

Autocratic Legalism and the Threat to Academic Freedom: Are We Learning the Right Lessons from Europe?

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Abstract

In the twenty-first century, the rise of authoritarian governance poses a threat to liberal democracies through the erosion of political and civic institutions. This article investigates the legislative assault on academic freedom by current and aspiring autocrats. Coined as “authoritative legalism” by Kim Lane Scheppele, this strategy involves “reforms” in the judiciary, electoral system, media, and education sectors to consolidate power and suppress opposition. We examine Hungary’s prime minister Viktor Orbán’s illiberal agenda, which resulted in the closure of Central European University, the elimination of gender studies, and reduced faculty involvement in higher education governance. The article also addresses similar efforts in the United States, which attempt to emulate Orbán’s strategy. Recognizing the potential consequences of these repressive tactics, we conclude by emphasizing the importance of faculty engagement and solidarity as crucial measures to safeguard and fortify academic freedom in the United States.

The first decades of the twenty-first century have seen a rise in authoritarian governance (Berberoglu 2022). In liberal democracies, the threat comes not from a coup d’état but from the erosion of political and civic institutions and norms of an open society. This authoritarian template includes the introduction of legislative “reforms” to the judiciary, electoral system, media, and secondary and higher education in order to entrench the dominance of a ruling party and suppress opposition parties and civil society. Kim Lane Scheppele’s (2018) term “authoritative legalism” aptly characterizes the current strategy to diminish academic freedom in Europe, the United States, and elsewhere.

This article explores how current and aspiring autocrats are using the legislative process for a frontal attack on academic freedom. We begin with the case of Hungary, where Prime Minister Viktor Orbán has used a parliamentary supermajority to push an illiberal agenda, including legislation that forced the closure of Central European University (CEU), the elimination of gender studies, and retrenchment of the role of faculty in the governance of Hungarian higher education. We then explore contemporary efforts in the United States that seek to emulate

Orbán's attack on academic freedom. Concerned about the success of these repressive efforts, we conclude with ideas to preserve and strengthen academic freedom in the United States.

Authoritarian Legalism in Hungary

Viktor Orbán and Fidesz, 1990–2010

In a turbulent century, 1989 will be remembered for the momentous end of Soviet dominance of the nations of Central and Eastern Europe. In those heady times, a young student radical, Victor Orbán, spoke in front of an estimated 50,000 people at a rally commemorating the thirty-third anniversary of the Hungarian Revolution. There he audaciously demanded the withdrawal of Soviet troops and the establishment of a free and democratic society (Szilágyi and Bozóki 2015). Orbán would go on to be the dominant personality in postsocialist Hungarian politics, though he and his party, the Alliance of Young Democrats (Fidesz), would both undergo important ideological transformations during this period.

In the 1980s and the early 1990s, Fidesz was a centrist party in the tradition of European liberalism—socially tolerant and oriented toward a free market. By 1998, Fidesz had rebranded itself as a conservative party, a decision validated when Fidesz won 148 of 386 seats in the 1998 parliamentary election. With this plurality, Fidesz was able to lead a center-right coalition from 1998 to 2002, with Orbán as prime minister. This initial period of Fidesz rule resembled democratic governance elsewhere in the region, with significantly further movement in the privatization and marketization of the economy. Fidesz's unsuccessful efforts during this period to curb the free media and to restrain the Constitutional Court of Hungary presaged a more concerted attack on democratic institutions later (Szelényi 2022).

The Rise of Illiberalism

In 2010 Fidesz won a decisive electoral victory and began quickly to enshrine legislative priorities into constitutional mandates and constraints. Fidesz introduced the Fundamental Law, which among other things, curbs the rights of religious and ethnic minorities and defines Hungary as a Christian nation (Egry et al. 2019). In 2014, Orbán took the occasion of an annual summer Fidesz leadership meeting to discuss his vision for Hungary.¹ He argued that globalization and immigration pose a threat and that Europe needs to strengthen its borders and protect its national identity. Tens of thousands of copies of the Fundamental Law were published in a folk design and distributed to every student upon graduation.

The 2015 Syrian refugee crisis offered Orbán the opportunity to demonstrate the policy implications of his national Christian agenda (Cantat and Rajaram 2019). Orbán took a strident and public stand against accepting any refugees for permanent resettlement (Bocskor 2018).

¹ For full text of the speech, see <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>.

Despite considerable pressure from other nations, Orbán remained steadfast, arguing that introducing Muslims into Hungary would be incompatible with his country's Christian identity.

School Curriculum and National Christian Identity

As in other areas of Hungarian society, Fidesz has used state power to project its ideology in education. The 2011 Law on Higher Education increased centralized control of university operations, appointments, and funding. In 2015, the Fidesz government introduced a controversial history curriculum that placed greater emphasis on nationalist themes and Hungary's Christian heritage and reduced the time devoted to the Holocaust (Petó 2017). In the area of faculty hiring, increased centralized control through administrative changes has allowed Fidesz loyalists to occupy executive positions. More recently, in 2020, the government introduced new changes to the curriculum that include a greater emphasis on national identity, Hungarian cultural heritage, and Christianity.

To address threats to Hungarian national identity, on March 31, 2017, the Hungarian minister of human resources proposed an amendment to the Higher Education Law of 2011 that placed new restrictions on any non-European university in Hungary. Since this proposed amendment would only impact one operating institution—Central European University—this law became known in Hungary and internationally as Lex CEU.

Lex CEU

Established in 1991, Central European University (CEU) sought to fill a void created by the absence of an independent social science tradition during the Soviet era. CEU's founder and primary benefactor, George Soros, and his commitment "to promoting the values of an open society and self-reflective critical thinking" has left an indelible legacy at CEU (Kaufman 2002). Soros, having survived the Holocaust as a teenager in Hungary, traveled to the United Kingdom and eventually gained entry to the London School of Economics. Passing his course work in his penultimate year, Soros devoted his final year to study with the Austrian philosopher Karl Popper, whom Soros would credit for the inspiration for the Open Society Foundation and CEU.

In his seminal work, *The Open Society and Its Enemies* (1967), Popper argued that empirical truth cannot be known with certainty—at best it can be falsified. Therefore, ideologies claiming to possess the ultimate truth are making a false claim that can only be preserved through repression. Popper therefore proposed an alternative, open society in which people are free and the rule of law permits people to live peacefully with different views. In this worldview, universities play a crucial role by providing a space for critical examination and the free exchange of ideas.

There was a time when a young liberal Orbán would have agreed, and Soros's Open Society Foundation supported Orbán's study at Oxford University in 1989. In a 2017 speech with antisemitic overtones, Orbán claimed that Soros is a "speculator" who has "ruined the lives of tens of millions of Europeans" and accused Soros of wanting "to destroy Europe's Christian Identity" (Plenta 2020).

By 2017, CEU had established itself as a leading social science research institute, with 1,500 students and 500 associated faculty. Nominally, Lex CEU required institutions to have students and programs in their country of origin. CEU was chartered in the United States, but it had no students enrolled there. The second restriction required a national agreement between the country of origin and Hungary. CEU quickly responded by establishing an arrangement for US classes in collaboration with Bard College. At the same time, CEU supporters nationally and internationally quickly mobilized. A demonstration in Budapest on April 9, 2017, in support of CEU drew tens of thousands of demonstrators. Numerous international organizations expressed support for CEU, including the European Parliament, which passed a resolution calling for the Hungarian government to respect the university's autonomy. Even the center-right European People's Party, one of the largest and most influential groups in the European Parliament with which Fidesz is affiliated, expressed concerns about pressure to close CEU. Despite this, Fidesz prevailed, and in 2018 CEU ceased operations on its main campus in Budapest, moving its operations to Vienna (Corbett and Gordon 2018; Walker 2018).

Elimination of Gender Studies

During the same time that CEU was struggling to accommodate the requirements of Lex CEU, Orbán opened another front against academic freedom. In the summer of 2017, at a summer youth retreat in Romania, Orbán delivered a speech in which he criticized gender studies as "an ideology not a science" and argued that it was a threat to traditional values and gender roles.² Throughout 2017 and 2018, the rhetoric against the LGBTQ community escalated as the government continued to focus on traditional values and a rejection of progressive ideas of gender and sexuality (Kuhar and Paternotte 2017). This included opposition to same-sex marriage, opposition to LGBTQ rights, and criticism of gender theory. In August 2018 the Hungarian government passed a law banning gender studies and also prohibited the accreditation and financing of gender studies programs. At the time of the ban, only CEU and Eötvös Loránd University had such programs.

² For full text of the speech, see <https://visegradpost.com/en/2017/07/24/full-speech-of-v-orban-will-europe-belong-to-europeans/>.

Authoritarian Legalism and the Attack on Academic Freedom in the United States

The US academic community has long recognized that researchers must have the freedom to pursue scholarly activities and to express their opinions without fear of censorship, repression, or retaliation. Legally, academic freedom first was recognized in the United States in the 1950s by the US Supreme Court through decisions—ironically enough—striking down politically motivated policies aimed at school teachers and university professors.³ However, since it has never been enumerated as a constitutional right or codified in statute, academic freedom stands on shaky ground (Van Alstyne 1993).

Recent Legislative Attacks on Academic Freedom

In the run-up to the 2024 presidential election, many in the Republican Party have sought to escalate the fight against liberal elites by developing legislation that directly undermines the norms of academic freedom. Specifically, Republican-controlled state legislatures are seeking to enact state laws that disrupt the norms of academic freedom in three areas: autonomy in teaching and research, tenure and collective representation, and shared governance. Much of our discussion will focus on initiatives in Florida, where these efforts are most advanced, but this is an emerging issue in US politics.⁴ In the area of diversity, equity, and inclusion (DEI), forty bills have been introduced in twenty-three states, with seven new laws being approved as of October 2023.⁵

Teaching methods and curricular choices are a source of natural tension among public officials. As elected representatives with the authority to pass budgets related to state-supported universities, legislators—directly or through oversight boards—have sought to set curricular objectives either through establishing funding priorities for certain majors or by standardizing essential components of undergraduate coursework. In this sense, academic freedom has never been absolute. However, once funding allocations are made, and basic core curriculum standards are set, the norm has been to allow faculty the freedom to set course objectives and to have discretion in the pedagogical choices they make in facilitating student success.

In April 2022, Florida governor Ron DeSantis signed legislation that directly violates norms related to faculty choice over both the content and method of education. This legislation, H.B. 7,

³ *Sweezy v. New Hampshire*, 354 U.S. 234 (1957) and *Keyishian v. Board of Regents*, 385 U.S. 589 (1967). These policies were instituted during the “Red Scare” of the McCarthy era and were directed at weeding out any faculty who might sympathize with the Communist Party.

⁴ The AAUP has issued a preliminary report on the developments in Florida higher education, noting that these politically and ideologically motivated attacks are unprecedented in US history with risks to permeate other states (2023).

⁵ For an up-to-date review of proposed legislation, follow the *Chronicle of Higher Education’s* “DEI Legislation Tracker,” <https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts>.

the Individual Freedom Act, broadly known as the “Stop WOKE [“Wrongs to Our Kids and Employees”] Act,” prohibits the teaching of critical race theory in K–12 education as well as pedagogy including discussions of past injustices that might lead some students to feel guilty about their own race. In March 2023, the Eleventh Circuit denied a stay of a 2022 injunction against this legislation. Though a final decision is still pending in district court, Judge Gregory Pernell clearly articulated his view in the preliminary injunction. In a decision that begins with a quote from the novel *1984*, Pernell writes that H.B. 7 “officially bans professors from expressing disfavored viewpoints in university classrooms while permitting unfettered expression of the opposite viewpoints. Defendants argue that under this Act, professors enjoy ‘academic freedom’ so long as they express only those viewpoints of which the State approves. This is positively dystopian.”⁶

Despite this legal setback, the Florida Legislature passed additional legislation during the 2023 session in its effort to infuse state ideology into higher education curricula, limit faculty power, and disrupt shared governance. Signed into law on May 15, 2023, Senate Bill (S.B.) 266 is expansive in its scope and unapologetic in its effort to use legislative mandates in Florida’s “war on woke.” Among its many mandates are directives to purge university core curriculum courses of theories that “systemic racism, sexism, oppression or privilege are inherent in the institutions of the United States.” S.B. 266 is also ambitious in its efforts to undermine diversity, equity, and inclusion efforts by prohibiting funding for a range of student programs that “advocate for diversity, equity, or inclusion.” Bypassing university senates that traditionally approve faculty-generated curriculum and academic initiatives, S.B. 266 authorizes, and the 2023 budget generously supports, the creation of the Hamilton Center for Civic and Classic Education at the University of Florida and the Adam Smith Center at Florida International University. Regarding the Hamilton Center, the legislation has a strict timeline requiring that the center become a permanent college at the university.

S.B. 266 seeks to further state power at universities by disrupting faculty appointments, promotions, and tenure security. The legislation shifts the power of hiring all faculty to the campus president, requires post-tenure review every five years, authorizes dismissal of faculty for violation of Florida law (presumably including S.B. 266’s prohibitions on teaching certain theories), and disallows any appeals of presidential decisions, including those that might be collectively bargained. S.B. 256, a separate bill passed in the same session, further attempts to undermine faculty voice. This legislation not only requires that all union chapters representing state employees (exempting fire and police) have at least 60 percent of their members paying dues to maintain certification but also establishes barriers to achieving this new threshold by disallowing automatic deduction of union dues from employees’ paychecks.

⁶ *Pernell v. Florida Board of Governors of the State University System*, 2022 U.S. Dist. LEXIS 208374 (N.D. Fla. 2022).

Eroding Academic Freedom through Autocratic Legalism

The final area of the recent assault on academic freedom is shared governance. One aspect of shared governance, as noted earlier, is faculty autonomy in research and teaching. Another area is academic hiring and appointments, where faculty involvement and input were primary in hiring and promotion and tenure decisions. A third area is curriculum and program adoption, where shared governance norms require that the establishment of new research institutions and programs emanate from faculty. In this final area, there are both administrative and legislative threats to academic freedom.

The foundation of shared governance is based on long-held norms. Though there have been tensions at times, there was consensus that in higher education, state support did not mean state control of higher education. Indeed, the idea of state control of education would seem an anathema in a democratic pluralistic society in which the governance of the state regularly changes with elections. For politicians who feel aggrieved by the preponderance of liberal political views among professors and who are impatient for “intellectual diversity,” the expedient path has been administrative takeover, in which the state forces institutional change through executive appointments.

Recent events at the New College of Florida in Sarasota illustrate this strategy. New College was founded in 1960 by a group of local civic leaders and educators who sought to break away from traditional educational models to prioritize intellectual freedom, creativity, and interdisciplinary learning. Over the decades, New College has developed a culture that reflects its origins. With an enrollment of only 700 students, it gives no letter grades, students develop independent programs of study, two-thirds of its students are women, and LGBTQ students are numerous.

In January 2023, Florida governor DeSantis appointed six new members to the New College Board of Trustees, with Florida education commissioner Manny Diaz stating, “New College of Florida will become Florida’s classical college, more along the lines of a Hillsdale of the south,” referring to a small Christian private college in Michigan. In the view of the DeSantis administration, “Like so many colleges and universities in America this institution has been completely captured by a political ideology that puts trendy, truth-relative concepts above learning” (Anderson 2023, para. 6). Prominent among newly appointed trustees is Christopher Rufo, a conservative activist from the Manhattan Institute who has championed the dismantling of the “DEI bureaucracy,” and Matthew Spalding, a dean from Hillsdale College.

The newly reconfigured board has moved quickly to transform New College despite (or perhaps because of) strong opposition by alumni and current students.⁷ The new board quickly terminated New College president Patricia Okker, replacing her with Richard Corcoran, a career

⁷ For a particularly poignant alumnus account, see Rothbaum 2023. For a group interview with New College students, see Wagner 2023.

Republican politician who previously was chief of staff for Senator Marco Rubio (2006–10), a Florida House representative (2010–18), and state education commissioner (2018–22). Worth noting is the board of trustees' authorization of a \$699,000 annual salary for Corcoran, more than double his predecessor's, putting him on par with counterparts at institutions nearly eighty times the size of New College. At the first board meeting following Corcoran's appointment, Rufo made clear that part of New College's transformation would be to eliminate DEI on campus because "it restricts academic freedom, it degrades the rigor of scholarship, it treats people differently on the basis of skin color or other inborn identities" (Dailey 2023).

The "hostile takeover" of New College is provocative by design, as DeSantis clearly hopes to gain political advantage in his "fight against woke." Violating norms of institutional autonomy is precisely the intent of this move. Less salient to the public, but of central importance academic freedom, have been the recent attempts in Florida and other states to establish university-based centers dedicated to free market economics and a conservative interpretation of liberty. Accreditation standards, university by-laws, and norms of shared governance require that initiatives for new programs be reviewed and approved by faculty subcommittees. The Hamilton Center at the University of Florida, the Adam Smith Center at Florida International University, and School for Civic Life at the University of North Carolina at Chapel Hill are all examples of centers established through legislation that have bypassed established procedures for faculty review and approval.⁸

Protecting Academic Freedom in the United States

The value and importance of a faculty union is particularly high in a period of legislative assault. Given the latent and actual power of faculty unions to support academic freedom, it should be unsurprising that efforts to limit faculty unions have also been part of the legislative assault on academic freedom, typically in "right-to-work" states that do not require dues from all in-unit faculty. This, too, weakens unions, since a faculty member can enjoy the benefits of the contract without paying dues. In the absence of strong workplace solidarity or a strong union tradition, many individuals will choose the free ride of contract protection without the cost of dues. Others will not join for ideological reasons. In Florida, H.B. 999/S.B. 265 requires that 60 percent of all in-unit member pay dues for the union to remain certified; this bill also prohibits payroll deductions.

The attack on academic freedom is global and is part of the rising antidemocratic trend in liberal democracies (Bartels 2023). Hungary's Orbán has demonstrated how autocracy and illiberalism can be introduced by legislation and constitutional change in an erstwhile electoral democracy. The similarities between Orbán's approach and that of Governor DeSantis have been

⁸ For a discussion of the events surrounding the Hamilton Center, see Pettit 2023. For a discussion of faculty resistance to the University of North Carolina School for Civic Life, see Lu 2023.

noted outside of academia. In an article published in *Vox* in the spring of 2022, Zack Beauchamp detailed how DeSantis is inventing an American Orbánism. In the days following the publication of Beauchamp's article, conservative blogger Ron Dreher lauded the emerging "Budapest-Tallahassee axis." Since that time, Dreher (2023) has decamped from his home in Louisiana to embed himself in Budapest, where he breathlessly cheers both DeSantis and Orbán through his blog, the *American Conservative*.⁹

The challenge is daunting. Undoubtedly, the US federal system and the vast number of private institutions mean that academic freedom is more resilient in the United States than in Hungary. At the same time, we should not surrender to this attack in some states only to have scholars and students move elsewhere. What is clear from the case of Hungary and the seeming success of DeSantis in Florida is that enemies of an open society are aggressively undermining academic freedom.

There are several things US academics should be doing to preserve the traditions of academic freedom at this country's universities. The first is to recognize that autocracy requires the suppression of academic freedom, just as democracy demands support of it. While some scholars may believe that their disciplines are apolitical, autocratic governance is indifferent as to whether one is a political scientist or a biologist when infringing upon individual rights. Where unions exist, faculty should join and ensure that collective bargaining agreements have strong protections for academic freedom. Faculty should also engage in the structures of shared governance, such as college-level faculty councils and the faculty senate, to ensure faculty control of curricula and participation in hiring and promotion decisions. Faculty also must recognize that current efforts to insert the state in education are not just a Machiavellian power move by politicians. Both in Europe and the United States, there is deep resentment of global elites, and a sense that universities are ivory towers where students and faculty are out of touch. Solutions to this will require self-reflection among academic leaders and faculty about our current divided politics. There can be no better place to model successful reconciliation of differences than at a university, but this is only possible in an environment in which a diversity of ideas prospers together with a diversity of people.

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⁹ A complete list of Dreher's blog posts may be found at <https://www.theamericanconservative.com/blogs/dreher/>.

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