

Academic Freedom in Europe: The Central European University Affair and the Wider Lessons

Anne Corbett and Claire Gordon

Academics like to quote Einstein when they think about academic freedom. “By academic freedom,” said Albert Einstein, “I understand the right to search for truth and to publish and teach what one holds to be true.”¹ In the 1940s, philosopher Karl Polanyi warned that “freedom from” could be a more important dimension than “freedom to” for those concerned with rights.² Today, in looking across the university world in Europe, Polanyi’s words seem apt.

This article looks at the case of Hungarian-based Central European University (CEU), which, in March 2017, became a byword for academic freedom under attack, and asks what general lessons, if any, we can draw on the state of academic freedom in Europe. In addition to giving an overview of the CEU case, it highlights some recent issues in Central, Eastern, and Western Europe; draws attention to the distinctions and commonalities between academic freedom and institutional autonomy; and raises questions as to whether the EU and European institutions have a role to play in defending university autonomy.

In April 2017, the CEU found itself the object of an amendment to Hungary’s Higher Education Law that, according to Michael Ignatieff,

Anne Corbett is a senior associate at LSE Enterprise at the London School of Economics and Political Science. Her research interests lie in higher education and Brexit. She is the author of *Universities and the Europe of Knowledge: Ideas, Institutions and Policy Entrepreneurship in European Union Higher Education Policy, 1955–2005*. Claire Gordon is Head of the LSE Teaching and Learning Centre at the London School of Economics and Political Science. This article expands on the authors’ April 2017 LSE blog, “Can Europe Stand Up for Academic Freedom? The Bologna Process, Hungary, and the Central European University,” <http://blogs.lse.ac.uk/europpblog/2017/04/18/can-europe-stand-up-for-academic-freedom/>.

¹Albert Einstein, Statement for a conference of the Emergency Civil Liberties Committee, March 3, 1954, Albert Einstein Archives, Hebrew University of Jerusalem, 28–1025 (in German) 59–714 (in English).

²For Polanyi’s concept of negative freedom, see Birsan Filip, “Polanyi and Hayek on Freedom, the State, and Economics,” *International Journal of Political Economy* 41, no. 4 (Dec. 2012), 69–87.

CEU's President and Rector, came out of the blue: its purpose to outlaw the structure of the Hungarian-American partnership that had underpinned this highly respected university for twenty-six years. Among its key provisions was forbidding the university to maintain its dual Hungarian and American legal identity, requiring it to choose a single form of accreditation, setting up a campus in the US, and vesting its governance in an international treaty. Despite the initial difficulties—such as the fact that US states are responsible for university matters and not the federal government as well as the cost implications of a new campus—discussions for a solution were under way. Then, in October 2017, the Hungarian government pulled out of the discussions. A year after the passing of the law, the fate of the CEU remains uncertain. It is free to admit students until January 2019 but uncertain of its legal status thereafter. Meanwhile it flourishes.

So what was the Hungarian government's motive in attacking the CEU, one of the smaller Hungarian universities (with around fifteen hundred postgraduate students and five hundred academics and researchers)? A government spokesman justified the legislation as creating a level playing field between Hungarian universities and the twenty-eight foreign universities that operate in Hungary. The somewhat dubious grounds were that these foreign universities had an unfair advantage in having their degrees recognized overseas. But few were in doubt that the government wanted to damage the CEU under legislation that became known as the "Lex CEU." Within days, the CEU became a cause célèbre for academic freedom in peril across many continents.

As widely portrayed in the international press, the CEU was a "bothersome institution" to the ruling Fidesz party.³ The Hungarian government has already sought to control the judiciary and the media in pursuit of what Prime Minister Viktor Orbán proudly calls his "illiberal democracy."⁴ Universities could see the threat coming with higher education laws between 2011 and 2014 exerting central control over the key appointments of rectors and chancellors.⁵ But the government had a particular reason for attacking the CEU. It

³"Orbán v Intellectuals: Academic Freedom in Hungary," *The Economist*, April 8, 2017, 32.

⁴Viktor Orbán, Speech at the 25th Bálványos Summer Free University and Student Camp, July 26, 2014, <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>.

⁵Attila Chikan, "Key Developments in Hungarian Education," in *Academic Freedom: The Global Challenge*, ed. Michael Ignatieff and Stefan Roch (Budapest, Hungary: Central European University Press, 2018), 113. See also Michael Ignatieff, "Academic Freedom from Without and Within," in *Academic Freedom: The*

was founded by Hungarian billionaire George Soros as part of his philanthropic effort to promote the democratic values of an open society in former communist countries, and thus an opponent of the Orbán way of doing politics.

The Lex CEU amendment to Hungary's Higher Education Law was passed despite protests from thousands of Hungarian students and academics and others across the world. Even Tibor Navracsics, the EU's education commissioner, who once served as Orbán's minister of justice, was critical. In an early response to events, Simon Marginson, director of the Centre for Global Higher Education at University College, London, said that "the CEU looks likely to be the first international university to be made a victim of the new closed brand of nationalism, epitomised by Brexit, [Donald] Trump and the [Marine] Le Pen agenda [unless] the threat can be headed off."⁶

But for Ignatieff, a political philosopher by training, there are gradations of nationalism and populism that help us understand the different emerging patterns of state action toward universities in Europe. Through his particular brand of authoritarian populism, Orbán has used the law to attack democratic institutions in Hungary. Subsumed under a potent mix of nationalist populist rhetoric, Fidesz successfully secured a successive third term in the April 2018 elections. Meanwhile, more democratic forms of populism evident in the UK's Brexit vote and in recent elections in Germany, France, Italy, and elsewhere can be seen as a revolt by voters who feel ignored by mainstream political parties. These different forms of populism call for somewhat different responses from universities. But the common theme is that "when the authority of knowledge in public debate is questioned as never before, universities need to stand up for their role as critical custodians of what societies ... actually know."⁷

The case of the CEU in Hungary is not a wholly isolated one. A disturbing picture has been emerging in some of the ten countries of Central and Eastern Europe (CEE) that acceded to the EU between 2004 and 2007, where the state takes a political lead in using legal instruments to restrict the institutional autonomy of the university, with adverse effects for academic freedom. This "repression" is different in kind from repressing academics for their political views, as

Global Challenge; and Liviu Matei, "Three Ideas on Academic Freedom," in *Academic Freedom: The Global Challenge*.

⁶David Matthews, "Central European University Fights for Survival in Hungary," *Times Higher Education Supplement*, March 29, 2017, <https://www.timeshighereducation.com/news/central-european-university-fights-for-survival-in-hungary>.

⁷Ignatieff, "Academic Freedom from Without and Within," in *Academic Freedom: The Global Challenge*, 2.

evidenced in Turkey. Nonetheless, it has dismayed many in the academic world. The collapse of communist regimes across CEE between 1989 and 1991 was initially accompanied by the restoration of academic freedom across large parts of the region and the revival of the historically famous institutions of higher education in these countries. The gradual integration of CEE countries into EU higher education structures provided an additional lock-in in terms of embedding good academic practice into the fundamental principle of academic freedom lying at the heart of these initiatives.

But more recently, as populist governments of varying hues have come to power in some countries of CEE, the relatively new democratic institutions have shown themselves to be less well embedded than previously thought. Attacks on academic freedom have increased, along with direct infringements and other efforts to curb aspects of the “open society,” as exemplified by institutions that represent independent thinking and opinion. Governments have employed a range of tools to limit the academy’s freedom, including influencing or determining key university leadership appointments,⁸ controlling and directing funding sources, controlling or influencing research agendas, vetting research and publication,⁹ and revoking a university’s license. Research by the Varieties of Democracy (V-Dem) project has shown a significant decline in academic freedom in the region since 2010.¹⁰

A more common block to change has been the legacy systems of “cadre” loyalty and tenured senior university roles in faculties and departments.¹¹ Meanwhile, both state and private universities have faced severe funding restrictions.

In Western Europe, institutional autonomy is often taken for granted. Bearing out a European University Association (EUA)

⁸For example, the attacks on Professor Jan Gross in Poland in 2016 threatening libel action for his work on the Poles in World War II and stripping him of his high state decoration. See Hank Reichman, “Academic Freedom Threatened in Poland,” *Academe Blog*, Feb. 19, 2016, <https://academeblog.org/2016/02/19/academic-freedom-threatened-in-poland/>. See also Tara John, “Poland Just Passed a Holocaust Bill That Is Causing Outrage,” *Time*, Feb. 1, 2018, <http://time.com/5128341/poland-holocaust-law/>.

⁹Daria Litvinova, “Russian Academia Divided over FSB Vetting of Research Papers,” *Moscow Times*, Oct. 21, 2015, <https://themoscowtimes.com/articles/russian-academia-divided-over-fsb-vetting-of-research-papers-50389>.

¹⁰Anna Lührmann, Staffan I. Lindberg, Valeriya Mechkova, et al., *Democracy at Dusk? V-Dem Annual Report 2017*, Varieties of Democracy, <https://www.v-dem.net/en/news-publications/annual-report/>.

¹¹Jasmina Opardija, “Building Social Science Research Capacities in the Western Balkans: RRPP Experiences and Perspectives in the Light of UE Integration,” in *Stagnation and Drift in the Western Balkans*, ed. Claire Gordon, Marko Kmezcic, and Jasmina Opardija-Susnjar (Oxford, UK: Peter Lang, 2013), 25–48.

study that shows autonomy as contingent on the diverse cultural, political, legal, and historical backgrounds of Europe's higher education systems, we do not see a single model in the older member states of Western Europe, but nor do we see the same style of legal restriction.¹² The watchword here has been efficiency and better use of resources rather than political repression. Within these categories, the UK education system with its traditionally high levels of autonomy is different from the systems in Continental Europe, which are more dependent on state regulation.¹³

The UK is an advanced example of new economic dynamics at work. Traditionally in Britain, universities are lauded for their legally guaranteed independence. The EUA study of university autonomy across twenty-nine countries shows that UK universities, which score well in international rankings, also come out on top in terms of organizational autonomy with, for example, the freedom to appoint their leaders and staff, control their budgets, and maintain standards through peer review and light-touch quality assurance. It is a linkage that UK politicians make much of.¹⁴

More recently, however, the admirable UK governance structure has appeared more vulnerable than some of its Continental counterparts due to policy changes away from "light touch" regulation largely exercised by academics and strong reliance on peer review and collegiate decision-making. At play is a dynamic of "growing marketisation ... coupled with growing hierarchical oversight. ... [and] the growing internationalised nature of positional competition among universities that went increasingly beyond national boundaries."¹⁵

Recent legislation establishing a UK Office for Students provides a telling example. The friendly sounding name notwithstanding, the law sneaks in additional powers that make it possible for governments to strip existing universities of their independent charter, a hugely symbolic blow to their historic autonomy. It also opens a path for

¹²Enora Bennetot Pruvot and Thomas Estermann, *University Autonomy in Europe III: The Scorecard 2017* (Brussels: European University Association, 2017), <http://www.eua.be/Libraries/publications/University-Autonomy-in-Europe-2017>.

¹³Note, however, some significant reforms, such as the 2007 French law on university autonomy.

¹⁴See David Willetts, *A University Education* (Oxford, UK: Oxford University Press, 2017). Willetts is a former and widely admired Minister of State for Universities and Science.

¹⁵Martin Lodge, "Regulating Higher Education: A Comparative Perspective," in *The Regulation of Higher Education*, ed. Martin Lodge (London: London School of Economics and Political Science, Centre for Analysis of Risk and Regulation, 2015), 1-9, <http://www.lse.ac.uk/accounting/CARR/pdf/DPs/DP-77%20The-regulation-of-higher-education.pdf>.

giving degree-awarding powers to private providers who do not necessarily aspire to the traditional mission of the universities. In summary, legislation aimed at improving the lot of ‘students as consumers’ may deal a serious blow to the famed British model.

There has been some debate about the role that the European Union or related European bodies can play in upholding academic freedom in Europe. On the one hand, the EU is not in a position to directly intervene in national educational or organizational practices. When the Hungarian government moved against the CEU, the European Commission was limited by Article 165 of the EU’s Lisbon Treaty, which explicitly states that any action it takes has to respect a member state’s responsibility for teaching content, educational system organization, and cultural and linguistic diversity. An education system is an expression of national sovereignty.¹⁶

On the other hand, voluntary but widely accepted European lines of support for academic freedom exist, although they tend to fall into the Einstein category of “freedom to” rather than Polanyi’s “freedom from.” In 1988, for instance, leading European rectors created a charter of academic freedom designed to uphold the “unique constellation of study, teaching and research, as represented by the European university for the last millennium.”¹⁷ This *Magna Charta Universitatum* now has 816 signatories from eighty-six countries who agree with the idea that they belong to an international community sharing the same academic values and purposes. In the words of the charter’s “Fundamental Principles”:

The university is an autonomous institution at the heart of societies differently organized because of geography and historical heritage; it produces, examines, appraises and hands down culture by research and teaching. To meet the needs of the world around it, its research and teaching must be morally and intellectually independent of all political authority and intellectually independent of all political authority and economic power.¹⁸

More significant is the Bologna Process, a globally admired political initiative that created the European Higher Education Area. It has

¹⁶Article 165, Title XII – Education, Vocational Training, Youth and Sports, The Lisbon Treaty, <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-xii-education-vocational-training-youth-and-sport/453-article-165.html>. The Lisbon Treaty was signed December 13, 2007 and came into force December 1, 2009.

¹⁷Magna Charta Universitatum, <http://www.magna-charta.org/magna-charta-universitatum>.

¹⁸Magna Charta Universitatum.

an explicit commitment to academic freedom and instruments for voluntary regulation of recognition and quality assurance. The forty-eight countries that are part of the Bologna Process agreed to implement higher education reforms on the basis of common key values, notably freedom of expression, institutional autonomy, independent student unions, academic freedom, and free movement for students and staff.¹⁹ At the next Bologna meeting in May 2018, the national ministers will be taking a position on nonimplementation of Bologna policy and principles. It could potentially tip the balance from the “Einstein” outlook to recognizing the force in the Polanyi dictum. We can only wait and see.

However, the degree of pan-European socialization that makes Europe distinctive with regard to academic freedom does provide grounds for some optimism. Europe’s multiple higher education and research networks do not take on the state but they do provide incentives to individual or institutional actors to mobilize.

The EU itself has not been totally absent in seeking to exploit a weak, but still significant, legislative power to enhance quality in ways that do not infringe on state powers. To this end, member states have jointly voted through, and sustained, institutionalized networks of educational and research exchanges, mobility, and collaboration enabled by EU funding (Erasmus+ and the research funding frameworks).

But the evidence suggests that it is the relationship between the university and the state is crucial, whatever form it takes in shaping the conditions for academic freedom in particular countries. The CEU case shows state power being used for highly political ends. In other countries, where populism is an important political factor and where disenchanting populist strands of public opinion want elites in their various guises to be accountable, the onus on the state is mostly to tackle voter dissatisfaction rather than to constrain the university mission. At the same time, the onus is also on universities to reassert their claim to public trust and esteem as well as to better communicate with the public. This may indeed require better and more transparent forms of accountability.²⁰

What counts in the end is the way in which institutional autonomy is supported to enable academics to fulfil their epistemic responsibilities: to engage in rigorous evidence-based scholarship in contexts

¹⁹“European Higher Education Area and Bologna Process,” European Higher Education Area, <http://www.ehea.info/>.

²⁰Tom Boland and Ellen Hazelkorn, “Public Trust and Accountability: A Time of Special Challenge,” Feb. 7, 2018, Wonkhe, <https://wonkhe.com/blogs/public-trust-and-accountability-a-time-of-special-challenge/>.

enabling the free exchange of ideas and critique, free of political pressure. Just as crucial is the autonomy to undertake the education of their students—future citizens and future contributors to the economies of their nation and the European region.

Twentieth-century Europe has many historical examples that demonstrate that when academic freedom and the ethics of scholarship and research are not defended, democracy pays the price and knowledge is constrained. As Berthold Rittberger and Jeremy Richardson put it in a pithy editorial at the time the law attacking the CEU was published, taking the argument to its extremes: “What happens when we do not defend academic freedom? There is no introduction, no argument and contribution, no analysis, no conclusion or avenues for future research, no more questions asked.”²¹

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²¹Berthold Rittberger and Jeremy Richardson, “What Happens When We Do Not Defend Academic Freedom,” *Journal of European Public Policy*, April 13, 2017, <https://doi.org/10.1080/13501763.2017.1316946>.