



Monitoring academic freedom: reflections for advocates

Monitorando liberdade acadêmica: reflexões para defensores

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How to cite: BOGGIO, Andrea; Monitoring academic freedom: reflections for advocates. **Revista de Direito Econômico e Socioambiental**, Curitiba, v. 16, n. 2, e521, maio/ago. 2025. DOI: <https://doi.org/10.7213/rev.dir.econ.soc.v16i2.31359>

Recebido/Received: 15.03.2024 / 03.15.2024

Aprovado/Approved: 24.09.2024 / 09.24.2024

Abstract

This paper reflects on the challenges and opportunities of academic freedom monitoring from an advocacy perspective. Based on the review of two existing academic freedom indexes and the author's experience building scientific freedom indicators, the paper discusses three challenges: conceptual, methodological, and political. The conceptual challenges are of four kinds: undertheorization, complexity, necessity of specification, and variation. The paper concludes by identifying three strategies (theory-building, interoperability, and cosmopolitanism) to strengthen monitoring and make it a more effective advocacy tool.

Keywords: academic freedom; indicators; human rights monitoring; human rights advocacy; human rights.

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Resumo

Este artigo reflete sobre os desafios e as oportunidades do monitoramento da liberdade acadêmica a partir de uma perspectiva de defesa. Com base na análise de dois índices de liberdade acadêmica existentes e na experiência do autor com a criação de indicadores de liberdade científica, o artigo discute três tipos de desafios: conceituais, metodológicos e políticos. Os desafios conceituais são de quatro tipos: subteorização, complexidade, necessidade de especificação e variação. O artigo conclui identificando três estratégias (construção de teoria, interoperabilidade e cosmopolitismo) para fortalecer o monitoramento e torná-lo uma ferramenta de defesa mais eficaz.

Palavras-chave: liberdade acadêmica; indicadores; monitoração de direitos humanos; defesa de direitos humanos; direitos humanos.

Sumário

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1. Reflecting on academic freedom monitoring: purpose and methods

In this paper, I reflect on monitoring academic freedom from an advocacy perspective. This contribution is a commentary on work already done on monitoring academic freedom, notably the Academic Freedom Index (AFI) (Academic Freedom Index, 2024), compiled by researchers from the FAU Erlangen-Nürnberg, Germany, and V-Dem in Gothenburg, Sweden and SAR's Academic Freedom Monitoring Project ("Academic Freedom Monitoring Project Index", 2021) from the viewpoint of a scholar and advocate who has worked on monitoring of scientific freedom (Boggio & Gran, 2021).

The paper examines various challenges that advocates face in building and using monitoring tools to expose deprivations of academic freedom and pursue government accountability. The challenges that monitoring academic freedom faces are of three types: conceptual, methodological, and political. Conceptual challenges relate to the conceptualization and undertheorization of academic freedom, the complexity of the legal landscape object of monitoring, the requirement for monitoring to frame the freedoms and entitlements enjoyed in and by academics in ways specific to the context in which they are enjoyed, and the necessity to account for a wide range of deprivations or violations of academic freedom. The methodological challenges discussed in this paper revolve around the necessity to use indirect measurements of academic freedom and the problems of reliability associated with their use. The political challenges concern the obstacles that academic freedom monitoring faces in achieving its political goals, that is, to be seen by governments as trustworthy tools to be taken seriously.

The paper is accordingly structured into three sections, each discussing these challenges, followed by closing remarks focusing on the future of monitoring and ways to strengthen its role in academic freedom advocacy.

2. Conceptual challenges

The first set of challenges stems from the daunting task of providing a compelling account of academic freedom and its normative content. Academic freedom is a legal concept facing four conceptual challenges - (under)theorization, complexity, specificity, and variation. I discuss each in turn. Conceptual challenges interfere with the proper place of academic freedom in international human rights law and the accurate definition of its normative content, which requires a sufficient degree of specificity in the face of legal complexity and a wide variety of deprivations of academic freedom observed worldwide.

These challenges are certainly not insurmountable and are likely to persist because the normative content of human rights is somehow purposely fluid to accommodate change (Bjorge, 2014; Vidigal, 2021). Conceptual challenges threaten the ability of monitoring to focus on the suitable unit of observation. If there is ambiguity about the scope and nature of the object of observation (in our case, academic freedom), there is a risk that monitoring does not adequately

capture the legal phenomenon. Consequently, the conceptual challenges discussed in this section must be evident to advocates building monitoring tools and accounted for in producing academic freedom indicators.

2.1 (Under)theorization

The first challenge is (under)theorization. Academic freedom standards are underdeveloped. As Quinn and Levine (2014, p. 903) noted, “[d]espite these existing treaty obligations, claims for violations of academic freedom are rarely brought under human rights law.” The authors attributed underdevelopment to advocate’s lack of familiarity with academic freedom issues and the fact that “attacks on academic freedom often manifest as violations of other rights under which claims are brought.” The situation is not very different ten years after the publication of their paper.

The literature on academic freedom and human rights is indeed abundant. A Google Scholar search of the terms retrieved about 37,400 bibliographical items, 2,830 of which were published in the past year or so¹. This proliferation of scholarship on academic freedom is not surprising given its long history, clear recognition under international human rights law, and status of being “under attack” (Andreopoulos, 2020; Greenfield, 2023; Packer, 2024).

Yet, despite the copious literature, academic freedom suffers from undertheorization. A general theorization problem concerns the nature of academic freedom and its place in international human rights law. Should academic freedom be considered a standalone human right or is its normative content part of other human rights? This is an unsettled question. The Special Rapporteur on the Right to Education tackles it in its latest report on academic freedom and freedom of expression in educational institutions (OHCHR, 2023) and seems to support that academic freedom is not merely “a derivation of freedom of expression” (Shaheed, 2024). Other scholars place academic freedom in the normative content of the right to science, codified in Article 15.1.b of the International Convention on Economic, Social and Cultural Rights (ICESCR), and conceptualize scientific freedom as one of the elements of academic freedom (Porsdam Mann et al., 2024). I maintain a different position: academic freedom is better conceptualized as an entitlement umbrella than a stand-alone human right (Boggio, 2021; Romano & Boggio, 2024). I expand on the notion of an entitlement umbrella in the following section. Here, it suffices to say that these profound questions about the nature of academic freedom within the human rights framework challenge efforts to measure its violation and foster accountability.

The point that it is important to make here is the following. The problem of undertheorization becomes quite insidious when scholars and advocates attempt to develop indicators to monitor academic freedom. The reason is that they do not deal with concepts that are fixed and whose interpretation is uncontested. Instead, it is an emerging concept with an unsettled normative nature and content. As an object of monitoring, its nature and content emerge as it is being monitored, and its standards are embedded in indicators. In other words, the monitoring activity contributes to its theoretical definition. Attempts to measure academic freedom inherently contribute to its theorization as a legal concept. The measuring activity (measuring academic freedom) entails a theoretical construction of academic freedom itself as the monitored object. As we measure, we also define the object of measurement. This dynamic clearly complicates how academic freedom can be monitored effectively.

2.2 Complexity

The second challenge to monitor academic freedom concerns its legal complexity. As a legal concept, academic freedom is multifaceted and multidimensional. Whether we conceptualize it as a single right, part of the right to

¹ performed the search "Academic freedom" and "human rights" in Google Scholar on March 12, 2024.

education, or as an entitlement umbrella, it is indisputable that its normative content is derived from a multitude of human rights, triggering freedoms and entitlements guaranteed by various of human rights.

To develop this analysis, I draw from my work on scientific freedom. In my writing, I have defined scientific freedom as an entitlement umbrella, a strategy that serves academic freedom well. The umbrella concept helps populate the normative content of scientific (and academic) freedom. This normative content comprises the freedom and entitlements that scientists (and academics) enjoy when doing science (or as members of academia),

The freedoms and entitlements that populate scientific freedom are drawn from various human rights codified in the International Covenant on Civil and Political Rights (ICCPR) and ICESCR. In particular, the freedoms and entitlements that fall under the academic freedom umbrella are recognized in Articles 18, 19, 21, 22, and 25 of the ICCPR and Articles 6, 7, 8, 9, 11, 13, and 15 of the ICESCR.

Everyone enjoys these rights. However, if scientists enjoy them when “doing science” or attempting to “do science,” these rights acquire an additional dimension as they become relevant as part of their freedom of research. The normative landscape is thus populated by a complex network of freedom and entitlements grounded in various human rights, which apply to those engaged in a specific collective activity called “doing science.”²

This approach to scientific freedom can be applied to academic freedom. When academic freedom is conceptualized as an entitlement umbrella, its normative landscape is also constituted by intellectual, social, labor, and cultural elements. Intellectual elements include the freedom of scientific thought, scientific opinion, and scientific expression. Social elements include the freedom of scientific assembly and scientific association, the freedom of movement of scientists, and the entitlement of scientists to participate in scientific affairs, that is, in public affairs relating to science, technology, and innovation policy. The labor elements concern the ability to follow a scientific vocation and work as scientists, enjoy just and favorable working conditions, enjoy safe and healthy working conditions, and enjoy social security. Finally, the cultural elements include the protection of the moral and material interests of scientists and, more generally, the right to participate in cultural life. The latter is a right to contribute to building cultural goods broader than those produced and exchanged in academics, and to the legitimacy of academics to participate in cultural life. This is often described as the “third mission” of universities (Compagnucci & Spigarelli, 2020; Godonoga & Sporn, 2023) or the extramural activities of academics (Quinn & Levine, 2014, P. 901; Reichman, 2022).

As we can see, there is a complex network of freedoms and entitlements under the surface of academic freedom, whether an entitlement umbrella, a single right, or a right contained in other rights. Each can be monitored separately and independently from the others. Combining them to monitor academic freedom is challenging in its complexity.

2.3 Specificity

The third conceptual challenge stems from the necessity for a normative account of academic freedom to be specific. The freedoms and entitlements that comprise the normative content of academic freedom must be specified in relation to the context in which they are enjoyed. This context is academia. How is freedom of expression enjoyed in academia? How is freedom of assembly enjoyed in academia? Analyzing general freedoms and entitlements in a specific

² This expression would need to be clarified, but this paper is not the right place to develop the analysis. For a definition, see: ROMANO, Cesare. P. R.; BOGGIO, Andrea. **The Human Right to Science: History, Development, and Normative Content**. Oxford, New York: Oxford University Press, 2024.

context is essential to properly define the normative scope of academic freedom and solve any conflict between academic freedom and other rights.

Here, I refer to the work of scholars who propose context-specific analysis as a desirable strategy to resolve conflicts of rights (Greene, 2021). Very often, but not always, conflicts of rights do not involve disagreements on the values behind the conflict. Rather, they stem from reasonable disagreements on applying a more or less shared set of values to a particular situation. Scholars like Jamal Greene (2021) argue that, where we are in that situation, it is not particularly helpful to pick out just a few rights that we think are important and essentialize them. This strategy resolves the conflict of rights “absolutely,” in a way that prioritizes a specific right no matter the nature of the conflict. The result is to silence voices in disagreement with the absolutist view, but that has reasonably contributed to raising the issue of a conflict of rights. A better strategy is to analyze the conflict in the context in which it arises, seeking a balance specific to the conflict’s circumstances. A context-driven analysis calls for thinking more carefully about how different values we believe are essential in analyzing a conflict of rights. The values underlying academia differ from those underlying political campaigns, journalism, or the advertising industry. Each context represents an aggregate of context-dependent values that inform and transform the analysis of the enjoyment of human rights in each context.

This approach is well suited to analyze academic freedom (and scientific freedom) because academia (and science) color human rights with a particular perspective. For instance, academia can be construed as a practice where people participate in an attempt to foster the truth. If so, not all forms of expression should be allowed. For instance, there should be no place in academic debates for advocacy of Holocaust denial because claims that the Holocaust never happened do not contribute to the academic discourse and the pursuit of the truth. They detract from that mission. Personally, I do not subscribe to the view that the mission of academia is the pursuit of truth, that it is to empower students with new knowledge while fostering civic engagement and advancing the public discourse. Even from this perspective, though, Holocaust denial claims have no space in academia.

The broader point is that the freedoms and entitlements derived from the ICCPR and ICESCR must be contextualized to academia for their normative force to be appropriately defined. Normative understandings developed in other contexts (for instance, in dealing with journalists’ freedom of expression or political speech) may not apply to academia. This means that monitoring academic freedom must account for this specificity, for how freedoms and entitlements are enjoyed in academia, particularly in relation to the rights and entitlements of others. Developing indicators and other monitoring to capture the specificity of academia adds another layer of challenges to an already undertheorized and complex legal landscape. This is not the last of the challenges, unfortunately. I now turn to variation.

2.4 Variation

Monitoring academic freedom is further challenged by the need to account for a wide range of circumstances that can be considered deprivations of academic freedom. This is primarily apparent when we observe the phenomenon from a comparative perspective. In some corners of the world, deprivation of academic freedoms means the military occupation of campuses and the arrest and jailing of academics. In other parts of the world, violations of academic freedoms take the shape of precarious working conditions, such as in the case of contingent faculty in universities hired to teach one course or on temporary contracts, whose renewal is uncertain and highly discretionary if not arbitrary. Or in the form of a subtle erosion of self-governance or faculty self-censorship.

While all these situations—from militarized campuses to the growing precarity of the academic workforce—can be construed as “deprivations” of academic freedom, the range of violations that monitoring is intended to capture

is extensive. Designing tools to enable us to monitor deprivations on this broad spectrum is undoubtedly a challenge for advocates.

Instruments to measure academic freedom have not ignored this problem. It is the case of the AFI, which is built on complexity and acknowledges the tension between the universality of conceiving academic freedom grounded in international human rights law and the reality that threats to academic freedom are heterogeneous. A vivid example of this approach is the AFI's conceptualization of political repression in the university sector as multilayered. Repression can happen at the country level, for instance, with laws and regulations limiting academic autonomy, at the level of the university with institution-specific initiatives such as abolishing tenure or classroom surveillance, or at the individual level, for instance, when the denial of tenure to individual faculty. Constructing academic freedom repression as a multilayered legal space permits the identification of various forms of academic freedom violations. Some of these violations may occur in one country but not in another. Instruments like the AFI, which are open to detecting a variety of academic freedom repressions, are well-suited to address the variation problem.

The conceptual tension between acknowledging the specificity of a temporal or geographical reality and the universality of academic freedom is addressed by this approach. However, it is still present as the model tries to fit an ever-changing landscape. To what extent should emerging forms of academic freedom repression be incorporated into the model? What if these forms of repression are highly localized (they are visible only in the university sector of a country)? Or is the marginal impact minimal or yet to be determined: should the emphasis be on more prominent forms of repression or account for repressions that, on their face, look modest?

This is not just an exercise in conceptualizing academic freedom. It is also a harrowing challenge for advocates. How is this variation reflected in the index and communicated to stakeholders? Should monitoring emphasize the most impactful trends, the most egregious violations, the least contested forms of repression, or all of the above?

3. Methodological challenges

The second set of challenges concerns measurements. Having resolved the thorny conceptual questions discussed so far, monitoring still faces difficult methodological questions. Monitoring is necessarily an empirical exercise because it must rely on factual information concerning the phenomenon being monitored. In the case of academic freedom, the information concerning the degree of enjoyment of academic freedom, if the monitoring strategy favors measuring a deviation from the expected standard of enjoyment, or the degree of deprivation of its enjoyment, if the monitoring strategy prioritizes a violations approach. Either way, academic freedom must be measured. How can this goal be accomplished? Data can be generated by direct or indirect measurements. Directed measurements are based on observation of academic freedom repressions or the information extracted from primary sources such as the text of a law or an institutional decision to deny tenure. Indirect measurements provide insights by relying on information that does not originate from direct observation of a phenomenon. Among other things, the tools that permit indirect measurements of academic freedom are surveys, focus groups, and interviews with members of academia reporting on their experience or their perception of the degree to which academic freedom is enjoyed. ("Latent variable", [s.d.]).

Direct measurements are not realistic in all dimensions of academic freedom because this legal landscape is populated by many latent variables that aim to assess academic freedom's enjoyment (or deprivation) in approximate terms through various measures presumed to permit that assessment. Let's take, for instance, the case of precarity in the academic workforce. An indicator of precarity can include data concerning the number of faculty employed in the university sector who are tenured or tenured-eligible and those who are not. This is population-based quantitative information that assesses the prevalence of precarious employment arrangements. On the other hand, precarity is also a function of whether a contract will likely be renewed in the future and at what conditions (equal, better, or worse). This is an essential aspect of precarity because academia assumes a stable faculty body to exist. Whether the members

of that body participate for a short period or have an expectation, and ideally, a guarantee, to be part of that community is critical to enjoying academic freedom. Precarity affects the ability of faculty to voice their concerns (an intellectual element of academic freedom), expect to be able to participate in future academic conferences (a social element of academic freedom), mobilize for better working conditions (a labor element of academic freedom), and more broadly participate in cultural life as academic (a cultural element of academic freedom). Measuring this dimension of precarity—the likelihood of a member of the academic community in the future—must rely on indirect measurements, such as self-reported confidence that a contract will be renewed or surveying perceptions among faculty.

Thus, indirect measurements are unavoidable. This data is hard to collect, creating a challenge for the completeness of monitoring. Furthermore, its reliability is not as strong as that of direct measurements, creating a challenge for advocates in persuading monitoring bodies and governments that the instrument should be trusted as evidence of the status of academic freedom.

4. Political challenges

The last set of challenges relates to the political viability of academic freedom monitoring. I define “political viability” in general terms as the ability of monitoring to work successfully, that is, to be seen by governments as trustworthy tools to be taken seriously as evidence of the situation of academic freedom. This is distinct from “epistemological viability,” which is the ability of monitoring to capture the state affairs of academic freedom accurately. Epistemological viability is the result of using the appropriate methods to monitor academic freedom so that the results of the monitoring can be considered credible information. This can be achieved, among other things, by addressing the challenges raised in the previous sections. However, epistemological viability is necessary but not sufficient to ensure that monitoring is taken seriously by governments and thus can achieve its political goals. For this to happen, monitoring must also possess political viability. Most crucially, success is a function of the degree to which governments embrace the information conveyed by academic freedom monitoring.

Many human rights advocates have found that even the most well-supported and well-crafted argument evidencing a human rights violation is not typically readily accepted by those who bear responsibility for that violation. Human rights advocacy is an exercise in overcoming political resistance to claims that human rights were violated.

Political viability calls for credibility and trust, which cannot be achieved simply with methodologically rigorous and reliable monitoring. It is also essential to focus on transparency. The AFI and SAR’s Academic Freedom Monitoring Project aimed to accomplish that by providing full access to a wealth of information concerning the methodology, data sources, and analysis deployed to interpret the data. Nonetheless, the subject matter being monitored is a complex legal phenomenon in different forms in different loci despite its universality. Even when transparency is implemented. For the average reader, it is still quite challenging to make sense of the AFI indicators, particularly their statistical elements, because it is such an intense multilayered tool that it is still challenging to navigate and acquire a complete understanding of the reality behind the Index. The SAR instrument provides a more accessible factual basis for assessing the status of academic freedom. Still, it lacks composite value in overall academic freedom performance.

Both rigor and accessibility are needed for political viability, and monitoring should avoid, to the extent possible, positioning itself at the extremes between rigor and accessibility—between monitoring findings too focused on accuracy and explaining what is behind accuracy and too focused on synthesis and the bottom line. Finding the right

balance or the proper way to integrate rigor and accessibility is another challenging aspect of crafting and using monitoring to advocate for the reality of academic freedom.

5. Three suggestions for strengthening academic freedom monitoring

The reflections presented in this paper should not be seen as a gloomy account of academic freedom monitoring and as a reason to give up efforts driven by this crucially important toolbox in the hands of human rights advocates. The challenges highlighted in this paper should not stop advocates from their efforts to foster accountability through academic freedom monitoring. Significant work has been done so far, and more should be encouraged. The ideas presented in this paper should be seen as an invitation to reflect on the work done and suggestions for strengthening monitoring in light of advocacy goals. I include myself in that group as I see these challenges as an incentive to keep working on human rights accountability.

Challenges are opportunities for reflection and action. In closing this paper, I highlight three areas of reflection and action that may strengthen academic freedom monitoring and its use in advocacy. Again, the spirit is constructive and built on the firm recognition of the outstanding efforts carried out by scholars and advocates who have dedicated themselves to monitoring academic freedom.

The first area of suggestions and action is an invitation for scholars and advocates to commit to building a more robust theory of academic freedom. This is not a commitment that academic freedom scholars and advocates have shied away from. On the contrary, most human rights theories on academic freedom result from advocates contributing to theory building. Evidence of this is the support that Scholars at Risk offered to then-Special Rapporteur on promoting and protecting the right to freedom of opinion and expression, David Kaye (2020) in drafting his influential report on the freedom of opinion and expression aspects of academic freedom. Given the unsettled theoretical understanding of academic freedom, it is essential to keep working on its definition and place in international human rights law. A more robust conceptual understanding of academic freedom crystallizing the object of monitoring activities and advocacy efforts to bring accountability, can only benefit its monitoring- political action benefits from defining academic freedom in uncontroversial terms.

The second area of suggestions and action is for scholars and advocates to work towards ensuring the interoperability of the various monitoring approaches. While it is worth reflecting on whether monitoring efforts by multiple groups and organizations should be consolidated in a single index, this is not my position. The argument for consolidation relies mainly on political viability. The different monitoring tools may yield different, occasionally conflicting images of the status of academic freedom. A monitoring tool may show instances of academic repression in a country, while a different tool may show improvement in academic freedom, perhaps between new universities that were established. For example, this would not be surprising in countries run by autocrats experiencing growth in the university sector. The risk is that, when presented with multiple assessments of academic freedom, governments would pick and choose the one better serving their interests, thus delegitimizing the monitoring exercises for all. Political viability priorities suggest that the convergence of monitoring approaches leads to more politically palatable assessments. While monitoring could acquire political capital through consolidation, epistemological diversity outweighs the benefits of consolidation. Indexes may generate divergent assessments because they adopt different methodologies. As long as each is epistemologically defensible, this diversity enriches the advocacy toolbox. Different monitoring approaches have a better chance of capturing the state of affairs of academic freedom in its complexity. It's essential, though, that, in the face of epistemological diversity, the different approaches communicate to understand gaps, complementarity, and potential for interoperability. Ultimately, the various tools are not just intellectual or methodological exercises; they contribute to a shared advocacy agenda.

A third suggestion for reflection and action is to ensure that monitoring tools have a cosmopolitical vocation. This vocation operates at two levels: production and use. At the level of production, monitoring must be participatory and incorporate a variety of perspectives to ensure that the full scope of experiences concerning academic freedom is accounted for and can be documented as part of monitoring. These perspectives include voices from the North and the South, different kinds of educational institutions, and different actors within those institutions. A cosmopolitan use entails an awareness of the political viability of the message conveyed through monitoring so that it does not alienate governments, particularly in reality where governance is weak. Monitoring must be intended as a set of tools that help governance grow and improve. However, the balance between shaming and constructiveness is challenging, particularly when addressing the most outrageous violations. Integrating acceptability and condemnation without diluting advocacy is a challenging goal to achieve.

Academic freedom is critical to society because academia is the space where knowledge is produced and passed on to new generations. It is also where citizens are made, and the rules of civic dialogue are passed on to the new generation. Fostering a free and healthy academic environment is thus in everyone's best interest. The fact that international human rights scholars and advocates devote their energies to monitoring academic freedom and elevating its appreciation and status in society must be cherished and encouraged. Notwithstanding the challenges that academic monitoring faces, we must all support and contribute to these efforts for the greater good of society and to empower a new generation with the tool of civic participation.

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