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University Autonomy and Academic Freedom

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2 University Autonomy and Academic Freedom¹

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When seeking to understand institutional autonomy, and its relationship to other components of academic freedom, an initial sticking point is the debate over an agreed international definition of academic freedom (Åkerlind and Kayrooz, 2003, pp. 327–44; Altbach, 2001, p. 206; Beaud, 2020, pp. 611–27). For this reason, many questions remain open about academic freedom, insofar as they relate to understanding institutional autonomy.

The debate and discussions on academic freedom that are of particular relevance for this book can be framed by three interconnected questions:

- i On what right(s) is academic freedom based? In particular, is it a right for academics, or a right for the whole society? And what does each interpretation mean for permissible limitations on academic freedom and university autonomy?
- ii What is the purpose of universities and, by extension, of academic freedom?
- iii Is there an ‘institutional right’ to academic freedom?

This chapter considers these three questions in more detail, with the aim of understanding the current parameters of university autonomy, and some of the challenges to securing autonomy in practice that arise from this.

2.1 What Right? Academic Freedom and the Freedom of Expression, the Right to Education, and to Science

As the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (hereinafter, the Special Rapporteur for Freedom of Opinion and Expression) noted, ‘there is no single, exclusive international human rights framework for the subject [of academic freedom]’ (Kaye, 2020, para. 5). Academic freedom is not directly included in the text of any international human rights convention as a standalone right. Rather, it has established itself under different core human rights (Kinzelbach et al., 2021, p. 2). This has resulted in a lack of clarity over its basis. International standards have placed academic freedom primarily under three different human rights: the right to education, freedom of expression, or the ‘right to science’. Locating academic

freedom ambiguously within the context of all of these rights means that substantively, its inherent purpose is unclear, and practically, that it is subject to various forms of state discretion and permitted limitations that those rights carry. Uitz (2021, p. 2) notes the challenges that have existed in developing an agreed definition of academic freedom: ‘for better or worse, academic freedom sits at the intersection of numerous disciplines that treat it as an aspiration, an ideal, a value, a principle or – to quote Joan W. Scott – a “complicated idea with limited application”’.

The most authoritative elaboration of the scope of academic freedom in international human rights law has come from the UN Committee on Economic, Social and Cultural Rights (CESCR) – the state-elected expert committee that oversees the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Its position has notably developed over a period of 20 years between its first and second major interpretation of the Covenant on this point. While the first interpretation related academic freedom to the right to education, the second framed it within the right to science (discussed further below). The 1999 CESCR General Comment on Article 13 of the Covenant, sets out the ‘right of everyone to education’, and specifically provides that ‘higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education’ (UN ECOSOC, 1999). The Committee’s interpretation with regard to academic freedom reads as follows:

Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights.

(UN ECOSOC, 1999, para. 39)²

This connects academic freedom to other rights, primarily freedom of expression, non-discrimination, and freedom of association, and places it squarely within the setting of academia (UN ECOSOC, 1999, para. 40).³ The Committee noted that those in higher education are ‘especially vulnerable to political and other pressures which undermine academic freedom’ (Ibid, para. 38). It set institutional autonomy as a distinct but supporting feature of academic freedom: ‘the enjoyment of academic freedom requires the autonomy of institutions of higher education’ (Ibid, para. 40). However, the Committee addressed the requirements of institutional autonomy in the context of limited self-governance: ‘Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities’ (Ibid). Importantly, this

interpretation framed institutional autonomy in an operational context, subject to state limitations. In the same paragraph, the Committee further emphasized the limits of self-governance, particularly because higher education institutions often involve substantial public investment and thus ‘an appropriate balance has to be struck between institutional autonomy and accountability’ (Ibid).⁴

The Committee also addressed some of the important *internal* features of self-governance for higher education institutions, noting that ‘institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible’ (UN ECOSOC, 1999, para. 40). However, it left broad scope for permissible state intervention. As will be seen below, this broad scope is further expanded by wide national variations in institutional governance models, compounded by the absence of fundamental agreement over the purpose of universities.

According to the CESCR, limitations on Article 13 (the right to education) are permitted where they are determined by law, but ‘only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’ (UN ECOSOC, 1999, para. 42). Article 13 is also ‘primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State’ (Ibid). The Committee specifically related such impositions of limitations to higher education institutions, noting that, ‘a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of the elements identified in article 4’ (Ibid). In practice, setting academic freedom within the context of the right to education problematically opens it up to the extensive discretion available to states under that right.⁵

The second human right that academic freedom is frequently subsumed under is the freedom of expression, as illustrated by the fact that the UN Special Rapporteur for Freedom of Opinion and Expression dedicated his 2020 report to the topic. This approach is particularly strongly ingrained in European and North American jurisprudence. In the United States, academic freedom has traditionally been protected by the First Amendment to the constitution on free speech. In *Sweezy v New Hampshire* (1957), US Supreme Court judge Justice Frankfurter identified ‘four essential freedoms’ for universities, requiring ‘the exclusion of governmental intervention in the intellectual life of a university’. He continued: ‘It is an atmosphere in which there prevail “the four essential freedoms” of a university to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study’. In *Keyishian v Board of Regents*, (1967, para. 603), the Supreme Court also observed that academic freedom was a free speech issue noting that it ‘is ... a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom’.⁶ The still-recognized 1940 American Association of University Professors’ *Statement of Principles on Academic Freedom and Tenure* connects academic freedom both to teaching and to research.⁷ Teachers are entitled to ‘full freedom in research and in the

publication of results, *subject to* the adequate performance of their other academic duties’ and to freedom in the classroom, but with limitations (American Association of University Professors, 1940, footnotes omitted, emphasis added; see generally Barendt, 2010, [chapter 6](#)) – albeit a 1970 interpretation noted that it was not intended to ‘discourage what is “controversial”’ (American Association of University Professors, 1940, footnotes omitted, second, 1970 comment).

In the European Union (EU), academic freedom has also been connected to the right to freedom of expression. The EU Charter of Fundamental Rights, which entered into force in 2009, provides in its Article 13 on *Freedom of the arts and sciences* that ‘Academic freedom shall be respected’ (European Union, 2012, pp. 391–407), while the accompanying explanation notes that academic freedom comes ‘primarily from the right to freedom of thought and expression’.⁸ In terms of the scope of limitations, this opens this right to the manifold limitations of Article 10 on freedom of expression of the European Convention on Human Rights (ECHR). Indeed, the European Court of Human Rights has also dealt with academic freedom issues under Article 10 ECHR (freedom of expression) (Beiter et al., 2016a, p. 266). Article 10 ECHR permits limitations that 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’ (Convention for the Protection of Human Rights and Fundamental Freedoms; European Convention on Human Rights, as amended (ECHR), Article 10). Similarly, the European Commission for Democracy Through Law (known as the Venice Commission), a preeminent voice on democracy and the rule of law in the Council of Europe region, only requires states to ‘refrain from *undue* interference’ with teaching and organizing teaching and research (emphasis added). According to their interpretation, limitations within the boundaries of ‘legitimate aims, and [...] proportionate and necessary in a democratic society’ are permitted, as foreseen by the relevant ECHR articles on freedom of expression, association and the right to education (European Commission for Democracy Through Law, 2017, p. 13, citing *Kjeldsen, Busk Madsen and Pedersen v Denmark*; see also *B.N. and S.N. v Sweden*, 1993; *Konrad and others v Germany*, 2006). It can thus be seen that so closely connecting academic freedom to freedom of expression is problematic as it is subject to a range of limitations, retains a focus on the individual as the rights holder, and may overlook institutional-level restrictions.

A third interpretation of academic freedom has been provided in connection with the ‘right to science’. Two decades after its first interpretation on the right to education, in its General Comment No. 25 (UN ECOSOC, 2020), the UN Committee on Economic, Social, and Cultural Rights again reviewed academic freedom within human rights law, this time in the context of Article 15 of the Covenant. This article recognizes the ‘right of everyone [...] to enjoy the benefits

of scientific progress and its applications’ and stipulates that state parties ‘undertake to respect the freedom indispensable for scientific research’.

The Committee provides a non-exhaustive list of rights required for academic freedom to exist, ‘including freedom of expression and freedom to seek, receive and impart scientific information, freedom of association and freedom of movement; guarantees of equal access and participation of all public and private actors; and capacity-building and education’ (UN ECOSOC, 2020, para. 46). In its comment, the CESCR describes the ‘freedom to research’ as containing ‘at least’ the following five dimensions (Ibid, para. 13):

- Protection of researchers from undue influence on their independent judgment;
- The possibility for researchers to set up autonomous research institutions and to define the aims and objectives of the research and the methods to be adopted;
- The freedom of researchers to freely and openly question the ethical value of certain projects and the right to withdraw from those projects if their conscience so dictates;
- The freedom of researchers to cooperate with other researchers, both nationally and internationally;
- The sharing of scientific data and analysis with policymakers, and with the public wherever possible.

The key aspect of General Comment No. 25 for the purposes of this university autonomy is the linking of academic freedom to the right to science – specifically, the right of everyone to enjoy the benefits of scientific progress and its application. This clarifies that academic freedom is more than a right enjoyed solely by academics or only in an academic context. The right to science is a right of all people within a society. Placing academic freedom within the right to science elevates it to a ‘societal’ right to be enjoyed by all, rather than an ‘elite’ right of some.

All of these standards suggest that autonomy, as a component of academic freedom, demands a balance be achieved. In order to assist with understanding where such ‘balancing’ of rights takes place, the usual approach is to apply the customary human rights ‘tests’ of necessity, proportionality, and legitimate purpose.⁹ Yet applying this approach to academic freedom exposes two fundamental flaws. Firstly, there are multiple potential component ‘rights’ (expression, association, science, etc.), meaning that multiple approaches to this test can be made from different angles, depending on how the relevant authority views academic freedom. Second, with the purposes of both academic freedom and the university itself being undefined, coupled with the diversity of national governance models, what is ‘necessary, proportionate and legitimate’ can have vastly different permissible interpretations. In framing academic freedom as part of the right to science in its 2020 General Comment No. 25, the Committee appears to permit fewer limitations, in particular noting that

‘any limitation on the content of scientific research implies a strict burden of justification by States, in order to avoid infringing freedom of research’ (UN ECOSOC, 2020, para. 22). The stricter limitations permitted on the right to science would appear to further illustrate the benefit of its framing under this right. When academic freedom is based in the right to science, then the debate on upholding this freedom can shift from one focusing on a narrow individual right of academics to a broader right of all humans.

2.2 What Is the Purpose of Universities?

To establish the meaning and scope of university autonomy also requires a clear understanding of the *purpose* of universities, (Karran, 2007; Thorens, 1998), and by extension, of academic freedom and university autonomy. However, there is no general agreement on this issue either. Four, at times overlapping, notions of the purpose of universities can be identified, variably defined as (i) the search for truth and expansion of human knowledge, (ii) the fostering of democratic societies and education of critical minds, (iii) engines of societal problem-solving, and (iv) responders to the demands of the national economy and labour market.

The first notion, the search for truth, is most prominently represented in the secondary literature on academic freedom. For example, Beaud emphatically argues against the market-oriented notion in particular in favour of the truth-seeking functions of universities:

The real mission of the university is not, as is believed almost the world over, to adapt higher education to the needs of the labour market so that people can find jobs. Its finality is rather what the Germans call *Hochschule* (schools of higher education). The university’s duty is higher, may I say more elevated, as Finkin and Post say, advancing the ‘sum of human knowledge’ or, better still, ‘to create new knowledge’.

(Beaud, 2020, p. 621)

Similarly, Beiter argues for an unequivocal understanding of academic freedom ‘as a guarantor of the discovery of the truth and the advancement of knowledge for the benefit of society at large’ (2019, p. 242; see also Thorens, 1998). The same idea is affirmed in the Council of Europe Committee of Ministers Recommendation CM/Rec (2012)7, where academic freedom is defined on the basis of an underlying rationale of the ‘search for truth’ (Council of Europe, 2012, para. 5).

The same Recommendation also invokes the second notion of universities’ purpose, suggesting that higher education should serve ‘open democratic societies’ by fostering critical and creative thinking. The Council for the Development of Social Science Research in Africa (CODESRIA)’s 2007 *Juba Declaration on Academic Freedom and University Autonomy* reflects the same rationale by providing for a democratic role for academics, where ‘Members of Academic

community should inculcate the spirit of tolerance and enhancement of democratic debate and discussion' (Article 11).

Furthermore, speaking to the third notion of universities' greater role in relation to broader society, the Juba Declaration also refers to the role of both institutions and academics in addressing societal problems (Articles 9, 12). A very similar idea can be found in the earlier *Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education* of the World University Service, adopted in 1988. It sets a democratic purpose for higher education institutions in pursuing the fulfilment of human rights (para. 14) and addressing themselves to the 'contemporary problems facing society' (para. 15). It proposes an active stance of universities in society: '[i]nstitutions of higher education should be critical of conditions of political repression and violations of human rights within their own society' (para. 15).

There is a compatibility between the first three notions, as there is an assumption that the 'search for truth' ultimately serves society and the 'common good' (Beaud, 2020, p. 620). However, such purposes as the fostering of democracy or the solving of societal problems are only compatible with a robust type of autonomy and academic freedom if it is the academic community itself that defines what those objectives consist of in practice. The notion of a 'pro-democratic' university appears to be rather new and is probably not a universally accepted conception within academia, whereas the idea of a 'search for truth' touches more on the core of universities' mission; and it is most aligned with academic freedom as the 'right to science' or, differently put, the 'right to truth'.

In contrast to this notion is the subservience of higher education institutions to state policy or market objectives. This type of approach is reflected in Council of Europe Parliamentary Assembly Resolution 1762 (2006, para. 10):

Universities should be expected to live up to certain societal and political objectives, even to comply with certain demands of the market and the business world, but they should also be entitled to decide on which means to choose in the pursuit and fulfilment of their short-term and long-term missions in society.

Worryingly, this suggests that universities' role extends only to the limit of 'certain societal and political objectives'. Though the Resolution leaves who might define those objectives open, the formulation does not imply that it is the academic community itself. Further, according to the Resolution, universities may be required to 'comply' with market and business demands. While universities remain permitted to decide on the means by which they implement these objectives and demands, the Resolution suggests that universities are not in a position to refuse. This appears incompatible with the 'moral and intellectual independence' pronounced elsewhere in the same resolution. Overall, the compatibility of this vision with an understanding of universities' mission as the 'discovery of the truth' seems, at best, challenging. The same compatibility challenge applies more broadly to the market-oriented model of the university,

where Beaud highlights an ‘economic threat’ that is ‘due to the heavy constraint imposed by society and the global economy, manifested in the threat of what could be called a purely managerial and functional university’ (2020, p. 616). Indeed, the increasing market-focus, managerialism, and ‘quality’ control exercised by the state over universities have repeatedly been criticized as undermining the purpose of universities as seekers of truth (Beaud, 2020; Beiter, 2019; Post, 2015).

The different notions of the purposes of universities are, ultimately, also reflected in the national variation of university governance models. Following Dobbins, Knill, and Vogtle (2011, p. 670), three broad models can be identified. The first is **state-centred**, whereby the state exercises ‘strong oversight over study content’ as well as itemized allocation of finances, appointed staff, and nationally standardized procedures such as conditions of access and pay scales (Ibid). Such a model is aligned with a vision of the university as serving certain societal or political objectives, which may, at least partly, be defined by the state. Dobbins, Knill, and Vogtle examples for countries following this state-centred model include France, Turkey, post-communist Romania, and Russia. This model contrasts with the **self-governing** model that ‘has shaped and still shapes [higher education] in Germany, Austria and much of pre- and post-communist central Europe’ (Ibid, p. 671). This model ‘[i]n its ideal form...is based on a state-university partnership, governed by principles of corporatism and collective agreement’ with a strong focus on knowledge as an end in itself, albeit ‘within state-defined constraints, as universities remain under the auspices of the state’ (Ibid). Moreover, truth-seeking is viewed as a key function under this model and it is the community of scholars that has the main decision-making role over which societal objectives it may want to pursue. The third model is the **market-oriented** model, prominently represented by the United States, where universities operate as economic enterprises ‘within and for regional or global markets’ and higher education is viewed as ‘a commodity, investment, and strategic resource’ (Ibid, p. 672). In this model the state ‘promote[s] competition, while ensuring quality and transparency’ and may influence higher education through policy instruments such as pricing and enrolment, and university management have the central decision-making role (Ibid).

These different governance models that states pursue in practice – and the underlying visions of the university’s ultimate purpose – necessarily lead to different views on the meaning and scope of university autonomy. A state-centred model suggests strong government control; a market-oriented model suggests a strong role for university administrations; whereas only the true self-governing model clearly places the power over key decisions within the academic community itself. Even if the three models may not be as clear-cut in practice, such national variations and historical traditions account for strongly diverging practices in the extent of interference in universities’ self-governance. As noted in a 2008 World Bank Report on University Governance:¹⁰

The extent of autonomy that institutions are allowed by the state is often a mixture of inherited rights, tradition, legislative intent, and societal culture.

It is usually built up over time through a variety of legislative processes, ministerial decisions, and ad hoc regulations. It is rarely a finely crafted structure to a rational design. It is also culture specific and rights or controls that are taken for granted in one country can be unthinkable in another.

(Fielden, 2008, p. 18)

The European University Association (EUA)'s Scorecard notes this challenge, particularly that '[a]utonomy is a concept that is understood very differently across Europe; associated perceptions and terminology tend to vary quite significantly' due to different legal frameworks and historical and cultural circumstances (2017, p. 11). This is likely to be true across the globe. For example, a similar diversity of models has been noted in Southeast Asian higher education institutions (Ratanawijitrasin, 2015). Yet as the case studies will show, this wide discretion may have helped to facilitate extensive interference in universities in some countries, which has essentially created non-autonomous institutions.

The absence of clear international standards to act as a baseline for autonomy, and the idea that cultural relativism and/or the requirements of market forces allow states to deal with universities as they wish has led to a situation in which universities in many countries are not in the hands of the academy. Yet it is only through robust self-governance that the right to academic freedom can be actualized.

The absence of agreement as to the purpose of universities has had significant implications for their recent development. Beaud describes this fundamental problem faced by higher education today, in the extent to which universities have been, or are at risk to be, instrumentalized towards building the economy:

It is *also* against this all-encompassing and more subtle threat of 'instrumentalising the university' by changing the ends for which the university strives, that academic freedom should protect us all. There is a glaring risk that the expert will replace the academic, and university bureaucracy will opt for collective rather than individual research. The consequence is that today's academics have the uncomfortable feeling that they are working inside the steel cage of bureaucratic machineries on which external bodies impose not only permanent evaluation – often as useless as it is time consuming – but also and more importantly, on the content of the research programme.

(Beaud, 2020, p. 617)

In attempting to rectify these inherent contradictions, Beiter argues that 'Legislation in the sphere of science should, firstly, guarantee rights; secondly, lay down rules of conflict resolution; and, thirdly, stabilize the science sector financially and organisationally' (2019, p. 259), balancing positive and negative obligations. He suggests that states are not well suited for the regulation of science and 'ultimate competence for regulation and decision making in the science

sector should be assigned to the scientific fraternity itself [...]. Most decisions are best left to individual universities and research institutions' (Ibid, p. 260). A central element of this is the control states exert over the provision of funding and the dictates of what constitutes the scientific norm in the field (Beaud, 2020, p. 622).

The absence of a clear agreement as to the purpose of a university further calls into question the idea that, as Altbach puts it, 'Academic freedom is at the very core of the mission of the university' (2001, p. 205). Beiter asks (2019, p. 234) 'to what extent is it legitimate for governments to regulate science?' and he argues that 'In many ways, autonomy is an entitlement deduced from and should thus serve academic freedom. Autonomy must serve the inherent requirements of science. It must serve safeguarding a science system "adequate for science"' (Ibid, p. 242). And he thus conceptualizes academic freedom as 'a concretised freedom of science' (Ibid, p. 244). Understanding academic freedom in the context of the human right to science, can set clearer parameters for autonomy, understanding that a decline in institutional autonomy in favour of state control is a restriction on the freedom of science that impacts all of society. Framing academic freedom within the right to science, helps to come closer to an understanding of academic freedom (and universities) as key foundations for the search for truth. This approach also shifts academic freedom's focus from being an individual right (e.g., the right to express oneself) to a societal right, and sets it within the expectation that this unrestricted search for truth will ultimately benefit society as a whole.

2.3 Is There an Institutional 'Right' to Academic Freedom?

A particular challenge that has existed in individual-level approaches to academic freedom in international standards, is that they fail to account for an essential feature, which is that academic freedom is primarily enjoyed within an institutional setting. Uitz notes the difficulties in applying academic freedom in this context, finding that definitions of academic freedom are 'often tailored to practical applications' (2021, p. 3) and suggesting that:

The picture becomes murky when the definition has to account for both the individual and the institutional dimension of academic freedom, [and] especially for the detrimental impact of institutional factors on individual academic freedom.

(Uitz, 2021, p. 3)

Part of the challenge with this institutional aspect of academic freedom is that in international human rights law, duties attach to states as the signatories of international human rights instruments, whereas rights attach to human individuals. The UN Special Rapporteur for Freedom of Opinion and Expression, for instance, recognized the institutional aspect of academic freedom in the form

of protections while nonetheless framing them as protections that guarantee *the rights of individuals*:

Academic freedom is not only about individual human rights protection by traditional State actors. It also involves institutional protections – autonomy and self-governance, themselves rooted in human rights standards – to guarantee the freedom for those pursuits.

(Kaye, 2020, para. 8, citing Lyer and Suba, 2019 p. 30f.)

A different approach has been taken by the Council of Europe. Its Committee of Ministers Recommendation CM/Rec(2012)7 *on the responsibility of public authorities for academic freedom and institutional autonomy* provides that ‘Academic freedom should guarantee the right of both institutions and individuals to be protected against undue outside interference, by public authorities or others’ (Council of Europe, 2012, para. 5, emphasis added). In attempting to map the scope of autonomy in the context of state discretion, the Recommendation gives examples of policies for ‘positive measures’ such as qualifications and quality assurance as being compatible with autonomy, while ‘detailed guidelines’ for teaching or regulation of ‘internal quality development’ are not (Council of Europe Recommendation, 2012, para. 7).

Attaching academic freedom as a right to an institution may arguably be legitimated by recognition of the special place of the academic institution within academic freedom, which, as Beaud recalls, has been described as ‘the special nature of a university as a singular institution’ (O’Neil, 2008, p. 3). Yet this approach of attaching the right to an institution comes with its own problems. The institution itself is not for preservation at any cost. Higher education institutions must support academic freedom (the right to science). As Beiter argues, ‘in universities the protection of individual academic freedom presupposes the existence of arrangements to ensure that decisions on science that are collective in nature will be “adequate for science”’ (2019, p. 341). Detaching institutional autonomy from the individual right to academic freedom and treating it as a separate ‘institutional right’ risks giving university *leadership and administrators* protection and ‘cover’ for activities that ignore or violate the fundamental freedoms of the members of the academic community, and the right to science of society more broadly. Such a concern becomes particularly pertinent when the leadership and administrators are state or political appointees, as will be illustrated in various case studies in [Part II](#) and further discussed in [Part III](#).

2.4 Towards an Academic Freedom-Anchored Understanding of Autonomy

In order to examine the causes and effects of institutional autonomy decline, it must be established what university autonomy is and how far it extends. The examination of the three questions in the previous section has highlighted a

number of complicating factors that hamper the pursuit of a definition of institutional autonomy:

- There remains an absence of agreement in international human rights law as to the underlying conception of academic freedom, which is reflected in the range of rights to which it is attached (expression, association, education, science, etc.). As institutional autonomy is a component of academic freedom, this means there is also a lack of clarity on its underlying principles.
- There is no consensus over the purpose of a university, which is fundamental to understanding the parameters of autonomy (autonomy from and for *what*). This is most starkly seen in the permissibility of state interference with universities on the basis of market forces. Moreover, the global variation of institutional governance models means that attempts to loosely define institutional autonomy as a ‘necessary degree’ of self-governance (UN ECOSOC, 1999) may be understood vastly differently in different national contexts.
- Academic freedom is primarily viewed as attaching to academics as individuals, which may not sufficiently account for its inherent connection to an institutional setting, and gives it an insular framing to what is, in reality, a general issue of human rights.

In fact, academics themselves do not seem to have a clear understanding of institutional autonomy. For instance, Åkerlind and Kayrooz (2003) in their survey of social scientists found that academic freedom was viewed as the right of individuals, with a wide variation of views as to the extent of institutional support/restriction and responsibilities.

In search of a definition of the substance and scope of institutional autonomy, it is useful to consider the existing international and regional declarations and instruments. As seen above, the UN CESCR has defined autonomy as a degree of self-governance, echoing the authoritative 1997 UNESCO *Recommendation Concerning the Status of Higher-Education Teaching Personnel*, which defined autonomy as the ‘degree of self-governance’ necessary for ‘effective decision-making by institutions of higher education regarding their academic work, standards, management and related activities’. It firmly sets institutional autonomy within both the state – ‘consistent with systems of public accountability, especially in respect of funding provided by the state’ – and national contexts – ‘the nature of institutional autonomy may differ according to the type of establishment involved’ (UNESCO, 1997). The Recommendation nonetheless emphasized that ‘Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source’ (Ibid, para. 19). However, with such a broad understanding of autonomy, the operationalization of this obligation is in question.

Other recommendations and standards are also useful to illustrate the understanding of autonomy. Article 11 of the 1990 *Kampala Declaration on Intellectual Freedom and Social Responsibility* of the pan-African research

council of social sciences (CODESRIA) provides that '[i]nstitutions of higher education shall be autonomous of the State or any other public authority in conducting their affairs, including the administration, and setting up their academic, teaching research and other related programmes' (CODESRIA, 1990). CODESRIA's subsequent 2007 *Juba Declaration on Academic Freedom and University Autonomy* separated academic freedom and autonomy. It emphasized that there should not be government interference in autonomy, and reiterated the Kampala Declaration's Article 12 that autonomy should be exercised by democratic and participatory means (CODESRIA, 2007, para. 5f).

As Altbach notes, academic freedom was 'never absolute', with state-based restrictions found as early as Medieval times (2001, pp. 206–10). However, the breadth of permissible limitations under international human rights law makes 'undue' interference challenging to identify. When examining a decline in institutional autonomy, one potential practical route to understanding permissible limitations is to distinguish between threats and 'legitimate interference'. In Lyer and Suba's report (2019) on state-based threats to university autonomy, they examined 'excessive, damaging or "repressive" restrictions'. Yet these are clearly subjective standards, particularly in the absence of an agreed international benchmark for autonomy, that will depend on the national situation; even seemingly minor interferences with self-governance can have significant impacts on the autonomy of a university.

Addressing the scope of self-governance, the UN Special Rapporteur for Freedom of Opinion and Expression found that this related to self-regulatory standards, 'based on non-discriminatory and academic criteria' that determine 'curricular, scholarly and research needs and requirements', as well as publication and hiring, and guarantees that teaching personnel have 'a say in the management and decision-making of their institutions' (Kaye, 2020). This points to another issue, which is not addressed in detail in this book as it is outside its scope, but which is nonetheless critical for higher education: While universities may be self-regulating, they cannot be permitted to be elitist or discriminatory. As Sundar puts it, 'what appears to be the disinterested upholding of educational standards is often the upholding of privilege' (Sundar, 2018, p. 50). The right to science requires that there are no discriminatory barriers, including the obligation for states to remove such barriers 'that impede persons from participating in scientific progress, for instance, by facilitating the access of marginalized populations to scientific education' (UN ECOSOC, 2020, para. 17).

As will be discussed in the analysis in [Part III](#), this speaks to the need for academic freedom to be recognized within international human rights law as a right in itself, with clearly defined autonomy through robust self-governance as a component. Indeed, some scholars have argued for an explicit right to academic freedom (Uitz, 2021), while others argue it cannot be a human right because it does not apply from birth (Beaud, 2020, p. 614).

The Council of Europe, in the Committee of Ministers' Recommendation CM/Rec (2007)6, has recommended that 'public authorities ... have a responsibility to promote autonomy for higher education and research institutions *as*

well as academic freedom for individual members of the academic community’ (Council of Europe, 2007, para. 4, emphasis added).

The *Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education*, adopted by the World University Service in 1988, defines institutional autonomy as ‘the independence of institutions of higher education from the State and all other forces of society, to make decisions regarding its internal government, finance, administration, and to establish its policies of education, research, extension work and other related activities’ (WUS, 1988). Incidentally, this is the definition of ‘institutional autonomy’ adopted by the V-Dem project’s coding of the AFI dataset.

More concrete is the EUA’s measurement of university autonomy in Europe, the Autonomy Scorecard (European University Association, 2017). It relies on a self-reporting mechanism for institutions in Europe to provide assessments of their autonomy, examining more than 30 indicators of autonomy across four areas:

- Organizational autonomy (including academic and administrative structures, leadership, and governance);
- Academic autonomy (including study fields, student numbers, student selection, and the structure and content of degrees);
- Financial autonomy (including the ability to raise funds, own buildings, and borrow money);
- Staffing autonomy (including the ability to recruit independently and promote and develop academic and non-academic staff).¹¹

These components of autonomy are reflected elsewhere in the literature.¹² A 1998 Australian study considered institutional autonomy and the government’s role (legal and *de facto*) in respect of seven main areas: staff; students; curriculum and teaching; academic standards; research and publication; governance; and administration and finance (Anderson and Johnson, 1998; see also de Boer et al., 2010). Beiter, Karran, and Appiagyei-Atua in their 2016 study on the legal protection of the right to academic freedom used similar indicators to the EUA in determining ‘organizational, financial, staffing, and academic autonomy’ (2016a, p. 286). Beiter et al.’s study also measured the extent of governmental powers, particularly the form of state supervision in checking legal compliance or the merits of decisions (Ibid). In a different paper, the same authors argue that while the state retains ‘ultimate responsibility’ for the sector, state powers and legislation should ‘reflect wide competences for [higher education] institutions and a “minimal measure of involvement of the state in regulating their activity”’ (2016b, p. 648, emphasis added).

However, such a functional notion of autonomy is not sufficient: Though it requires independence from the state in setting governance, financial, and administrative rules, and autonomous decision-making on education- and research-related activities, this comes with limitations insofar as institutions are expected to adhere to the requirements of financial propriety, as is common for

independent institutions (see e.g., Langtry and Lyer, 2021, Chapter 5.4). Many of the current parameters for measuring autonomy – focusing on governance or funding – are too narrow, as they are open to extensive state intervention (in the guise of accountability) and fail to account for the substantive aspects. Autonomy as understood in the context of academic freedom, however, requires that the institutions uphold the academic freedom of their community, and that the state upholds the right to science of the broader community. The reason why institutional autonomy is of such interest is precisely because it is essential to secure academic freedom.

The Council of Europe Committee of Ministers Recommendation CM/Rec (2012)⁷ may come closest of the international standards to such an academic freedom-respecting understanding of autonomy, which encompasses the autonomy of teaching and research as well as financial, organizational, and staffing autonomy. It treats academic freedom within a hierarchy, and proposes state engagement *only at the level of a framework based on trust* (Council of Europe, 2012). The Recommendation views academic freedom and institutional autonomy as values (Ibid, para. 4) and features (para. 1) of national education systems. It defines that autonomy should be ‘a dynamic concept evolving in the light of good practice’ (para. 6). Perhaps most importantly, it requires that autonomy should not take priority over academic freedom: ‘institutional autonomy *should not impinge on* the academic freedom of staff and students’ (para. 8, emphasis added).

Based on this notion of university autonomy being anchored in the respect of academic freedom, some clarity and a way to organize the discussion around autonomy can be proposed. Framing academic freedom as the right to both the truth and the progress arising from scientific discovery, that is, as the right to science, helps to emphasize its wide societal importance. Academics are those searching for truth, and universities are the institutions that provide the space for this search. Universities provide the enabling environment through which academic freedom can be exercised. While not the only locale, it is the case that for the vast majority of ‘academics’, this label is due to an association with an *academic institution*. Thus, we can say that universities are the physical manifestation of the state obligation to the right to science. Not only is this the framing given to the most recent interpretation of academic freedom by the CESCR at time of writing, but viewing encroachments on academic freedom not as a narrow framing whereby the right being infringed is an individual’s right to write or say what they want but as one that illustrates state interference in scientific discovery and ‘truth’ helps solidify a broader understanding of its importance. A decline in institutional autonomy therefore equals state interference in academic freedom and, thus, in the human right to science and to truth. This may also help with the persistent disagreement as to the ‘appropriate’ role for universities and as to whether academic institutions should be ‘a-political’, with arguments in this line suggesting differentiation should be made between the rights of individual academics to express their views and the institution as such (Altbach, 2001, p. 207). What is problematic within such arguments is of course who

determines what is ‘political’ and how an institution is likely to protect individuals speaking on politically contested topics if it is expected to be ‘a-political’.

The CESCR found that ‘the enjoyment of academic freedom requires the autonomy of institutions of higher education’ (UN ECOSOC, 1999, para. 40), yet this autonomy *can only be said to exist* where academic freedom is enjoyed. As Beiter puts it, ‘autonomy must serve the inherent requirements of science’ (2019, p. 243). This is the ultimate test of autonomy. Universities therefore must be autonomous entities in the sense of being run and governed by a community of academics *for the purpose of* academic freedom, meaning, the right to advance (produce) scientific knowledge by means of critical thought without externally imposed restrictions. This is intellectual autonomy – it encompasses not just institutional factors of autonomous governance, but the intellectual autonomy of academics themselves, and of the broader public as part of their right to science. As a consequence, where a university is not supporting the academic freedom of its individual scholars, it cannot be said to be autonomous. A decline in intellectual autonomy is synonymous with a decline in academic freedom.

This approach retains recognition of academic freedom as attaching to the individual academic,¹³ while also recognizing that academic freedom is a component of the right to science that is to be enjoyed by everyone. It does not consider autonomy as the ‘institutional counterpart’ of academic freedom, as some have (e.g., Ren and Li, 2013), but rather as an integral aspect of academic freedom itself. Institutional autonomy should not be a ‘right’ separate from academic freedom. To attach this level of importance to the university as an institution risk undermining academic freedom by giving separate ‘rights’ to leadership and administrators who may not uphold the academic freedom of the individuals who constitute the university. A university is not brick and mortar buildings, it is a community of individual scholars and students who enjoy academic freedom; thus, rights given to a university are given to the *individuals within it*, not to some separate figurehead and certainly not to an organ of the state. While academic freedom remains a personal right of academics that requires certain institutional and procedural features to be realized, it is also a wider right of society to benefit from the scientific progress it enables. The autonomy of the institution can be said to exist only insofar as it upholds the individual rights and freedoms of its own community and thus the right of the wider public to science. A university may be ‘on paper’ assessed as autonomous against parameters such as freedom of research or academic exchange, but if individual academics’ fundamental rights to critically search for the truth are being undermined, the functional or structural autonomy of the institution is no more important than the bricks that make up its walls.

This approach also recognizes that human rights cannot be ignored in favour of state interests towards their higher education sector, as argued by Kinzelbach et al. (2021) with regards to global university rankings. The resolution of potential tensions between a university and the individual academic can be approached by focusing on the concept of ‘the academy’ rather than the institution. The

academy is the body of scholars based within the institutional framework of a university. It is the academy that should have the say on matters of academic freedom, not the *institution*.

Finally, it must be noted that this definition recognizes that a duty for university autonomy also lies with universities themselves as secondary duty bearers: They must ensure that academic freedom is enjoyed by those within their institution. Where academic freedom is not being enjoyed, it is most likely to be because the state itself is failing to ensure this freedom, including by failing to ensure a framework that enables its universities to be autonomous. However, there could conceivably be a situation where it is the university itself that is failing to uphold academic freedom in an otherwise facilitating national environment, in which case the state may be required to intervene to uphold its duty to academic freedom. Ren and Li note this potential paradox of autonomy: ‘as the state reduces interventions and gives university more autonomy, the threat to academic freedom may not be so much coming from the state as from the institution itself’ (2013). This focus on the duty of universities themselves is particularly critical if they are to be a ‘self-regulating space’ (Post, 2015).

Notes

- 1 Some of the material in this chapter draws from Roberts Lyer and Suba (2019).
- 2 The Committee on Economic Social and Cultural Rights has described the phrase in UDHR Article 26(2) and ICESCR 13(1) that ‘education shall be directed to the full development of the human personality’ as ‘perhaps the most fundamental’ of the educational objectives in the ICESCR and UDHR (UN ECOSOC, 1999, para. 4).
- 3 Article 13(4) provides, ‘4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State’.
- 4 This language on self-governance is also reflected in the 1997 UNESCO Recommendation, para. 17.
- 5 For example, to limit admission to those who have reached the required level (European Court of Human Rights, 2022, p. 4, citing *X. v the United Kingdom* Commission decision); setting entrance exams (Ibid, citing *Tarantino and Others v Italy*: legislation imposing an entrance examination with *numerus clausus* for university studies in medicine and dentistry [public and private sectors]); and the duration of studies (Ibid, citing *X. v Austria*). But ‘the fact of changing the rules governing access to university unforeseeably and without transitional corrective measures may constitute a violation’ (Ibid, citing *Altınay v Turkey*, paras. 56–61). The European Court continues: ‘Thus, in view of a lack of foreseeability to an applicant of changes to rules on access to higher education and the lack of any corrective measures applicable to his case, the impugned difference in treatment had restricted the applicant’s right of access to higher education by depriving it of effectiveness and it was not, therefore, reasonably proportionate to the aim pursued’ (Ibid).
- 6 However, more recent rulings have cast doubt on whether, and to what extent, academic freedom is covered by the First Amendment. See for example Amar and Brownstein (2017). See generally Post (2015) and Rabban (2001, pp. 16–20).

- 7 This was first formulated in 1915 and reissued in 1940 and 1970, and is widely accepted by many US universities (Barendt and Bentley, 2010, p. 4).
- 8 The Explanations Relating to the Charter of Fundamental Rights (2007/C 303/02), ‘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 authorized by Article 10 of the ECHR’ (European Union, 2007).
- 9 In his report to the UN, the Special Rapporteur detailed some of the forms of restriction that take place against academics, considering them against the permissibility of state interference (legitimacy, proportionality, necessity) (Kaye, 2020).
- 10 There is a large body of academic literature discussing issues of governance, reforms, and funding. See for example: Shattock (2014); Christensen, (2011); Dobbins et al. (2011), discussed further below; and Erkkilä and Piironen (2014).
- 11 In their assessments, the EUA uses a self-reporting mechanism, limited to public universities. ‘Private universities are not addressed in the country profiles, regardless of their relative importance in the system. The score for a country always relates to the situation of public universities’ (European University Association, 2017, p. 8).
- 12 For example, a 2003 OECD study (p. 63, Table 3.1) on university governance examined autonomy on the following basis: university ownership of buildings and equipment; ability to borrow funds; ability to ‘spend budgets to achieve their objectives’; the ability to set academic structure and course content; ability to employ and dismiss academic staff; the ability to set salaries; ability to decide on the size of student enrolment; and the ability to decide on the level of fees.
- 13 On the tension between individual and institutional freedom in the US context, see Rabban (2001, pp. 16–20).

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