdraw the Masters programme of Gender Studies at the public Eötvös Loránd University (ELTE) and to refuse the recognition of the MA in Gender Studies from the private Central European University. The European Parliament points out that a misinterpretation of the concept of gender has dominated the public discourse in Hungary and deplores this wilful misinterpretation of the terms ‘gender’ and ‘gender equality’. The European Parliament condemns the attacks on free teaching and research, in particular on gender studies, the aim of which is to analyse power relationships, discrimination and gender relations in society and find solutions to forms of inequality and which has become the target of defamation campaigns. The European Parliament calls for the fundamental democratic principle of educational freedom to be fully restored and safeguarded. (Annex to the EP’s resolution of 12 September 2018, para. 33–36, available online at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0340+0+DOC+XML+V0//EN&language=EN#BKMD-10>)

monopolize truth” (Daniels 2019).¹¹² For universities to continue their commitment to truth and to unfettered intellectual inquiry, they need fundamental rights protection. Does the guarantee of scientific freedom under Article 13 CFR live up to that task?

As outlined above, the answer to that question must be in the affirmative. In the pre-Charter era it was unclear whether or to what extent an unwritten right to scientific freedom existed at Union level. Article 13 CFR ended this state of uncertainty and made it clear that a comprehensive, “stand-alone” right to scientific freedom exists at Union level. In this way, Article 13 CFR contributes to strengthening the fundamental principle of legal certainty.

The codification of scientific freedom in Article 13 CFR also allows for a better protection of this fundamental right. Legal action can now be initiated on the European level by independent institutions, such as the Commission. The “guardian of EU law” can initiate infringement proceedings under Article 258 TFEU if it believes that a Member State fails to comply with its obligations. The significance of such independent supervision is underlined by the situation in Hungary, where the national judicial system failed to adequately protect academic freedom in the case of the “lex CEU”. This protection is further strengthened by the jurisprudence of the ECJ, which interprets the scope of application of charter rights (including scientific freedom) broadly.

References

Augsberg, Steffen. 2015. Kommentierung Art. 13 Charta der Grundrechte der Europäischen Union: Freiheit der Kunst und der Wissenschaft. In *Europäisches Unionsrecht in 4 Bänden. Vertrag über die Europäische Union, Vertrag über die Arbeitsweise der Europäischen Union, Charta der Grundrechte der Europäischen*

¹¹² Ronald Daniels, ‘Central European University is a remarkable school. It should stay in Hungary’, The Washington Post, 22 January 2019, available online at https://www.washingtonpost.com/opinions/central-european-university-is-a-remarkable-school-it-should-stay-in-hungary/2019/01/22/518a2fc6-1e61-11e9-9145-3f74070bbdb9_story.html?noredirect=on&utm_term=.92b252d50c87.

- Union. Band 1 (Nomos-Kommentar)*, ed. Hans von der Groeben, Jürgen Schwarze, and Armin Hatje, 7th ed., 600–603. Baden-Baden: Nomos.
- Bernsdorff, Norbert. 2014. Kommentierung Artikel 13: Freiheit der Kunst und der Wissenschaft. In *Charta der Grundrechte der Europäischen Union*, ed. Jürgen Meyer, 4th ed., 293–299. Baden-Baden: Nomos.
- Borowsky, Martin. 2014. Kommentierung Artikel 52: Tragweite und Auslegung der Rechte und Grundsätze. In *Charta der Grundrechte der Europäischen Union*, ed. Jürgen Meyer, 4th ed., 771–812. Baden-Baden: Nomos.
- Charter of Fundamental Rights of the European Union (CFR). 2016. *Official Journal of the European Union*, 7 June. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12016P/TXT&from=EN>. Accessed 18 February 2021.
- Cremer, Wolfram. 2011. Grundrechtsverpflichtete und Grundrechtsdimensionen nach der Charta der Grundrechte der Europäischen Union. *EuGRZ* 38: 545–554.
- Daniels, Ronald J. 2019. Central European University is a remarkable school. It should stay in Hungary. *The Washington Post*, January 22. https://www.washingtonpost.com/opinions/central-european-university-is-a-remarkable-school-it-should-stay-in-hungary/2019/01/22/518a2fc6-1e61-11e9-9145-3f74070bbdb9_story.html?noredirect=on&utm_term=.92b252d50c87. Accessed 23 January 2021.
- Demuro, Gianmario. 2010. Commentary on Article 13—Freedom of the Arts and Sciences. In *Human Rights in Europe: Commentary on the Charter of Fundamental Rights of the European Union*, ed. William B.T. Mock and Gianmario Demuro, 84–87. Durham, NC: Carolina Academic Press.
- Dickert, Thomas. 1991. *Naturwissenschaften und Forschungsfreiheit (Schriften zum öffentlichen Recht 595)*. Berlin: Duncker & Humblot.
- Ehlers, Dirk, ed. 2014. *Europäische Grundrechte und Grundfreiheiten*. 4th ed. Berlin: De Gruyter.
- European Court of Human Rights (ECHR). 2020. Guide on Article 10: Freedom of Expression. https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf. Accessed 18 February 2021.
- Frenz, Walter. 2009. *Handbuch Europarecht. Band 4: Europäische Grundrechte*. Berlin–Heidelberg: Springer.
- Gärditz, Klaus Ferdinand. 2011. Grundrechte im Rahmen der Kompetenzordnung. In *Handbuch des Staatsrechts der Bundesrepublik Deutschland, 3. Auflage. Band IX: Allgemeine Grundrechtslehren*, ed. Josef Isensee and Paul Kirchhof, 225–264. Heidelberg: C.F. Müller.

- Grotius, Hugo. 1646/1925. *De jure belli ac pacis libri tres*. Volume Two. The Translation by Francis W. Kelsey, with the Collaboration of Arthur E.R. Boak, Henry A. Sanders, Jesse S. Reeves, and Herbert F. Wright, with an Introduction by James Brown Scott (The Classics of International Law 3,2). Oxford: Clarendon Press.
- Halmi, Gabor. 2018. The Hungarian Constitutional Court betrays Academic Freedom and Freedom of Association. *Verfassungsblog*. <https://verfassungsblog.de/the-hungarian-constitutional-court-betrays-academic-freedom-and-freedom-of-association/>. Accessed 27 January 2021.
- International Law Commission (ILC). 2006. Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group. Finalized by Martti Koskenniemi. U.N. Doc. A/CN.4/L.682. https://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf. Accessed 17 February 2021.
- Jarass, Hans D. 2013. *Charta der Grundrechte der Europäischen Union. Kommentar*. 2nd ed. München: C.H. Beck.
- Karran, Terence, and Lucy Mallinson. 2017. Academic Freedom in the U.K.: Legal and Normative Protection in a Comparative Context. Report for the University and College Union. https://www.ucu.org.uk/media/8614/Academic-Freedom-in-the-UK-Legal-and-Normative-Protection-in-a-Comparative-Context-Report-for-UCU-Terence-Karran-and-Lucy-Mallinson-May-17/pdf/ucu_academicfreedomstudy_report_may17.pdf. Accessed 27 January 2021.
- Knemeyer, Franz-Ludwig. 1969. *Lehrfreiheit. Begriff der Lehre, Träger der Lehrfreiheit*. Bad Homburg: Gehlen.
- Kühling, Jürgen. 2009. Grundrechte. In *Europäisches Verfassungsrecht. Theoretische und dogmatische Grundzüge*, ed. Armin von Bogdandy and Jürgen Bast, 2nd ed., 657–704. Heidelberg–Berlin: Springer.
- Rödter, Andreas. 2016. *21.0. Eine kurze Geschichte der Gegenwart*. München: C.H. Beck.
- Rodgers, Daniel T. 2012. *Age of Fracture*. Cambridge, MA: Harvard University Press.
- Ruffert, Matthias. 2006. Grund und Grenzen der Wissenschaftsfreiheit. In *Kultur und Wissenschaft. Berichte und Diskussionen auf der Tagung der Vereinigung der Deutschen Staatsrechtslehrer in Frankfurt am Main vom 5. bis 8. Oktober 2005*, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 65, ed. Karl-Peter Sommermann et al., 146–210. Berlin: De Gruyter.

- Schmidt, Walter A. 1929. *Die Freiheit der Wissenschaft. Ein Beitrag zur Geschichte und Auslegung des Art. 142 der Reichsverfassung (Abhandlungen zur Reichsverfassung 3)*. Berlin: Stilke.
- Seidel, Gerd. 1996. *Handbuch der Grund- und Menschenrechte auf staatlicher, europäischer und universeller Ebene*. Baden-Baden: Nomos.
- Steiner, Udo. 2001. Richterliche Grundrechtsverantwortung in Europa. In *Staat, Kirche, Verwaltung. Festschrift für Hartmut Maurer zum 70. Geburtstag*, ed. Max-Emanuel Geis and Dieter Lorenz, 1005–1018. München: C.H. Beck.
- Streinz, Rudolf. 2012. Kommentierung Titel II. Freiheiten (Charta der Grundrechte der Europäischen Union). In *EUV/AEUV. Vertrag über die Europäische Union und Vertrag über die Arbeitsweise der Europäischen Union*, Beck'sche Kurz-Kommentare 57, ed. Rudolf Streinz, 2nd ed., 2784–2817. München: C.H. Beck.
- Streinz, Rudolf, and Walther Michl. 2012. Kommentierung Art. 52. In *EUV/AEUV. Vertrag über die Europäische Union und Vertrag über die Arbeitsweise der Europäischen Union*, Beck'sche Kurz-Kommentare 57, ed. Rudolf Streinz, 2nd ed., 2866–2873. München: C.H. Beck.
- Varszegi, Mark. 2018. Gender Studies und die starken Männer von der Donau—Vorgehen gegen einen unliebsamen Studiengang in Ungarn. *JuWissBlog* Nr. 78/2018, September 13. <https://www.juwiss.de/78-2018/>. Accessed 23 January 2021.
- Verseck, Keno. 2018. Warum Ungarn das Fach Gender Studies an Unis abschafft. *Spiegel Online*, August 21. <http://www.spiegel.de/lebenundlernen/uni/ungarn-gender-studies-soll-an-unis-verschwinden-warum-a-1223688.html>. Accessed 23 January 2021.
- von Danwitz, Thomas. 2006. Kommentierung Art. 52. Tragweite und Auslegung der Rechte und Grundsätze (Abs. 1–3). In *Europäische Grundrechte-Charta. Kölner Gemeinschaftskommentar*, ed. Peter J. Tettinger and Klaus Stern, 774–800. München: C.H. Beck.

Part III

Institutional Perspectives



Academic Freedom Versus Institutional Evaluation of Research

Susanna Terracini

This text gathers some of my reflections on the impact of institutional assessment of research on academic freedom which emerged at the end of my four-year service at the National Agency for the Evaluation of the University System and Research (*Agenzia nazionale di valutazione del sistema universitario e della ricerca*—ANVUR). The paper also takes into account the many ideas and suggestions offered by relatives, friends and colleagues, whom I thank.

It should be noted that numerous controversies have accompanied the introduction of reward-based policies in the Italian University System. Central in the debate is the Research Quality Assessment system (*Valutazione della Qualità della Ricerca*, henceforth VQR) which ANVUR developed on behalf of the Ministry of Education, University and Research (“Ministero dell’Istruzione, dell’Università e della Ricerca”, MIUR) in 2012, mainly for the purpose of allocating the merit-based

S. Terracini (✉)

University of Turin, Turin, Italy

e-mail: susanna.terracini@unito.it

share of the Financing Fund of the Italian University System (*Fondo di Finanziamento Ordinario*, henceforth FFO).

On the sidelines of this debate, I was struck in particular by some aspects (including lexical ones) that correspond to a consistently negative chronicle of recent events connected to the VQR. According to this narrative, *assessment* (in the singular) becomes an activity in its own right, and its clearly authoritarian nature directly threatens academic freedom. This specific point is the focus of the present article, further extending the discussion by including the institutional assessment (or rather *assessments* in the plural) of research in the wider framework of merit-based policies and the use of economic incentives in the distribution of public funds to and among universities.

I believe it is not possible to separate the analysis of the evaluation/assessment procedures from that of the whole set of criteria used to allocate public funds to universities. The allocation of public funds is in itself a political act, whatever distribution rule applied, whether it be indiscriminate funding based simply on the number of teachers and/or students, or based on the history of funding, or yet again following strategic priorities. First of all, I appreciate that current provisions offer a good degree of transparency in the criteria for the allocation of resources, making merit-based policies visible, regarding both the definition of objectives and their indicators. It must be recognized that this was not the case in the past (before 2012), when the funding shares of Italian universities resulted from obscure individual negotiations with the ministry.

It is worthwhile to note that the quality of research—be it fundamental or applied—is one of the main criteria for the distribution of a share of the FFO, known as merit-based allocation, which accounts for 30% of all allocations and includes advanced training activities. It is key in affirming the essential role of research in the Italian university system. In fact, the law states that at least three fifths of the FFO merit-based quota is allocated according to ANVUR's assessment of the quality of research in universities (the VQR). The other two fifths of the merit-based share are allocated according to compliance with the general objectives set by the Ministry Plan and include teaching, recruitment and employment practices, and all other aspects of the universities' mission. The VQR indicator used has led to a qualitative shift, according to the—upward or

downward—deviation from the national mean for the subject, with a general allocation depending on the number of faculty (for the VQR-IRAS1 share) and on the number of newly recruited or promoted faculty (IRAS2). This correction has caused a relatively moderate shift in the allocation of funds to universities, when compared to the uniform method. It acts as an incentive with no dramatic quantitative effects, but with a high potential stimulus. Universities can in turn select their own criteria for the internal allocation of resources, thus offering means to reward the quality of research which use the national VQR results along with local assessments.

The assessments under consideration appear functional to the allocation of public resources to (and within) the universities. The question should therefore be worded as follows: *Do incentive-based policies on research as a whole restrict academic freedom?* Or, more specifically, if one takes the argument to the extreme: *Are strategic initiatives involving merit-based fund allocation a threat to academic freedom?*

The answer to this question is that they most certainly are, even if the opposite—that is, not considering research and the quality of its results in the allocation of public funds to universities—is certainly a much greater danger. The definition of the funding distribution criteria, when considering research, necessarily requires an evaluation of its perceived potential, in light of the results (thought to have been) obtained in the past. Stating allocation criteria, introducing objective procedures, and limiting one's personal judgment as far as possible are the three key elements for a transparent funding system. The easy way out of declining to consider the quality of the research results leads to two possible avenues: the first determines a purely quantitative approach and the well-known “publish or perish” perversion—which I, personally, consider the worst-case scenario, especially given that the VQR exercises consider a very limited sample of papers per person. The second possibility is often described as egalitarian (and therefore more democratic): it consists in uniform distribution according to the number of faculty members (i.e., permanent staff lecturers and researchers). However, when allocating resources, the lack of assessment is a delusion as it leads to the *status quo* necessarily being the optimal configuration and delegates the key elements that determine the evolution of the system to another stage. Finally,

the variant of the standard allocation only among staff actively involved in research is an even more delusional approach, as the ambiguous definition of being *active in research* belies very thorny evaluative implications.

Let us now specifically consider the implications of result assessments in relation to the applied/fundamental research dualism:

- i) strategic research with recognizable short-term applications and effects on society and on the economy—such as in the medical, health, industrial and service fields. This type of research could be reasonably funded according to the degree of satisfaction of relevant social expectations. On the whole, generally acceptable external criteria such as the ability to attract external funds and investments, or the measurement of social impacts, can be considered to assess applied research. However, such an approach requires a political debate on whether the ability to attract external resources should increase or reduce allocation of public funds, considering the defence of the independence of research against possible conflicts of interest (particularly in the medical and environmental fields). However, VQR only considers this aspect marginally, focusing on the evaluation of all research products, regardless of their impact on application; and
- ii) in humanities and scientific disciplines, basic or fundamental research, of no lesser importance, on which both applied research and the entire cultural fabric are ideally based. This type of research is freely cognitive and creative, sometimes defined as “curiosity driven”; it has become increasingly difficult to find a place for this type of research within the complex framework of public and private funding, because of its natural, practical, chronological and conceptual distance from everyday life. On the other hand, it plays a key role as a driver of applied research, for innovation as a whole, and for the nation’s cultural wealth and independence, both in terms of the foundation of knowledge and new ideas, and in the training of expert, flexible researchers.

Given the strong risk of marginalising “pure” research, the introduction of measures based on the quality of research, even that which is purely knowledge-seeking and with no immediate applications, would

appear to favour rather than pose a threat to academic freedom. Assessment offers a unique opportunity—ideal rather than economic—for so-called pure research to be recognised as central and of collective interest. That said, it is important that the objectives and methods of the assessment be clearly defined, and that the political and technical aspects intertwine.

The risks of a centralised quality assessment of research and the possible negative impact on the orientation and choice of topics, such as focusing on fashionable, mainstream, politically acceptable topics, or topics thought to be so, have often been strongly emphasised. The risks are real, but I believe they can be overcome through a well-balanced range of knowledge within the expert group and through a wide range of external (possibly international) reviewers. From this point of view, both the independence of the Agency and the scientific authority of the members of the Governing Body, who choose the experts, play a key role. The contribution of the academic community, with whom ANVUR cooperates and from whom it seeks advice, is also paramount. However, assessment can only reflect the opinions of the evaluators and should therefore not be taken as an absolute judgement of the quality of scientific results. Its validity is always to be seen statistically, never literally, reflecting shared feelings within the reference community.

There is another aspect, perhaps a bit more technical but equally important, which favours centralisation. In fact, evaluations necessarily translate into numerical indicators that are then used in resource allocation. Centralised surveys are the only means to provide national figures, which are essential in correctly calculating expected values for indicators within each discipline and context. Blatant examples can be found in many criteria used locally by universities in their internal assessment process, when reference values are set without any solid method, on the basis of mere theoretical considerations, thus easily lending themselves to abuses of power and inducing endless internal conflicts. Centralisation, authoritativeness, transparency and impartiality are the tenets of assessment, without which conflicts of interest inherent to resource allocation can easily arise.

A possible causal link between the introduction of institutional research assessment and the deterioration of the working environment within

universities has been highlighted. In Italy, this was accompanied (since 2008) by the reduction of overall resources and fewer opportunities for academic careers. Indeed, the work environment has become much more competitive than in the past and has sometimes led to some episodes of misconduct. The trend appears to be worldwide and a child of its time. An increased competition within fields of research exists on a global level and seems to be independent of the presence of institutional assessment. Likewise, the concentration of resources in a small number of institutions or centres of excellence is pursued by almost all countries (and by the EU through the policies of the European Research Council). Institutional assessment can be used as a tool to measure compliance with these objectives, but it certainly does not generate such results *per se*. On the contrary, assessment can verify the real effectiveness and possible limits of the introduction of elements aimed at increasing competition within the research system. Here, too, one has to distinguish between assessment of policies and evaluation. A founding hypothesis of the VQR is that all public universities (and their teaching staff) must contribute equally to national research: when the quality or standard of research is equally distributed, the distribution of the relative share is uniform.

Finally, when used for the purposes of resource allocation, evaluations can only be comparative; the definition of boundaries (national, regional, international, disciplinary, geographical) when carrying out comparisons is a delicate problem of a political nature, because it affects the objectives to which the evaluation is subject and has considerable and numerous technical implications. This is where MIUR and ANVUR provide a balance of functions and a range of expertise. In particular, ANVUR, whose Governing Body members are drawn from the scientific community, bridges the gap between the scientific community and policy-making. ANVUR's independence is one of the aspects that defend academic freedom. In fact, ANVUR is the Ministry's knowledge bank, containing the expertise to carry out evaluations mirroring the cultural and disciplinary differences, the different modalities and contexts where research is carried out. Ultimately, the principles underpinning a correct assessment (and not only that of the quality of the research) are:

- *peer evaluation*: the assessment can only be carried out by professors and researchers themselves, through the involvement of the most scientifically authoritative members of academia, and not by external entities nor by evaluation professionals;
- *definition of homogeneous categories*: homogeneous sets, where direct comparisons can be made, are to be explicitly defined; these categories are to be identified, for example, on the basis of disciplinary (or in any case methodological) differences, or other issues;
- *expected values by category*: the expected values for each homogenous category must be identified, informed and explained; they can be absolute or relative (as in the case of normalised or standardised indicators).

The two previous VQRs were carried out in full compliance with these principles. Threats to academic freedom can easily be hidden when objectives are not clear, or assessments violate the above-mentioned principles in merit- or reward-based policies.

In conclusion, the risks are serious and the impact of incentive-based policies dependent on the quality of research (and other aspects) must be critically analysed. It is one of ANVUR's duties to conduct this analysis in its two-year report on the state of the universities, highlighting and pointing out how policy choices determine changes in the university system, addressing its findings to the political arena as well as to the scientific community and to public opinion at large.

However, politics are not the same as assessment: as a public independent agency, ANVUR must guarantee principles of independence and transparency which are the basis of a correct performance of evaluations and which, in the end, are what defend academic freedom from politics. These principles mean that each evaluation exercise must be preceded by an analytical and reasoned explanation of

- (a) objectives,
- (b) the space/time/disciplinary scope of the comparison,
- (c) the list of categories considered sufficiently homogeneous to offer direct comparisons, and
- (d) the expected values for each category.

After all, ANVUR is an independent agency that also represents the academic community: it must act as a link between the latter and the Ministry by developing evaluation/assessment methods that enable it to act as an arena for the community's active participation in academic policy-making.



State-fostered Immaturity? Kant, Galileo, and the Grand Evaluator

Giuseppe De Nicolao

In 2017, the president of ANVUR, the Italian agency for research evaluation, was asked if bibliometrics-based research evaluation could discourage innovative research. The answer was disconcerting, yet revealing: a scientific genius “will be rewarded twenty years from now, when he becomes the most famous scientist in the world. In the meantime, he should be grateful that he maintained his academic position without being burnt alive. Frankly speaking, we are not all Galilei or Newton” (ROARS 2019). No less worrying is the creeping effect of research evaluation on the public use of reason by academics. Linking administrative actions such as hiring, career, funding, and wages to the outcomes of centralized research evaluation can subtly impair academic freedom in fields such as health, environment, economics, education, and research policy. In the following chapter, these issues are illustrated through the analysis of methods, outcomes, and intended/unintended effects of research evaluation. When subjected to close scrutiny, the pretended

G. De Nicolao (✉)
University of Pavia, Pavia, Italy
e-mail: g.denico@unipv.it

objectivity of league tables reveals paradoxes and flaws, but nevertheless academic rankings exert a powerful control on academic policies at both the national and university level. The erosion of academic freedom goes hand in hand with the decline of “academic citizenship”, i.e., values and practices such as mentoring, peer review, and selfless activities, without which the infrastructure of academic life would not last. Kant’s lesson was in vain: the Grand Evaluator warns us that it is time to return to the state of minority.

1 Research Assessment: A Theatre of the Absurd?

Neil: Understanding Poetry, by Dr. J. Evans Pritchard, Ph.D. To fully understand poetry, we must first be fluent with its meter, rhyme, and figures of speech. Then ask two questions: One, how artfully has the objective of the poem been rendered, and two, how important is that objective. Question one rates the poem’s perfection, question two rates its importance. And once these questions have been answered, determining a poem’s greatness becomes a relatively simple matter. If the poem’s score for perfection is plotted along the horizontal of a graph, and its importance is plotted on the vertical, then calculating the total area of the poem yields the measure of its greatness. A sonnet by Byron may score high on the vertical, but only average on the horizontal. A Shakespearean sonnet, on the other hand, would score high both horizontally and vertically, yielding a massive total area, thereby revealing the poem to be truly great.

Keating: Excrement. That’s what I think of Mr. J. Evans Pritchard. We’re not laying pipe, we’re talking about poetry. (Weir 1989)

1.1 Dead Poets Society

Most readers will remember the lecture on poetry that ended with the students ripping out the manual's pages upon the request of John Keating, the unconventional professor played by Robin Williams in Peter Weir's movie *Dead Poets Society*. Whatever your judgement on the movie, the idea that poetry can be made the object of a geometric measurement—length times height—appears grotesque. It may even seem that the script veered into the implausible for the sake of exacerbating the conflict between dumb tradition and intellectual liveliness.

Dead Poets Society was released in 1989. Just fifteen years later, the idea of a geometric measurement of the products of thought was revived by the Italian National Agency for the Evaluation of Universities and Research Institutes (ANVUR). The object of measurement was no longer poetry but instead scientific works, dubbed “products of research” according to quality assurance terminology.

A cumbersome procedure was devised in order to score the papers submitted by researchers through the national research exercise called VQR 2011–2014. The final objective of the exercise was to measure the quality of the research activities of Italian universities and research institutions. The scores were to be used as a criterion to distribute the so-called “pre-mial share” of state funding. A major part of the procedure was the assessment of submitted papers, typically two per researcher, which had to be scored one by one. The Italian research exercise was largely designed following the UK Research Excellence Framework (REF), where peer review is used to assign grades ranging from 4* to unclassified. Though widely criticized, the REF at least avoids the pitfall of quantitatively scaling the assessed quality of research: a 4* grade is by no means worth twice a 2* grade. Rather, 4* stands for “quality that is world-leading in terms of originality, significance and rigour” while 2* stands for “quality that is recognised internationally in terms of originality, significance and rigour,” whatever this might mean (UCA REF 2021). In the UK, the formula that translates the grades into funding is a subsequent political decision, distinct from the assessment exercise.

Italy went a step further: each paper was to receive a mark that would directly and proportionally impact the share of funding assigned to the academic or research institution. Given that submissions were not optional, it would have been prohibitive to evaluate 118,000 papers by peer review. Hence, J. Evans Pritchard's methodology was exhumed and made even more reductionist. While Pritchard's assessment of perfection and importance called for some critical appraisal by an expert, for all the hard sciences ANVUR objectively measured the "length" and "width" of scientific papers in terms of bibliometric indicators. To do this, reference was made to the two main bibliometric databases, Scopus and Clarivate, which classify and count citations of scientific papers, mainly those in the hard sciences.

Based on these statistics, both journals and papers can be ranked and given a percentile that translates into a 0-1 score. For instance, a citation score equal to 0.9 means that, in a given scientific category, only 10% of papers receive more citations. Similar scores can be worked out for scientific journals, comparatively measuring the citedness of the journal within a certain scientific category. For instance, a 0-1 score can be derived from the percentiles of the Impact Factor. By equating the journal score to the "length" and the citation score to the "width," both properly scaled, the total area of the article yields the measure of its greatness, according to ANVUR (Anfossi et al. 2016). In fact, this "area" uniquely determines the final score, on which departments and universities are ranked and funded.

How does quantitative research evaluation jeopardize the individual freedom of researchers? It might seem that individuals were protected by the anonymization of the scores, but this protection was only apparent. Young researchers who aspired to a permanent position soon became aware that their ability to increase the department's VQR score was going to become a primary recruitment criterion. Further, the introduction of thresholds on the average VQR scores of members of accredited doctoral boards forced the implicit or explicit disclosure of individual scores if not the shaming of underperforming researchers whose papers did not reach the prescribed "area".

Besides being an unfailing ingredient of academic reforms shaped on the New Public Management model, the numerological drift of research

evaluation also bears some undeniably Kafkaian traits that can be appreciated by this short excerpt of evaluative newspeak:

An indicator similar to the VQR 2004–2010 IRD1 indicator will be built. Before the evaluation, the average and the standard deviation of the number of publications, by category, by person, entered by the Departments of all the Universities will be calculated for each of the SSDs present in the Department. If the number of publications per person entered by the Department for a given SSD [...] is lower than the average value decreased by 2 times the standard deviation, the final indicator will be multiplied by a weight less than 1 which depends on the distance from the national average value. (translated from p. 8 in ANVUR 2014)

1.2 Another Doubtful League Table

We would like to congratulate Alexandria University for its performance in this year's rigorous rankings. Being ranked 147 in the world top 200 is an impressive achievement. The top 200 universities in the world represent only a tiny fraction of world higher education and any institution that makes it into this table is truly world class. (Ann Mroz, Editor of the Times Higher Education, 2010)

It was September 16, 2010, when Times Higher Education (THE), ceasing its collaboration with Quacquarelli Symonds (QS), published a new edition of the university ranking. Its value was not understated:

The Times Higher Education World University Rankings 2010–11 were developed in concert with our new rankings data provider [...] with input from more than 50 leading figures in the sector from 15 countries across every continent, and through 10 months of extensive consultation. We believe we have created the gold standard in international university performance comparisons.

This confidence was underpinned by the use of objective bibliometric indicators. In fact, a 32.5% weight was assigned to citations: "A university's research influence—as measured by the number of times its published work is cited by academics [...] This weighting reflects the relatively

high level of confidence the global academic community has in the indicator as a proxy for research quality.” (THE World University Rankings 2010–11).¹ It was therefore natural to take a look at the universities achieving the highest citation scores:

1. Caltech—United States
2. MIT—United States
3. Princeton University—United States
4. Alexandria—Egypt.

Surprisingly, the Egyptian university had outperformed giants such as Stanford, Rice and Harvard universities. It was thanks to this outstanding score in the citation criterion that Alexandria gained a remarkable 147th position in the global ranking. For the sake of comparison, in that year’s edition of the THE Rankings, no Italian university entered the first 170 positions. So confident was THE of its methodology that its editor, Ann Mroz, issued a congratulatory statement, celebrating the impressive achievement of Alexandria University.

A week later, Phil Baty, deputy editor of Times Higher Education, was forced to acknowledge that Alexandria’s surprising prominence was actually due to “the high output from one scholar in one journal”.² Various blogs had identified the highly cited researcher as Mohamed El Naschie, a professor who had published over 320 papers in a scientific journal, published by Elsevier, of which he was also the editor.

Who could have known? This might have been the defense by THE. As a matter of fact, as pointed out by the New York Times (Guttenplan 2010), the case was already well known. El Naschie had resigned from his editorial appointment in 2009, possibly due to the public complaints raised by the mathematician D.N. Arnold (2009) and an article in Nature News (Schiermeier 2008).

Ten years have since passed, and THE has had ample time to remedy the weakness of its citation score, which still amounts to 30% of the total

¹ <https://www.timeshighereducation.com/cn/world-university-rankings/2010-11/world-ranking/analysis/robust-transparent-and-sophisticated>.

² <https://www.timeshighereducation.com/cn/news/new-weights-and-measures-throw-up-a-few-surprises/413528.article>.

score today. The weakness still persists, however. In the latest edition (THE World University Rankings 2021a), there are nine universities that share the top score of 100/100 in the Citations indicator: Anglia Ruskin University ARU (UK), Babol Noshirvani University of Technology (Iran), Brighton and Sussex Medical School (UK), Cankaya University (Turkey), Indian Institute of Technology Ropar (India), Kurdistan University of Medical Sciences (Iran), University of Occupational and Environmental Health (Japan), University of Peradeniya (Sri Lanka), and Reykjavík University (Iceland). According to THE, these universities outperform Harvard, MIT, Oxford, Cambridge in “spreading new knowledge and ideas”—as this is what the Citations indicator claims to measure (THE World University Rankings 2021b, Methodology). Rather than a gold standard, we should talk of a pyrite standard, pyrite being the mineralogical name for fool’s gold. But why and how are pseudoscientific rankings going to jeopardize academic freedom?

1.3 Rigging the Rankings

The blunders of rankings, as ridiculous as they may be, are less harmful than the perverse incentives which they create. Rather than denounce their lack of scientificity, most universities do their best to climb the rankings, in view of the possible yields in terms of image. Emblematic, for instance, is the fact that the Italian Conference of Rectors maintains a Ranking Committee whose goals are to:

- increase the number of Italian universities in the international rankings;
- improve the overall ranking of the universities in the ranking with the greatest media impact;
- develop critical analysis of the methodologies adopted by the main rankings and formulate guidelines for Italian universities in order to optimize their ranking;
- propose possible integrations and methodological changes to the managers of the main rankings through a systems-based interaction with Italian universities. (translated from CRUI Ranking)

Lack of scientificity and plain absurdities are not an issue for the rector. Like hamsters in a wheel, they attempt to running faster than their competitors. But what can be done, in practical terms, to climb the rankings? The ranking analyst Richard Holmes (2013) made a list of “Twenty Ways to Rise in the Rankings Quickly and Fairly Painlessly”. Most of his advice is still valid today:

- Get rid of students. [...] The university will therefore do better in the [...] faculty student ratio indicators.
- Kick out the old and bring in the young. Get rid of ageing professors, especially if unproductive and expensive, and hire lots of [...] temporary teachers and researchers.
- Get a medical school. [...] Medical research produces a disproportionate number of papers and citations [...].
- The wisdom of crowds. Focus on research projects in those fields that have huge multi-‘author’ publications, particle physics, astronomy and medicine for example. Such publications often have very large numbers of citations.
- Amalgamate. [...] What about a new mega university formed by merging LSE, University College London and Imperial College? Or a *tres grande école* from all those little *grandes écoles* around Paris?

This last trick, previously highlighted by Billaut et al. (2010), is at the root of the creation of the New Sorbonne from the merger of Paris-Sorbonne and Pierre-and-Marie Curie (UPMC) universities. In their discussion of the perverse effects of rankings, Billaut et al. had also underscored the sad fate of entire scientific fields when the rankings become the benchmark:

Suppose that you manage a university and that you want to increase your position in the ranking. This is simple enough. There are vast areas in your university that do not contribute to your position in the ranking. We can think here of Law, Humanities and most Social Sciences. Drop all these fields. You will surely save much money. Use this money to buy up research groups that will contribute to your position in the ranking. [...] This tends to promote a view of Science that much resembles professional sports in

which a few wealthy teams compete worldwide to attract the best players. We are not fully convinced that this is the best way to increase human knowledge, to say the least. (Billaut et al. 2010, p. 257)

2 Though This Be Madness, Yet There Is Method

2.1 Governing by Numbers

Although many facets of quantitative research evaluation and rankings may resemble a theater of the absurd, there is a method behind the madness. Reforms and agendas that cannot be overtly pushed are better pursued through “governing by numbers” techniques. Disfunctionalities and inefficiencies of pseudoscientific rankings are a small price to pay for driving the academic system in the desired direction. Reward-and-punish at both the individual and institutional level by means of scores and rankings is a highly effective way of enforcing strategic changes of the objectives and role of academic institutions.

A question arises, however, as to the real price of governing by numbers. What are the distortive effects on research in the long run? Could it be that a substantial amount of academic freedom is essential for academia not to rot and become fruitless under a veil of apparent efficiency? We are fortunate to have some answers from an exceptional witness of the Italian method of research evaluation.

2.2 I’ve Seen Things You People Wouldn’t Believe

Automated numerical evaluation is an incentive to a number of malpractices: courtesy and multiple coauthorships, coercive citations, citation cliques, salami slicing, to name the best known. Is academic integrity acting as a dam? Let’s let our Italian witness speak.

Courtesy Authorship

On these aspects the personal experience of recent years is extraordinary. [...] In the aftermath of the VQR at my university, a department director, whose position in the scientific field was very weak, wrote to colleagues to include as co-authors those who were inactive, i.e. with fewer publications than required. [...] To give another example, the day after the release of the criteria for the Scientific Habilitation, I saw with my own eyes the table of a competition sector in which the list of works submitted for review or already accepted was made, with a scientific breakdown of the cases in which the authors (all young) would be asked to add the name of another author before the final publication, all controlled by a well-organized group of full professors.

Multiple Authorship

If A and B first wrote four works a year under single authorship, if they agree to become co-authors their production magically doubles to eight per year. Here also the direct experience of the last few years is interesting: I have seen curricula in which the number of articles per year triples from before to after the National Scientific Habilitation. In my field, where the average number of authors was traditionally around two, I have recently seen articles with six and seven signatures, of which four are associate professors (who study completely different topics) and two or three are PhD students (soon the Habilitation will reopen, better to be ready).

Coercive Citations

In the area of economics, as you will remember, in the classification of scientific journals there were no Italian journals in Band A, for the purposes of the National Scientific Habilitation. [...] ANVUR then initiated a procedure, held twice, aimed at the periodic review of the judgement of journals. [...] It was then learned that a business journal had organized the request for review well in advance, circulating to the authors detailed instructions on how to quote the articles of the journal itself. That is, by organizing a planned form of coercive citation, with periodic monitoring of the results on Google Scholar.

Citation Cliques

At a further level of complexity is the game of cliques: A, B and C agree that A will cite the works of B, B those of C and C those of A, 'giving' each other citations that are not necessary from the scientific point of view. If the protagonists were only A and B, the game would easily be discovered. From three up, identifying a clique is a more complicated matter. So, one might see articles about logistics which cite articles about sanitary management, which cite articles about Customer Relationship Management, which in the end mysteriously consider it fundamental to cite articles about logistics.

Salami Slicing

Instead of writing a single complex article, several shorter articles are written, corresponding to the so-called minimum publishable unit, for the sole purpose of multiplying the count.

Given this relentless denunciation of malpractices, one could imagine the indignation of our witness. As a matter of fact, his viewpoint is anything but outraged:

The academic ethics of the past would have irreversibly censored these behaviors, [but today] this should not in any way surprise or outrage social scientists. [...] The key is therefore not to abandon complex systems of governance, but to assume the point of view of the social scientist who seeks to anticipate not only the direct consequences of his own action, but also the direct and indirect consequences of the adaptation of social subjects to his own action, and their subsequent interaction.

What sort of person, after witnessing all sorts of malpractice, concludes that it is time to abandon the academic ethics of the past in favor of social engineering? Our witness is Andrea Bonaccorsi, member of the Governing Board of ANVUR from 2011 to 2015. According to his Panglossian view,

There is, in my view, no robust empirical evidence that evaluation or even publish-or-perish systems induce permanent distortive effects on research in the long run. (see pp. 27–48 in Bonaccorsi 2017; my translation)

Sheer numbers leave less room for optimism. The “inwardness” of a country is defined as the percentage ratio between the total number of country self-citations and the total number of citations of that country. It tracks what proportion of the publications co-authored by national researchers are cited by the same or other national scholars. With an unparalleled upward jump, in 2016 Italy became, both globally and for a large majority of the research fields, the country with the highest inwardness within the G10 countries (Baccini et al. 2019). The need to reach bibliometric targets created immediate incentives for self-citing and citation clubs for the exchange of citations. So widespread must have been these opportunistic behaviors that their effect is now visible on a national scale and in most of the research fields.

2.3 The Erosion of Academic Citizenship

For those not yet convinced that they are living in the best of all possible worlds, the greatest danger of automated rankings and research evaluation has to do with the erosion of academic integrity and citizenship. Concerning the former, we have already given a list of malpractices. If integrity is lost, will ever more complex regulations be able to keep gaming under control? The extent and gravity of the so-called replication crisis (Ioannidis 2005)—that is, the inability to replicate the studies of others—warns us of the possible danger that much of the scientific literature may become unreliable because it is produced by scientists who aim only to maximize their indicators at the expense of scientific integrity.

By academic citizenship we mean the complex of practices, distinct from research and teaching, that benefit both the university and society. They have been classified as service to students, colleagues, the institution, the discipline or profession, and the public (Macfarlane 2007). Mentoring and peer review are two examples of service to colleagues and institution and to one’s scientific discipline. Multiform in its nature,

academic citizenship is hardly measurable. It comes as no surprise that it is put under strain by the increasing use of quantitative metrics of academic performance. When researchers and professors are focused on inflating individual and institutional rankings, time and effort devoted to academic citizenship are the first to evaporate. This is obviously harmful for society as a whole. The response of the social engineer would be to design a new set of indicators to reward the different facets of citizenship, triggering an endless spiral of metrics and opportunisms.

But what is the ideological assumption that underlies the replacement of ethics with social engineering? As we will see, a possible answer comes again from the Governing Board of ANVUR.

3 The Legend of the Grand Evaluator

- G. Presutti: Some say that bibliometric criteria, i.e. the number of citations which an article receives, the scientific impact of the journal, somewhat discourage innovative research.
- A. Graziosi: [...] if I do physics and study particles, let my particle study be evaluated by the scientific community that studies particles—may I say so?—I see no other solution. If there exists the extraordinary person who has understood that particles are all nonsense and that you have to study bigger particles, that person will be rewarded twenty years from now, when he becomes the most famous scientist in the world. In the meantime, he should be grateful that he maintained his academic position without being burnt alive. Frankly speaking, we are not all Galilei or Newton.

(Andrea Graziosi, interviewed by G. Presutti, 2017. Transcriptions of the interview and links to the audio files can be found at [ROARS 2019](#)).

3.1 If Evaluation Does Not Exist Everything Is Allowed

It is widely recognized that innovative research is discouraged by mechanical research evaluation based on quantitative bibliometric indicators. In the medium-long run, bean counting not only incentivizes a series of malpractices but undermines the very mission of academia, i.e., critical thinking and innovation. When interviewed by a journalist, the President of ANVUR showed no discomfort in managing an apparatus that fosters mediocrity, because “the Italian state is not interested in going to that extreme point [research that is really innovative]” (ROARS 2019). As a matter of fact, his pessimism about Italian scholars was so deep that the goal of mediocrity appeared perfectly legitimate. In his words, the threat of academic anarchy is hovering over us:

This system—this I say without any fear of denial—it went adrift, starting in the seventies and eighties [...]. The number of universities has increased, the number of professors has increased tenfold, at a certain point, roughly tenfold. (The video of Graziosi’s interview can be found at ROARS 2016)

It is interesting that this vision is ultimately based on mythological grounds: from 1961/1962 to 1996/1997, the number of professors increased from 27,578 to 60,468 (ISTAT). A little more than double, but not at all tenfold. In the same years, student enrollment had grown eightfold.

The Grand Evaluator is painfully aware that researchers can never be free, for they are weak, vicious, worthless, and rebellious. Quantitative evaluation is harmful for scientific innovations and academic freedom, but it is a necessary evil, because if it did not exist everything would be allowed.

3.2 The Queen’s Question

Why did nobody notice it [the financial crisis]?

—Queen Elizabeth II, visiting the London School of Economics in 2008

Academic freedom could seem a matter of little interest for the man in the street who struggles with many and more immediate threats to his wellbeing. However, an example such as the Queen's question demonstrates that a self-referential academia can severely impair the collective ability to prevent and manage crises. During her visit to the London School of Economics, Queen Elizabeth could not help but ask why experts of such value had not predicted the arrival of the financial crisis.

When researchers are increasingly focused on boosting the citational indicators of their publication record in high impact journals, following the mainstream becomes priority over spotting the clouds at the horizon. The recent COVID-19 pandemic offers another example of the importance of medical and pharmacological research, but also of the value of academic freedom. On a range of issues regarding pharmacological and nonpharmacological responses to the viral threat, we have witnessed unprecedented pressures by political and economic stakeholders on experts and scientists. Forcing any single scientist to be productive according to quantitative metrics that can easily be gamed produces glittering reports but, paradoxically, wastes taxpayers' money when the scientific profession is reduced to a competitive game for its own sake. In quiet times, bureaucratic nonsense annoys only its victims, but there comes a time when society needs science and culture at their best and not their simulacra.

References

- Anfossi, Alberto, et al. 2016. Large-scale Assessment of Research Outputs through a Weighted Combination of Bibliometric Indicators. *Scientometrics* 107 (2): 671–683.
- ANVUR. 2014. Linee guida per la compilazione della Scheda Unica Annuale della Ricerca Dipartimentale (SUA-RD). Parte Prima e Seconda. http://ricerca.unimc.it/it/valutazione/sua-rd-1/LineeGuidaSUA_RDParteIeII_19.11.2014.pdf. Accessed 19 December 2020.
- Arnold, Douglas N. 2009. Integrity Under Attack: The State of Scholarly Publishing. *SIAM News* 42 (10). <http://www-users.math.umn.edu/~arnold/siam-columns/integrity-under-attack.pdf>. Accessed 19 December 2020.

- Baccini, Alberto, et al. 2019. Citation Gaming Induced by Bibliometric Evaluation: A Country-level Comparative Analysis. *PLoS One* 14 (9): e0221212. <https://doi.org/10.1371/journal.pone.0221212>.
- Billaut, Jean-Charles, et al. 2010. Should You Believe in the Shanghai Ranking? An MCDM View. *Scientometrics* 84 (1): 237–263.
- Bonaccorsi, Andrea. 2017. La valutazione della ricerca produce effetti indesiderati? In *Culture della valutazione. IULM tra sistema nazionale e globalizzazione* (Biblioteca di testi e studi), ed. Angelo Turco, 27–48. Roma: Carocci Editore.
- Conferenza dei Rettori delle Università Italiane (CRUI). Ranking. <https://www.cruai.it/nuove-commissioni-cruai/ranking.html>. Accessed 19 December 2020.
- Guttenplan, Don David. 2010. Questionable Science Behind Academic Rankings. *New York Times*, November 14.
- Holmes, Richard. 2013. Twenty Ways to Rise in the Rankings Quickly and Fairly Painlessly. University Ranking Watch. <http://rankingwatch.blogspot.com/2013/12/twenty-ways-to-rise-in-rankings-quickly.html>. Accessed 19 December 2020.
- Ioannidis, John P.A. 2005. Why Most Published Research Findings Are False. *PLoS Med* 2 (8): e124. <https://doi.org/10.1371/journal.pmed.0020124>.
- ISTAT. Time Series Archive of the Italian National Institute of Statistics. <http://seriestoriche.istat.it/>. Accessed 19 December 2020.
- Macfarlane, Bruce. 2007. Defining and Rewarding Academic Citizenship: The Implications for University Promotions Policy. *Journal of Higher Education Policy and Management* 29 (3): 261–273.
- ROARS. 2016. Graziosi (ANVUR): “sistema alla deriva, sono decuplicati i docenti”. Return on Academic Research and School (ROARS). <https://www.roars.it/online/graziosi-Anvur-sistema-alla-deriva-sono-decuplicati-i-docenti/>. Accessed 19 December 2020.
- . 2019. Bibliometric Evaluation Chokes Innovation. But It’s OK Because “We Are Not All Galilei and Newton”. Return on Academic Research and School (ROARS). <https://www.roars.it/online/bibliometric-evaluation-chokes-innovation-but-its-ok-because-we-are-not-all-galilei-and-newton/>. Accessed 19 December 2020.
- Schiermeier, Quirin. 2008. Self-publishing Editor Set to Retire. *Nature* 456 (7221): 432–433.
- THE World University Rankings. 2010–11. <https://www.timeshighereducation.com/world-university-rankings/2011/world-ranking>. Accessed 19 December 2020.

- . 2021a. <https://www.timeshighereducation.com/world-university-rankings/2021/world-ranking>. Accessed 19 December 2020.
- . 2021b. Methodology. <https://www.timeshighereducation.com/world-university-rankings/world-university-rankings-2021-methodology>. Accessed 19 December 2020.
- UCA REF. 2021. <https://ucaref.wordpress.com/ref-terms-explained/>. Accessed 12 March 2020.
- Weir, Peter (director). 1989. *Dead Poets Society*. Touchstone Pictures.

Index¹

NUMBERS AND SYMBOLS

ἀσχολία | *ascholia*, 12, 16–18,
27–31, 30n4, 33, 38
πόλις | *polis*, viii, ix, 13, 22, 23, 27,
29, 30, 33, 34, 38–41, 43–49,
51, 68, 71
σχολή | *scholē*, viii, 12–14, 12n3, 16,
17, 26–32, 28n3, 30n4, 45

A

Academia

academic autonomy, 40, 117,
119, 123, 132, 140, 144
academic citizenship, xv,
334, 344–345
academic exemption, 76
academic space, vi, 33, 34

Accountability, vii, 47, 129, 130,
249, 253
Agenzia Nazionale di Valutazione
del sistema Universitario e
della Ricerca (ANVUR), xiv,
xv, 16, 275–279, 325, 326,
329–333, 335–337, 342, 343,
345, 346
American context, vii, vi
Anonymity
anonymous evaluator, 95, 96,
102, 103, 114
anonymous judgment, 95, 96,
102, 103, 109, 111
anonymous peer-review, 97–100,
274, 276–278
Aporetical, 8
Arendt, Hannah, 125, 126

¹ Note: Page numbers followed by ‘n’ refer to notes.

- Aristotle, 6, 7, 22, 24, 26, 27,
29–31, 30n4, 101, 101n6
- Artificial Intelligence (AI), 114, 114n14
- A-scientific, 41
- Assessment
 ethical assessment, xi, 152,
 166–171, 180
 Research Assessment Exercise
 (REA), 247
- Austria, xi, xiii, 151–181
 Staatsgrundgesetz, 153
- Authority, 48, 76, 83, 84, 102, 104,
 107, 128–130, 132, 133, 137,
 141, 145, 176n96, 191, 206,
 208, 217, 221, 231, 235, 238,
 245, 263, 278, 290, 295, 307,
 310–311n80, 317n111, 329
- Autonomy, ix, x, 22, 31–33, 40, 60,
 60n13, 84, 117–146, 164,
 165, 179, 181, 187, 188, 196,
 207, 213, 225, 242, 243, 245,
 247, 254, 264, 282, 290, 295,
 302, 302n48, 303, 314
 institutional autonomy, 122, 133,
 136, 303
- B**
- Basic Law, xi, 153n3, 188–191,
 195n5, 195n6, 199n9,
 200, 201
- Being | to be, 9, 28n3, 67
- C**
- Canon, 124, 226
- Censorship, 61n13, 97, 100, 107,
 114, 222, 243, 247
- Central European University (CEU),
 151, 289–291, 294, 295,
 316, 318n111
- Citation syndicate, 131
- Civil clause, 196, 197
- Collegial structure, 131
- Commodification, 117, 122
- Competition, 84, 89, 117, 128, 139,
 140, 168, 205, 282, 293,
 330, 342
 competitive cooperation, 261
- Compliance, 49, 129, 134,
 144, 290, 295, 310n80,
 316, 317, 330
- Conditions for academic freedom
 inner conditions, 118
 objective conditions,
 x, 118–134
 outer conditions, 118
 subjective conditions, x,
 118, 134–140
- Consumer, 128, 139, 141, 305
- D**
- Decision
 decidability, 36, 47
 decision-making, 84, 105, 113,
 114, 128, 129, 144, 145, 192,
 226, 245, 249
- Democratic science, 260–283
- Dewey, John, 78, 79
- Duty, xi, xiii, xiv, 76, 88, 89, 111,
 130, 131, 134–137, 145, 152,
 155, 159, 160, 213, 215,
 291n6, 299n38, 314, 316,
 316n106, 331
 duty to protect, xii–xiv, 159

E

- Effectivity, 34–39, 41–43, 46–48
 brute effectivity, 34–39, 34n6,
 41–43, 48
- End
 τέλος | *telos*, 30, 30n4, 34
 horizon, 59, 60, 65, 66
 means-to-end rationality, 56, 60,
 60n13, 62
 ultimate, ix, 61, 62
- Enlightenment, 128, 200, 289
- Epistemology, x
 epistemic authorization, 128
- Ethics, 44, 64, 65, 65n17, 72, 73,
 101, 158, 162, 166–171,
 166n57, 180, 236, 343, 345
 ἦθος | *ethos*, 65, 71, 261
- Europe
 Charter of Fundamental Rights of
 the European Union, vi,
 291–292n8, 318n111
 European Charter of Fundamental
 Rights, xiii, 289–319
 European Convention on Human
 Rights, 153–155, 159n36,
 248, 298, 298n33, 299,
 302n44, 305–307
 European Court of Justice,
 292n8, 316
- Evaluation
 bibliometrics, 270, 272, 274,
 277, 346
 evaluation of scientific
 achievements, 177–179
- Excellence
 Research Excellence Framework
 (REF), 17, 247, 250, 251, 335
 Teaching Excellence Framework
 (TEF), 250–252

F

- Faculty, x, 16, 82, 85, 88, 89, 118,
 119, 122, 123, 125, 128, 131,
 133, 134, 141, 143, 145, 192,
 244, 293
- France, xii, xiii, 16, 205–238
 Edgar Faure law, 208, 213, 217
- Freedom
 freedom of conscience, 106, 298
 freedom of expression, 76, 77,
 80–82, 88, 90, 91, 107, 213,
 215, 217, 222, 227–234,
 237, 269, 298, 302,
 306, 317n111
 freedom to know, 81–85, 90, 91
 freeness, ix, 31–34, 38–40,
 47, 50, 51
 free speech, vi, vin5, 79, 86,
 87, 91, 243
 knowledge-based academic
 freedom, 83, 87, 88
libertas philosophandi, 298
libertés universitaires, 207
 negative freedom, 60n12,
 68n23, 83
- Functionalization, 125
- G
- Germany
 German Constitutional Court,
 299, 314
Grundgesetz, xi, 219, 299
- Governance
 autonomous governance, vii, 45
 governance of science,
 x, 270
 shared governance, 129, 130, 143
- Grandes Écoles, 205, 340

H

Hate speech, 75
 Heidegger, Martin, 8, 22, 35, 36, 49,
 61, 63, 65, 66, 66n19, 66n20,
 69n25, 70, 71
 Human Rights Act 1998, 248
 Humboldtian model, 86
 Husserl, Edmund, 7, 22

I

Ideology, vi, 88, 141, 234, 296
 Infringement procedure, 291, 316
 Institutional guarantee, 152,
 154–155, 208n3, 216, 302
 Intellectual property, 243, 260–270,
 273, 282, 283

J

Jaspers, Karl, 85, 212
 Judgement, 15, 16, 18, 39, 131, 227,
 228, 230, 329

K

Kant, Immanuel, 60n12, 88,
 98–100, 99n3, 100n4, 269,
 270, 333–347
 Keynes, John Maynard, 12n3, 27

L

Leopardi, Giacomo, 4
 Lisbon Reform Treaty, xiii, 292

M

Man-world-relation, 23
 Mill, John Stuart, 45, 79

N

Nietzsche, Friedrich, 35, 70n26

O

Objectivity, x, 97, 109–113, 137,
 176, 334

P

Parametrization, x, 112–113
 Peer-review, xii, xv, 96–100, 101n7,
 102, 114n14, 130, 140, 143,
 144, 175, 179, 265, 274,
 276–279, 334–336, 344

Peirce, Charles Sanders, 79

Phenomenology, 5, 7

Place

abode (existential place | place for
 human dwelling), ix, 9, 33,
 64, 65, 72
 gift (unevaluable, unnegotiable,
 unplannable favor |
 conceivability of an existential
 place), 9–11, 14

Plato, 12n3, 26, 64n16,
 69n25, 70n26, 101n6,
 135, 303

Public sphere

public dialogue, 260–270,
 278, 279
 public use of reason, 100,
 270, 333

Publish or perish, 161, 327, 344

R

Ranking, 103, 113, 122, 132, 139,
 140, 334, 337, 339–341,
 344, 345

Responsibility, 10, 40, 51–52,
69n24, 127–130, 132, 133,
136, 142, 145, 187, 192,
193n4, 212, 213, 219n14,
226, 228, 245, 252, 252n6
Ricoeur, Paul, 209–214

S

Safe spaces, 86, 199
Scholarship, 55–73, 69n24, 72n27,
118, 120, 128, 133, 137
Scientific difference, ix, 22, 38–44,
48, 50–52
Sense, vi, 4, 6, 8, 10, 11, 13, 15,
22–25, 27–34, 36–39, 41–47,
50, 51, 57n5, 60n11, 61, 63,
64, 71, 72, 76, 83, 91, 112,
125, 135, 136, 187, 189,
196n8, 207, 208, 208n4, 214,
215, 217, 261, 266, 305
Smart research management
(SRM), xiv
Subtle measure, xiv
Sweden, 131, 144

T

Technics, 12, 37, 49
Theoretical, 21, 27, 31, 33–35, 40,
46, 51, 63n14, 241, 271,
278, 281
Threats to academic freedom
external intrusions, x
external threats, vi, 22, 44,
48, 49, 110
internal intrusions, x
internal threats, ix, xiii, 34–38
silencing, 75, 229, 233

threats to academics, 227, 243

Time

χρόνος | chronos, 6, 7
control-time, 49, 50
cybernetic clockwork, 42
ethical time, 22–25, 29–32, 51
existence-time, 7, 8, 10–13
free time, ix, 12, 22, 25–34
physical time, 24
space of time, 10
sub-time, 25, 27–29, 31,
34, 37, 49
temporaneousness, 9, 11
timelessness, 21, 25, 28, 36

Tradition, viii, 22, 35, 61, 63,

63n14, 63n15, 64, 64n16,
66–72, 68n23, 69n25, 70n26,
78, 82, 86, 101n6, 207, 208,
217–219, 263, 298–300, 305,
307n67, 313

Truth, vi, ix, 10, 11, 13, 21–52, 62,
77, 78, 80, 81, 83, 84,
98–103, 99n3, 111, 112, 114,
151, 159, 187–190, 188n1,
200, 208, 210, 212, 213, 260,
261, 272, 291n4, 300

U

United Kingdom
Brexit, 242, 253
Education Act of 1988,
xii, 246
Higher Education Act of 1992,
xii, 246, 253
United States, 57n7, 76, 78, 90,
101n7, 167, 200n11, 215,
216, 220, 230, 233–237, 242,
242n1, 270, 271, 289, 338

University privileges, 207, 208, 216
Usefulness, ix, x, 14, 15, 29,
46–48, 141

V

Value, vi, viii, x, 4–18, 23, 35, 38,
39, 42, 46, 48, 49, 57, 86, 98,
102n8, 112, 113, 120, 125,
126, 135–140, 142, 173, 174,
175n94, 189, 211, 244, 249,

263, 274, 283, 291n6, 296,
305, 316n106, 317, 317n110,
329, 331, 334, 337, 347
value-free, 11
Vocation (*Beruf*), x, 118, 130, 137

W

Weber, Max, x, 86, 118, 123,
130, 134, 135, 137, 138,
140, 141