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Ethics of Studying Illiberalism in a Hyperconnected, Polycrisis-defined Era: An Introduction to the Special Issue

GULNAZ SIBGATULLINA

As of April 2024, at the time of composing this introductory note, research on the challenges faced by liberal democracies—whether established or aspiring—appears to be in continuously high demand. One needs only to focus on a small domain, election results, to realize the scope and intensity of those threats to the existing order. While elections of last year in Poland brought some hope for the pro-EU, left-wing opposition in Europe, populist far-right parties have secured a victory in the Netherlands, further fueling fears of a significant shift to the right in the upcoming European Parliament elections.[1] The recent casting-of-ballots in Russia has ensured incumbent Vladimir Putin's presidency for another six years, while the fall 2024 elections in the US, with Donald Trump as the primary Republican candidate, promise to be a tough race for the Democrats. In India, Hindu nationalist Narendra Modi will run for a third term, competing against a broad alliance of opposition parties that are struggling to catch up.[2]

Liberalism and democracy—understood both as practice and as concept—are under pressure in a context where practically all parts of the world are affected by a polycrisis, a state in which multiple crises become intertwined, making solutions to any of them particularly challenging, if not mutually exclusive. Illiberal actors react to and employ the multitude of overlapping crises—including energy, cost-of-living, and climate crises, as well as devastating consequences of ongoing wars in Ukraine and the Middle East—by continuously challenging the existing status quo, the established institutions and norms, often advocating for more closed, exclusivist, and conservative societies. An inherent part of these contemporary perils is the collapse of the very foundations of how we make sense of the world, as the notion of Truth itself risks becoming an empty signifier. The phenomena of "post-truth" and "alternative facts" indicate that socio-political, climate, and economic crises unfold while there is a growing disagreement on what constitutes Truth and who has the right to it. This phenomenon, referred to as yet another, epistemic crisis,[3]

1 Kevin Cunningham et al., "A sharp right turn: A forecast for the 2024 European Parliament elections," ECFR, January 23, 2024, https://ecfr.eu/publication/a-sharp-right-turn-a-forecast-for-the-2024-european-parliament-elections/.

2 Sheikh Saaliq, "Here's what you need to know about the world's largest democratic election kicking off in India," AP, April 1, 2024, https://apnews.com/article/india-election-modi-bjp-democracy-8998fe6aba5fa26debc0f82c4e2ccf69.

3 Tetyana Hoggan-Kloubert and Chad Hoggan, "Post-Truth as an Epistemic Crisis: The Need for Rationality, Autonomy, and Pluralism," *Adult Education Quarterly*, 73:1 (2023), 3-20, https://doi.org/10.1177/07417136221080424.

DOI: 10.53483/XCOA3572

adds an additional layer of complexity to bringing together the polarized and deeply divided societies, as different factions adhere to and become entrenched in distinct interpretive frameworks that shape their perceptions of reality.[4]

In this context, institutions previously entrusted with producing Truth—primarily universities and, to a lesser extent, research centers and think tanks[5]—find themselves at the epicenter of critique, all while still expected to produce high-quality and ethical research on diverse and distinct processes, cautiously brought together under the umbrella notion of "illiberalism."[6] Can research institutions avoid being co-opted, eroded, or transformed in contexts where other societal institutions fail to do so? Despite the persistence of an image that there is a clear demarcation line between what is perceived as safe, inclusive, and knowledge-oriented academic spaces on one hand, and dark, misogynistic, and exclusivist spaces occupied by supporters of an illiberal turn on the other, in reality, the distance between the object and the subject when studying illiberalism is barely there.

Research in the Postmodern Context

The shrinking and eventual disappearance of this distance owes itself to various processes that characterize the postmodern reality. Among these, three are particularly prominent: epistemic change that has made the responsibilities of a researcher vis-à-vis a research participant more pronounced; digitalization and hyperconnectivity that has blurred physical and institutional distances between a researcher and their respondents; and the proliferation of neoliberal logic into areas of social policy, including education and academic research, which imposes market principles on how research is conducted. Together, these processes engender a zone of tension for researchers delving into the study of illiberalism, as competing and contradictory norms collide while pressure to follow them increases.

Recent decades have witnessed a paradigm shift, particularly in social sciences and humanities research, towards prioritizing care and protection for research respondents. This shift has been catalyzed by a growing awareness of the potential harm inherent in the researcher's institutional power, leading to the implementation of strict rules regarding data protection and research ethics. While criticisms of the so-called "Moral Bureaucracies" are warranted[7]—where Research Ethics committees often prioritize norm adherence to fulfill bureaucratic requirements rather than striking a balance between potential risks and scientific advancement—the new ethical guidelines, for the most part, have been a valuable assistance in defining guiding ethics principles and norms within research projects.

However, while the contemporary academic community has been trying to define the procedures to make research ethically more fair, a larger epistemic transformation has challenged the very principles that dominated intellectual discourse for centuries. The proliferation of what is known as a decolonial approach to science,

4 Jeffrey Friedman, "Post-Truth and the Epistemological Crisis," *Critical Review*, 35:1-2 (2023), 1-21, https://doi.org/10.1080/08913811.2023.2221502.

5 Katarzyna Jezierska, "Illiberal Think Tanks," in Marlene Laruelle (ed.), *The Oxford Handbook of Illiberalism* (online edn, Oxford Academic, 20 Nov. 2023) https://doi.org/10.1093/oxfordhb/9780197639108.013.24.

6 Marlene Laruelle (ed.), *The Oxford Handbook of Illiberalism* (online edn, Oxford Academic, 20 Nov. 2023), https://doi.org/10.1093/oxfordhb/9780197639108.001.0001.

7 José Luis Molina and Stephen P. Borgatti, "Moral bureaucracies and social network research," *Social Networks* 67 (2021): 13-19, https://doi.org/10.1016/j.socnet.2019.11.001.

knowledge, and academic institutions[8] has informed critical perspectives regarding the very aspects of knowledge production. This critique has argued in favor of dismantling monolithic and totalizing systems of thought, prioritizing multiplicity over essentialization, and championing the diversity of cultures and identities over homogenization. In the process, concepts like rationality and autonomy, inspired largely by the Enlightenment philosophy, have come to be regarded as idiosyncratic Western constructs that historically served to establish and perpetuate dominance and power dynamics.[9]

In this evolving landscape, claims of objectivity and impartiality in scientific analysis are increasingly questioned to mitigate epistemic injustices. Instead, there is a growing recognition of the impact of researchers' subjectivities on the research process and an acknowledgement that knowledge production is inherently subjective and situational. Consequently, research outcomes are understood as products of co-creation, intended or unintended, influenced by the interaction between the subjects and objects of study. This approach, although lauded in the study of minority and oppressed communities, creates tension when we turn towards groups that are "unlikable,"[10] whose views and ideas we do not share, and whose positions (still marginalized, yet increasingly less so) we do not necessarily wish to change. What political views/actions/social position of our research respondents should be defining, if at all, when we consider the limits of privacy? Should university spaces be indeed open to all kinds of knowledge and perspectives, even the illiberal ones?

In addition to the epistemic shift, academic research is being conducted within a rapidly transforming physical reality. Globalization and the accessibility of travel have expanded the possibilities for research beyond the traditional confines of the researcher's geographic location or institutional affiliation. Moreover, the proliferation of digital technologies has created and made accessible virtual spaces that transcend physical and institutional borders. Turning to research data and methods, there are now vast amounts of digitized and continuously newly produced information ready to be "mined." Sophisticated means of harnessing and analyzing this data have already reached unprecedented levels, while the potential of AI and Large Language Models in transforming how we do research is still to be fully uncovered.

And as societies increasingly drive and feed on large data, we are confronted more and more with the boundaries of human capabilities to collect and process those quantities of information, prompting us to increasingly "outsource" the research work to machines. The desire to eliminate the biased and subjective "human" aspect from research results has already led to the domination of quantitative research methods even in those fields that have traditionally drawn on qualitative or mixed approaches. Yet is such data truly neutral and objective? And who is accountable when this data is being used to make societal interventions?[11]

8 E.g., Gurminder K. Bhambra, Dalia Gebrial, and Kerem Nişancıoğlu, *Decolonising the University* (London: Pluto Press, 2018); Ramón Grosfoguel, Roberto Hernández, and Ernesto Rosen Velásquez, *Decolonizing the Westernized University: Interventions in Philosophy of education from within and without* (London: Lexington Books, 2016); Sharon Stein, *Unsettling the University: Confronting the colonial foundations of US higher education* (Baltimore, John Hopkins University Press, 2022).

9 Hoggan-Kloubert and Hoggan, "Post-Truth as an Epistemic Crisis," p. 5.

10 Agnieszka Pasieka, "Anthropology of the far right, or: What if we like the unlikeable others?" *Anthropology Today* 35(2019): 3–4, https://doi.org/10.1111/1467-8322.12480.

11 Annette N. Markham, Katrin Tiidenberg, and Andrew Herman, "Ethics as methods: doing ethics in the era of big data research—introduction," *Social Media+ Society* 4.3 (2018): 1-9, https://doi.org/10.1177/2056305118784502.

In addition to new methods and possibilities for conducting research, the digital revolution increasingly embeds us, the researchers, within the social fabric which we study. We live in a state of "digital hyperconnectivity—the condition in which everyone is (potentially) connected to everyone."[12] Hyperconnectivity has created new ways of being and constructing a self—where our digital self can be a better, happier, more successful version of our "real-world" one. Social media platforms encourage the merging of our professional accounts with the private ones, making the information beyond our publications record and conference visits publicly available. The results of research, the digital traces left in the process, are potentially forever out there, making it difficult to predict how this information can be used (against us) in the future. Hence the hyperconnectivity is not only about means of constructing a self, but also about new ways of being constructed as a self from the outside—"being configured, represented, and governed as a self by sociotechnical systems."[13] This, in turn, creates new risks to the safety of researchers engaged in studying groups with whom they do not share the same political views, for instance, as the consequences of a fallout with a community can be seriously emotionally, physically, and institutionally taxing.

Finally, these transformations occur within a broader context of evolving professional ethics and norms as universities increasingly conform to neoliberal market standards characterized by accountability, quantifiability, and tangible revenues.[14] Practices that may have been viewed as ethically dubious by earlier generations of academics, such as prioritizing grantsmanship, self-justificatory expressions of vested interests, and tangential claims to authorship, are now often regarded as legitimate and even laudable virtues in an era marked by hyper-performativity and heightened competition.[15] The neoliberal logic context in which universities operate leads them to respond to the undermining of liberalism and democracy by capitalizing on it. Research funders have been making substantial investments into projects that promise to explain and ideally provide policy recommendations on how to address the palpable dissatisfaction with the status quo among diverse societies. As a result, studying illiberalism becomes, to put it simply, both a socially relevant and professionally lucrative direction for a researcher to take. However, precisely this blurring of boundaries—between the financial interests of a university and priority research agendas, between a scholar's professional motivations and research ethics, and between the very subjects and objects of study—creates a serious area of tension for scholars engaged in illiberalism studies.

All these changes make it increasingly difficult to maintain a distance with the objects of our research, when we conduct research on the anti-democratic, illiberal, or radical right actors. Such a distance can be desirable for a number of reasons: moral—not to endorse or sympathize with their often exclusionary views; political—to marginalize, not normalize such positions; or professional—to avoid consequences for one's career through association with such groups; and finally personal—to protect the well-being and psychological health of the researcher. Despite the desirability of

12 Rogers Brubaker, "Digital hyperconnectivity and the self," *Theory and Society*, 49 (2020) 49: 771, https://doi.org/10.1007/s11186-020-09405-1.

13 Brubaker, "Digital hyperconnectivity and the self," 772.

14 Adrianna Kezar, Tom DePaola, and Daniel T. Scott, *The gig academy: Mapping labor in the neoliberal university* (Baltimor: Johns Hopkins University Press, 2019); Yvette Taylor and Kinneret Lahad, *Feeling Academic in the Neoliberal University: Feminist Flights, Fights, and Failures* (Cham: Springer International Publishing AG, 2018).

15 Bruce Macfarlane, "The neoliberal academic: Illustrating shifting academic norms in an age of hyper-performativity," *Educational Philosophy and Theory*, 53:5 (2021): 465, https://doi.org/10.1080/00131857.2019.1684262.

maintaining such distance, it becomes increasingly challenging, if not impossible, in today's research landscape.

On this Special Issue

This special issue of the *Journal of Illiberalism Studies* is an attempt to shed light on this area of tension and deliberate on the rights and responsibilities of researchers involved in projects on challenges to democratic and inclusive societies. The concept for this special issue originated from two workshops on illiberalism hosted at the University of Amsterdam in November 2022[16] and June 2023.[17] The first workshop focused on theoretical conceptualizations of illiberalism, while the subsequent one delved into the ethical dimensions of such research. The eight papers included in this special issue were presented and discussed during these workshops. The peer-review process consisted of two stages: open peer-review in preparation for the workshop, and blind peer-review during the editing process for publication by the participants.

As the reader will likely notice, the format of this special issue deviates from the standard of the journal. The articles within this volume take the form of relatively short personal opinion pieces, where authors not only openly acknowledge their subjectivity in approaching their objects of study but also reflect on how their positionality informs their research. Each paper draws upon the personal experiences of working in the field, influenced by the researchers' individual backgrounds, identities, and personalities. While these accounts are personal and subjective, the authors acknowledge that their experiences are not unique and to a large extent are shaped by academic, institutional, or societal norms, thus likely resonating with others working in similar contexts.

The issues raised in these papers are complex and do not lend themselves to simple solutions, as moral, professional, and personal considerations are often in conflict. By engaging in (self-)reflexivity, the authors navigate the existing tensions and seek new places of understanding while respecting the differences in perception, status and views.[18] Consequently, the objective of this special issue is not to present a universal solution to complex issues, rather to stimulate a public discussion and contribute to building more egalitarian research relationships.

Specifically, the contributions in this collection bring into the spotlight existing contradictions between different kinds of responsibilities inherent to the roles that researchers hold as professionals, employers, colleagues, and engaged citizens. All of these roles, and consequently responsibilities, ideally come with a set of rights, which are also sometimes difficult to align, let alone protect. Professional responsibilities, for instance, require us to conduct thorough analysis that draws on a sufficient amount of data and evidence, and the collection of these data and evidence should align with the ethics of research and protection of the well-being of our respondents. The epistemic change in academic research poses questions regarding the existing institutional hierarchies and ownership of these data, incentivizing researchers to closely engage with respondents, co-create knowledge with them, and share the findings. As a result, there are issues of a practical kind: how to enter the field and gain access to the respondents without deceiving them about the goals of our

16 *Analysing illiberalism in Europe: Concepts, methodologies, constraints*, U of Amsterdam, 11/3/2022—11/4/2022.

17 *Researching Illiberalism: Rights, Roles and Responsibilities of a Researcher*, U of Amsterdam 6/16/2023—6/17/2023.

18 Wanda S. Pillow, "Reflexivity as interpretation and genealogy in research," *Cultural Studies? Critical Methodologies* 15.6 (2015): 419-434, https://doi.org/10.1177/1532708615615605.

research or our own personal political preferences? A more fundamental question is: Who gains priority in protection: the respondent sharing a private information about committed crimes or their victims?

Beyond having professional responsibilities, scholars also operate as producers of knowledge that have the power to impact societies. Moral responsibility requires us not to normalize or "whitewash" words and deeds that are harmful to others, and not to function as instruments of illiberal groups seeking to reach broader audiences and claim public spaces from which they have been excluded. However, how do we distinguish legitimate and justified critique of institutions from attempts to impose exclusivist ideologies without hearing the other side out, without engaging in debate? And who shares the responsibility, if such an engagement takes place: the university board, the individual researchers, or the university collective? Moreover, there is an inherent tension between us trying to be the professional, sober, and maximally unbiased recorder of events and us in a scholar-activist status that requires to use our status to fulfil societal duties for the protection of inclusive norms.

The situation becomes further complex as the equation includes the pressures put by academic norms, institutions, and funders that issue and sponsor researcher projects. Funders' schemes are deliverables-oriented, meaning that tangible results need to be produced within a limited timeframe. In other words, researchers often do not have the possibility of engaging in long-term research or postponing/refusing the publication of results. As noted by the two contributions in this issue, besides deliverables, the logic of grants requires a serious degree of visibility: of the researcher and of the research findings, ideally "disseminated" to broader audiences. This aspect, first of all, poses questions regarding the normalization and sensationalization of research on the illiberal actors. Moreover, it brings into the spotlight the issue of the rights that researchers should have when engaged in such research: namely to remain anonymous to protect their safety and well-being.

Content of the Issue

The special issue opens with Aurelien Mondon's contribution that draws attention to the risks of euphemizing reactionary politics by using new academic concepts. In his engagement with the notion of "illiberalism," Mondon advocates for discerning between opportunistic critiques of liberal democracies, often promoting normative and exclusionary politics, and constructive critiques aimed at addressing liberalism's inherent hierarchies and exclusion with an aim of building more fair societies.

Anja Hening, in her contribution, illustrates the ambiguous role of universities in challenging the illiberal movements, by using the example of Monday demonstrations in East Germany. While universities serve as open forums for discussion, deliberation, and critique, they also bear the responsibility of upholding academic integrity and preventing the dissemination of unscientific claims. Hening highlights the precarious position of researchers navigating uncharted territory, risking their status by organizing events or teach-ins which may not always be aligned with the university board and funder positions.

Continuing the discussion, Gábor Halmai explores scholars' agency in studying and consequently resisting constitutional illiberalism, using examples from Hungary and Israel. He underscores the passivity of the academic community in Hungary, where there is a lack of "scholactivism" tradition, which in Halmai's view, has contributed to the establishment of an illiberal regime in the country. Conversely, Israel has

exhibited a higher degree of scholarly involvement in defending normative values, though situation there has seriously changed since the start of the Israel-Hamas war in October 2024.

Pola Cebulak examines the potential impact of scholactivism by legal scholars, focusing on illiberal backlash against the judiciary and debates about "juristocracy." She emphasizes that despite the pressures on democratic norms, the scholars should not necessarily shield the EU institutions, including the Court of Justice, from social and political criticism; and instead engage in the involvement and empowerment of local actors who may feel marginalized in the European-level democratic processes.

In her paper, Marlene Laruelle discusses the difficulties of researching illiberalism at present-day American universities and research institutions. By focusing on the ecosystem of Washington D.C.—where policy-making, research, and public debate are particularly tightly interwoven— she highlights how researchers are often dependent on funders with specific ideological leanings. This situation can lead to a form of self-censorship where scholars have to prioritize topics and perspectives that are likely to be favorably received by funders and policy circles over those that challenge prevailing views.

The sixth contribution focuses on a specific case where illiberal actors have intersecting identities, including of oppressed religious minorities. The case study of European white male converts to Islam highlights inherent tensions in studying conservative Islam, particularly within prevailing security studies frameworks. The paper stresses the importance of developing a deeper understanding of the community to distinguish between various shades of conservative and far-right ideologies among Muslims.

Antonia Vaughan's article, based on interviews with researchers of the far right and manosphere, argues that the current approach to researcher safety has epistemological implications. It affects the type of research that can be conducted and who can safely contribute to knowledge production. These findings underscore broader issues of "epistemic exclusion" that unjustly hinder the ability of individuals with minority identities to participate in knowledge production.

Lastly, the conversation among four scholars—Larissa Böckmann, Marija Petrovska, Luiza Bialasiewicz and Sarah de Lange—reveals the tensions between the research ethics and a culture of care, on the one hand, and institutional obligations and the demands of an academic career, on the other. As the scholars work together on a project funded by the European Commission from different positions of power, they discuss and try to support each other in navigating issues of (in)visibility in the context of rigid institutional expectations and obligations.[19]

19 This publication is part of the project that has received funding from the European Union's Horizon 2020 research and innovation program under the Marie Skłodowska-Curie grant agreement No. 892075.

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I Was Gonna Fight Fascism… The Need for a Critical Approach to Illiberalism

AURELIEN MONDON

Abstract

Illiberalism, much like populism, has become a buzzword. While some excellent research has been done on the matter, helping us make sense of our current political moment, much of the discourse around the term has made it blurrier and been outright counterproductive in the defence of democracy. Often, the use of illiberalism has led to a flattening and simplification of the complex nature of politics, pitting an ideal, fantasised version of liberalism against a caricatural, homogenous and exceptionalising version of illiberalism. While those defending the former are widely considered not only unable to respond to, but at the origin of the many crises our societies and planet are facing, they are justified if only through the comparison with the latter: we are bad, but they are worse.

This has not only been counterproductive with regards to addressing said crises, but it has legitimised certain illiberal alternatives, found on the far right in particular, both as alternatives to the status quo, and through the false equivalence it constructs with alternatives on the left which seek to explore beyond the liberal fantasy. To address this vicious circle, it is essential to take a critical approach to illiberalism as a concept. This short piece outlines three essential starting points: 1. Liberalism should not be constructed as an innate good, as homogenous and as above critique; 2. Critical takes on liberalism should not be automatically equated with siding with the reactionary kind of illiberalism; 3. There should be an unequivocal denunciation of far right/reactionary politics with no compromise or absorption.

Keywords: illiberalism, liberalism, populism, fascism, far right

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I was gonna fight fascism . . . I just didn't want to be rude.[1]

"Illiberalism," much like "populism," has become a buzzword in elite public discourse (see figure 1).[2] While Viktor Orbán's Hungary is most often described as "illiberal" (including by Orbán himself), the term has also been used increasingly over the past few years to describe diverse kinds of politics. To cite but a few examples, a *Guardian* editorial described Giorgia Meloni's victory in Italy in 2022 as "a victory for illiberalism," even though her far-right views on immigration appear increasingly compatible with the European Union.[3] The same year, *The New York Times* opinion pages warned of "a crisis of illiberalism" that was spreading "from Moscow to Tehran."[4] Yet it is not only far-right or typically authoritarian politics that are subsumed under "illiberalism": in a model construction of a false equivalence, an opinion piece in *The Washington Times* warned of the illiberal threat to democracy coming from both the right and the left, comparing the far right with the social-democratic left's apparent "unwillingness to recognize and praise those aspects of the United States that should be conserved."[5] Therefore, while some useful research has been done on the matter, helping us make sense of our current political moment, much of the wider discourse around the term has made it blurrier, and some has been outright counterproductive for the defense of democracy.[6] Often, the use of "illiberalism" has led to a flattening and simplification of the complex nature of politics, pitting an idealized, fantasized version of liberalism against a caricatural, homogeneous, and exceptionalizing version of illiberalism. While those defending the former are widely considered both unable to respond to, and at the origin of, the many crises our societies and planet are facing, they are justified only through the comparison with the latter: we are bad, but they are worse.

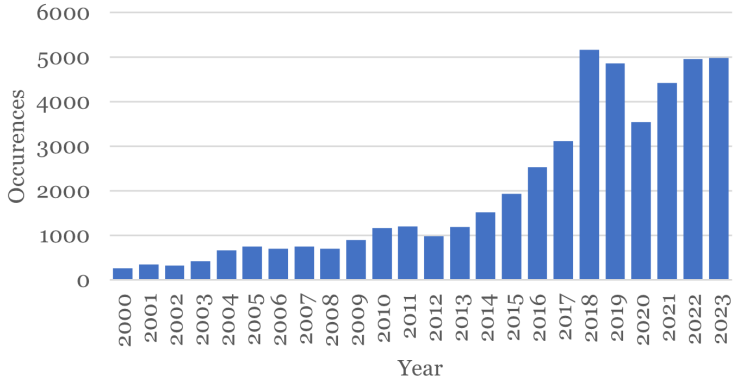

Figure 1. Uses of "illiberal*" in newspapers or newswires and press releases (based on the Lexis database)

1 Soccer 96 and Alabaster DePlume, "I Was Gonna Fight Fascism" (Moshi Moshi Records, 2020).

2 On the definition of "the elite," see Teun A. van Dijk, "Principles of Critical Discourse Analysis," *Discourse & Society* 4, no. 2 (April 1993): 249–83, https://doi.org/10.1177/0957926593004002006.

3 Nikolaj Nielsen, "Far-Right Meloni Praises von der Leyen's Migration Stance," *EuroObserver*, October 26, 2023, https://euobserver.com/migration/157613.

4 Ross Douthat, "From Moscow to Tehran, a Crisis of Illiberalism," *New York Times*, October 8, 2023, https://www.nytimes.com/2022/10/08/opinion/russia-iran-china-putin.html.

5 Theodore R. Johnson, "Illiberalism Is a Threat to Democracy—On the Right and Left," *Washington Post*, May 4, 2023, https://www.washingtonpost.com/opinions/2023/05/04/democracy-challenged-right-left/.

6 See, for example, Marlene Laruelle, "Illiberalism: A Conceptual Introduction," *East European Politics* 38, no. 2 (2022): 303–27, https://doi.org/10.1080/21599165.2022.2037079.

This flattening and simplification not only has been counterproductive with regard to addressing said crises, but has also legitimized certain illiberal politics, found especially on the far right, both as alternatives to the status quo and through the false equivalence it constructs with alternatives on the left that seek to explore beyond the liberal fantasy.[7] To address this vicious circle, this short, reflective article argues that it is essential for researchers in this fledgling area to take a critical approach to both liberalism and illiberalism as concepts, and avoid mistakes made in similar fields such as populism studies. After discussing the issue with "illiberalism," I outline three starting points essential to a critical study of both liberalism and illiberalism: 1. liberalism should not be constructed as innately good, homogeneous, or above critique; 2. critical takes on liberalism should not be equated with siding with the reactionary kind of illiberalism; and 3. far-right/reactionary politics should be unequivocally denounced.

The Illiberal Hype: Illiberalism as the New Populism

It was tempting to start this article with a spin on the *specter-haunting-Europe* metaphor. Much like the many articles and books on populism starting with this tired trope, it may sound good, but does very little to explain not only what the current threats facing democracy are but also, and more importantly, how to counter them. Engagement with the emerging literature on illiberalism bears striking resemblance to that on populism, although it is yet to explode in the way "populist hype" has. Indeed, countless scholars have jumped on the populist bandwagon, regardless of how little they know about or are interested in the concept or what the consequences of misusing it could be.[8] Similarities extend beyond academia, as the term has become widely used in public discourse. There it not only tends to obscure more than explain but also borrows directly from the vocabulary of reactionaries, thus following their lead and allowing them to set the agenda. This is reminiscent of attempts by the Le Pens, Matteo Salvini, and Nigel Farage to impose "populist" as a key definer of their politics to distance themselves from more stigmatizing labels.[9] Similarly, Viktor Orbán has claimed illiberalism as a positive, diverting attention from the true dangers of his politics. It is not so much the "illiberal" in his "illiberal democracy" that should be scrutinized but rather the use of "democracy." Indeed, "illiberal" for Orbán could be counterposed to a weakened and (rightly or wrongly) disliked liberal hegemony, while "democracy" lent him a legitimacy and somewhat progressive veneer, despite his time in power having eroded most of the democratic safeguards

7 Aurelien Mondon and Aaron Winter, *Reactionary Democracy: How Racism and the Populist Far Right Became Mainstream* (London: Verso, 2020).

8 On the misuses of populism in academia, see the excellent overview by Sophia Hunger and Fred Paxton, "What's in a Buzzword? A Systematic Review of the State of Populism Research in Political Science," *Political Science Research and Methods* 10, no. 3 (July 2022): 617–33, https://doi.org/10.1017/psrm.2021.44. On populist hype and its consequences, see Jason Glynos and Aurelien Mondon, "The Political Logic of Populist Hype: The Case of Right-Wing Populism's 'Meteoric Rise' and Its Relation to the Status Quo," in *Populism and Passions: Democratic Legitimacy after Austerity*, ed. Paolo Cossarini and Fernando Vallespín (London: Routledge, 2019); Jana Goyvaerts, "The Academic Voice in Media Debates on Populism" (POPULISMUS working paper 12, School of Political Science, University of Thessaloniki, October 2021), http://www.populismus.gr/wp-content/uploads/2021/10/working-paper-12.pdf; Benjamin De Cleen, Jason Glynos, and Aurelien Mondon, "Critical Research on Populism: Nine Rules of Engagement," *Organization* 25, no. 5 (September 2018): 649–61, https://doi.org/10.1177/1350508418768053; Jana Goyvaerts et al., "The Populist Hype," in *Research Handbook on Populism*, eds. Giorgos Katsambekis and Yannis Stavrakakis (Cheltenham: Edward Elgar, 2024); Bice Maiguashca, "Resisting the 'Populist Hype': A Feminist Critique of a Globalising Concept," *Review of International Studies* 45, no. 5 (December 2019): 768–85, https://doi.org/10.1017/S0260210519000299; and Katy Brown and Aurelien Mondon, "Populism, the Media and the Mainstreaming of the Far Right: The Guardian's Coverage of Populism as a Case Study," *Politics* 41, no. 3 (2020): 279–95, https://doi.org/10.1177/0263395720955036.

9 Annie Collovald, *Le populisme du FN : un dangereux contresens* (Bellecombe-en-Bauges: Editions du Croquant, 2004).

that would normally make a system worthy of the name.[10] As such, "illiberal" is a diversion, a decoy, a sleight of hand.

This echoes the work Jason Glynos and I have done on populist hype, which has since been developed and sharpened by many others.[11] Far from denying the rise of the far right or the very real threat posed by such politics, a focus on populism as a key signifier and populist hype as a political logic has served to highlight how the powerful discontent with the current liberal hegemony (and "really existing liberalism") can be interpreted in a way that not only forecloses any attempt to address its shortcomings but can also end up legitimizing reactionary politics by setting them as an exceptional threat.

What matters, therefore, is how we understand "illiberalism." In a similar fashion to populism, illiberalism too

> can function as both a concept and a signifier. Approached as a concept, populism [and illiberalism in this case] should be judged by its capacity to capture a particular dimension of social and political reality, a capacity that relies heavily on analytical precision.[12]

Approached as a signifier, on the other hand, what matters is how, how much, and to what purpose it is used in the wider political space. This distinction also ties into literature on anti-populism and how certain uses of the term can end up delegitimizing all types of illiberal politics rather than focusing on those that directly threaten particular values, rights, or politics.[13]

As the concept of illiberalism takes off, there is a real risk that similar issues will arise; based on the populist-hype template, this can therefore have predictable consequences. For example, we have witnessed a euphemization of certain kinds of politics under the illiberal label. Indeed, if liberalism is contested for good reasons, then an unqualified "illiberalism" can appear a valid alternative to an unsatisfying or failing system. For this reason, it is no surprise that Orbán uses the term rather than another such as authoritarian.[14] Illiberalism can also be used to disguise and euphemize far-right politics or more stigmatizing terms such as racism, which are also more precise and build on more sophisticated literature.[15] Another consequence of the potential misuse of illiberalism is the creation of false equivalences. Much as

10 Seongcheol Kim, "'Illiberal Democracy' after Post-Democracy: Revisiting the Case of Hungary," *The Political Quarterly* 94, no. 3 (July/September 2023): 437–44, https://doi.org/10.1111/1467-923X.13255.

11 See, among others, Maiguashca, "Resisting the 'Populist Hype'"; and Benjamin De Cleen and Juan Alberto Ruiz Casado, "Populism of the Privileged: On the Use of Underdog Identities by Comparatively Privileged Groups," *Political Studies*, published ahead of print, March 20, 2023, https://doi.org/10.1177/00323217231160427.

12 Goyvaerts et al., "The Populist Hype."

13 See, for example, Seongcheol Kim, "Populism and Anti-Populism in the 2017 Dutch, French, and German Elections: A Discourse and Hegemony Analytic Approach" (POPULISMUS working paper 7, School of Political Science, University of Thessaloniki, April 2017), http://www.populismus.gr/wp-content/uploads/2018/04/Kim-WP-7-upload.pdf; Emmy Eklundh, "Excluding Emotions: The Performative Function of Populism," *Partecipazione e conflitto* 13, no. 1 (2020): 107–31, https://doi.org/10.1285/i20356609v13i1p107; Goyvaerts, "The Academic Voice in Media Debates on Populism"; and Yannis Stavrakakis, "The Return of 'the People': Populism and Anti-Populism in the Shadow of the European Crisis," *Constellations* 21, no. 4 (December 2014): 505–17, https://doi.org/10.1111/1467-8675.12127.

14 Giorgos Katsambekis, "Mainstreaming Authoritarianism," *Political Quarterly* 94, no. 3 (July/September 2023): 428–36, https://doi.org/10.1111/1467-923X.13299.

15 See Aurelien Mondon, "Epistemologies of Ignorance in Far Right Studies: The Invisibilisation of Racism and Whiteness in Times of Populist Hype," *Acta Politica* 58 (October 2023): 876–94, https://doi.org/10.1057/s41269-022-00271-6.

it risks legitimizing and euphemizing reactionary politics by framing them as the alternative to liberalism, it also risks conflating very different kinds of politics under a broad and even meaningless banner. This could reinforce far-right politics as discussed, but also discredit more progressive alternatives that are in fact striving to achieve many of the ideals we commonly consider as liberal, such as the rule of law, equality, democracy, and pluralism. This is based on a misunderstanding of liberalism and, in particular, really existing liberalism.[16] Indeed, much of what we think of as core to liberal democracy today does not necessarily come from the liberal tradition, and in fact it was often won from the liberal elite of the time, who viewed equal rights and democracy with suspicion. Conversely, much of what is done in the name of liberal states today (think of the militarization of borders, the curtailing of protest rights, or the failure to take a decisive stand against genocidal regimes) could fall under definitions of illiberalism.[17] "Illiberalism" as a simplistic qualifier could thus flatten opposition to the flaws of the current liberal order and quash valid critiques of such shortcomings that link them to reactionary politics.

What we see, therefore, is both a strengthening of the liberal hegemony, as any criticism of it is portrayed as illiberal and thus dangerous, and a legitimization of reactionary politics, as they can claim to be the alternative to a deeply distrusted status quo yet also increasingly count on the more or less tacit support of the liberal elite.

Of course, this does not mean that illiberalism as a concept should be entirely discarded. Much like populism, it can shed light on our current political moment. Yet, if used carelessly, "illiberalism" can just as well obscure this moment and play a part in strengthening the very politics those who use the concept seek to oppose. As academics, we therefore have a responsibility beyond our own use of terms to think about the way said words are taken up in public discourse and how our work may be legitimizing potentially harmful discourse and politics. As such, my argument is not about policing this burgeoning field, nor is it about imposing a particular definition of the term. As with critiques of populism studies, it is about considering illiberalism in a broader context.[18] As Benjamin De Cleen and Jason Glynos note, going "beyond populism studies"

> implies that populism be treated as a useful but modest concept that needs to be integrated into a broader conceptual framework, the precise ingredients of which depend on the characteristics of the populist politics under study and the nature of the research questions asked.[19]

The same applies to studies of illiberalism, as the illiberal nature of a particular political project only tells us so much about it, and ignoring the broader politics that feed it only creates more confusion. Building on De Cleen and Glynos's argument, we must be aware of "the performative effects of discourses about" illiberalism: for

16 Aurelien Mondon, "Really Existing Liberalism, the Bulwark Fantasy, and the Enabling of Reactionary, Far Right Politics," *Constellations*, (2024): 1-12, https://doi.org/10.1111/1467-8675.12749.

17 See "More than 2,500 Dead, Missing as 186,000 Cross Mediterranean in 2023," *Al Jazeera*, September 29, 2023, https://www.aljazeera.com/news/2023/9/29/more-than-2500-dead-missing-as-some-186000-cross-mediterranean-in-2023; Daniel Boffey, "Why Are European Governments Clamping Down on the Right to Protest?" *Guardian*, November 17, 2023; and Nesrine Malik, "It's Not Only Israel on Trial. South Africa Is Testing the West's Claim to Moral Superiority," *Guardian*, January 15, 2024, https://www.theguardian.com/commentisfree/2024/jan/15/israel-trial-south-africa-icj-palestine.

18 Benjamin De Cleen and Jason Glynos, "Beyond Populism Studies," *Journal of Language and Politics* 20, no. 1 (January 2021): 178–95, https://doi.org/10.1075/jlp.20044.dec.

19 De Cleen and Glynos, "Beyond Populism Studies."

example, why does Orbán use it? What happens when we also use it in positions of discursive power? Much like De Cleen and Glynos's call about populism studies, we must question whether there is a need for a field studying illiberalism and the risks attached to it. While my inclination would be to suggest there is not and that research on illiberalism could, and in fact should, take place within existing fields so as not to exist in a silo, I believe that at the very least the study of the concept should be guided by three considerations in an effort to avoid participating in the illiberal hype.

Liberalism Should Not Be Constructed as Innately Good, Homogeneous, or Above Critique

The liberal hegemony continues to hold a strong grip, including within academia, which often leads to a naïve assessment of the state of politics. For example, it is common to hear from scholars in the field that liberalism is or remains a bulwark against reactionary politics. This assessment is often made without any need to evidence it, yet it remains clearly based on a political and ideological assessment of the situation. In fact, it would be difficult to substantiate such a claim either historically or in our current context. Therefore, such a statement requires a suspension of disbelief and asks the reader or listener to ignore the shortcomings and contradictions of really existing liberalism. It requires instead an uncritical embrace of ideal versions of liberalism. The plural is key here, as, while it is often ignored in public discussions around illiberalism, those who seek to oppose "illiberalism" tend to do so from very different understandings of what liberalism actually is or means. As Marlene Laruelle points out, illiberalism "represents a backlash against today's liberalism in all its varied scripts—political, economic, cultural, geopolitical, civilizational—often in the name of democratic principles and by winning popular support."[20] Laruelle's "five major illiberal scripts" make it clear that if anything, liberalism only exists as ideal forms yet to be attained (if attainable at all, considering the tensions between each principle).[21] This awkward assemblage often feels contradictory, as if exceptions to these scripts are more often the rule than not. As I explore elsewhere,

> the fuzziness of liberalism is thus key to defining "illiberalism" and requires us to see it as an empty signifier rather than the hegemonic good we tend to accept it as, even in academic circles. Despite much evidence to the contrary, post racial, post patriarchal, post totalitarian fantasies have become uncritically accepted as reality and their positive aura has led to the strengthening of the liberal hegemony through the naturalisation of their relationship.[22]

As pointedly noted by Domenico Losurdo, the "liberal revolution" can only be understood as "a tangle of emancipation and dis-emancipation."[23] As such, scholars interested in illiberalism must reckon with the fact that much of what is currently considered at the positive heart of their version of liberalism has, in fact, not always been at the heart of the liberal tradition as it has *really* existed: various types of exclusion generally associated with (or more precisely, perceived as) part of illiberal politics today have not been overcome painlessly within the liberal tradition, and that progress has not been linear—"to put it simply, emancipation was often to be

20 Laruelle, "Illiberalism."

21 Laruelle, "Illiberalism": 312–13.

22 Mondon, "Really Existing Liberalism, the Bulwark Fantasy, and the Enabling of Reactionary, Far Right Politics."

23 Domenico Losurdo, *Liberalism: A Counter-History* (London: Verso, 2016), 301.

found against the liberal elite and outside of the 'liberal world'".[24] This could not be made clearer than by the way the inclusion of communities within the liberal social contract has always been precarious, limited, and subject to conditions. As Charles W. Mills explored in *The Racial Contract*, the original social contract concealed "the ugly realities of group power and domination" and conveniently ignored the many people and communities who were excluded from "the people" and considered unworthy of signing or living under this contract.[25] Exclusion of said communities was fought against and at times overturned, at a great cost to those communities. Inclusion, when achieved even partially, remains precarious: consider the rights to vote or protest, or those of trans people, women, people of color, or the poor, all under threat today in so-called liberal democracies. Crucially for academics here, such fantasies play a central role in justifying inaction and consolidate a status quo that should appear unfair and undemocratic (and potentially even illiberal) by its very own claimed standards. Much as Mills's racial contract provides "for its signatories an inverted epistemology, an epistemology of ignorance; a particular pattern of localized and global cognitive dysfunctions (which are psychologically and socially functional), producing the ironic outcome that whites [or men, or anyone holding a privileged identity] will in general be unable to understand the world they have made," the liberal contract offers the opportunity to overlook clear shortcomings in terms of race, gender, disability, class, and so on and to ignore the hierarchies of power that undermine any pretense of democracy.[26] In this twisted logic, illiberalism becomes the only name for all exclusionary practices, and anything that is not illiberal must therefore be good and blindly defended. This way of thinking could not be clearer than in the aftermath of the terrorist attack on *Charlie Hebdo*, when speech was curtailed and securitization increased in the name of free speech.[27]

Critical Takes on Liberalism Should Not Be Equated with Siding with the Reactionary Kind of Illiberalism

Building on the previous section, it is essential to posit that the liberal order and its progressive outlook has always depended on the forces it has had to contend with—as Losurdo highlights, liberalism's flexibility as an ideology has been central to its success.[28] Should the ante be on the side of progress, then liberalism would more or less willingly accommodate new demands for equal rights and justice, as was the case in the postwar period. However, should the balance shift back toward reaction, liberalism could just as well adapt, as it often has. This means that not only is it essential not to take the benevolence of really existing liberalism as a given, but also, perhaps more importantly, we should not paint all opposition to liberal practice as reactionary or against some of what we falsely assume to be liberalism's core principles.

Challenges to the exclusionary practices of the liberal hegemony have always been painted as radical and dangerous. What is telling, of course, is that those who have succeeded in gaining (partial) rights and acceptance within the liberal contract were often portrayed as dangerous radicals when demanding such acceptance, only subsequently being welcomed as natural parts of the liberal contract (until their

24 Mondon, "Really Existing Liberalism, the Bulwark Fantasy, and the Enabling of Reactionary, Far Right Politics."

25 Charles W. Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997), 3.

26 Mills, *The Racial Contract*, 3.

27 Gavan Titley, Des Freedman, Gholam Khiabany, and Aurelien Mondon, eds., *After Charlie Hebdo: Politics, Media and Free Speech* (London: Zed Books, 2017).

28 Losurdo, *Liberalism*.

rights are undermined again when power shifts). This could not be clearer than in the struggle against slavery, the fight for women's rights, or through the civil rights movement. It could also be witnessed in the liberal elite's long-held distrust and fear of "the masses" and their refusal to grant basic democratic rights to those it has deemed or continues to deem unworthy or untrustworthy. Take the example of the climate crisis in our current setting: are protesters' means—often painted as illiberal in much of our public discourse—in any way similar to the reactionaries' illiberalism? Are the states who crack down (in an increasingly extreme and openly violent manner) on the basic right to protest lobbies destroying the planet really keepers of liberal values? The naïve assumption that liberalism will automatically protect us from the rise of reaction would suggest that this is the case.

Refusing to face the uneven record of the liberal experiment means that we cannot properly assess the present, particularly the threat posed by the resurgence of reactionary politics. The flawed and naïve idea that liberalism will act as a bulwark against the far right cannot sustain basic scrutiny, as it is increasingly clear that many self-appointed liberal elites and institutions are absorbing rather than resisting so-called illiberal politics. The work on the mainstreaming and normalization of far-right politics should have put an end to such fantasies, and yet it continues to grip the imagination of many, including scholars of the far right. As I argue elsewhere, "creating too tight a border between liberalism and illiberalism risks making actions deemed illiberal an exception that ends up legitimising others deemed liberal by comparison, even if they participate in the slide toward exclusion or authoritarianism."[29]

There is therefore a risk that painting all critiques as illiberal will equate them automatically with the illiberal far right (which receives most, and in fact disproportionate, attention in public discourse). This not only whitewashes the capacity of liberalism to absorb reactionary politics, as already discussed, but also prevents the exploration of politics that would offer progressive and democratic alternatives. Much like populism again, illiberalism should not be considered as monolithic. Nor should we accept a simplistic dichotomy between liberalism and illiberalism as the political horizon. Much of what was once considered illiberal has since been accepted as liberal, just as what was once considered liberal is now seen as illiberal. As such, liberalism should not be reified as a coherent ideology, as its history simply cannot sustain such a claim.

Far-Right/Reactionary Politics Should Be Unequivocally Denounced

Where does this leave us? As already noted, this reflective piece is not about policing the use of illiberalism or even rejecting its usefulness, but we must question it in the current discursive setting. My aim here is to use my expertise and experience with populist hype to highlight a series of pitfalls the field has faced. Indeed, much like populism, while there are some fascinating discussions taking place within small circles around the term, they tend to be drowned out by the unhelpful noise created by the illiberalism hype. Unfortunately, as with populism, it is the latter that has the most impact on public discourse.

This context thus requires us to first acknowledge that whether we want it to or not, our work on the concept participates in these wider public discussions and power struggles and we cannot shy away from engaging in and with them. As such, we must

29 Mondon, "Really Existing Liberalism, the Bulwark Fantasy, and the Enabling of Reactionary, Far Right Politics."

critically engage and challenge epistemologies of ignorance. These epistemologies have not only served the perpetuation of oppressive systemic structures but also facilitated the resurgence of reactionary politics, as the liberal hegemony struggles ever more to convince us that it has the solutions to the many crises we are facing. Whatever our position in the hierarchy of power, we all must reckon with our role in shaping it. This includes academics, who often downplay their role in the shaping of public discourse and legitimizing or challenging power.

Challenging epistemologies of ignorance thus requires us to confront both past and present shortcomings and do away with comfortable fantasies.[30] Pointing to the failures of really existing liberalism, its inconsistencies, and its contradictions is not "canceling" liberalism as such. It is an essential step toward a critical assessment and addressing of the current system's clear inability to counter the reactionary turn. If liberalism in and of itself proves ultimately unhelpful as a concept or ideology in surmounting the present challenges, then we have a duty to explore whether it must be dispensed with. Crucially, this need not mean abandoning key principles that can be transposed to new frameworks or ideologies, or indeed originated elsewhere.

However, challenging such epistemologies of ignorance can only be done through a critical evaluation of all liberal (and even more broadly progressive) concepts that we take as common sense but have been hijacked by reactionary forces to serve their needs. Take free speech again, which today only seems to benefit those wishing to reinforce their position in power and turn the clocks back.[31] There is no free speech without equal and fair access to public discourse: currently, free speech only works for those who have the power to shut down critique of their unfair and undeserved standing in society. The same could be said of other concepts that have been sacralized and must urgently be reassessed, reclaimed, or reinvented: democracy, human rights, or *laïcité* in France, to name a few.[32]

Finally, standing against the forces of reaction takes an unwavering commitment. There is no middle, objective, neutral ground between racism and anti-racism, fascism and anti-fascism, transphobia and trans rights, and so on. Simply not being a fascist does not make one anti-fascist, especially if we passively accept the slide toward fascism, the removal of rights from certain communities, or their downright exclusion from our societies. Our commitment to equality and liberty must be uncompromising and it must be for all if it is to be genuine.

"I Was Gonna Fight Fascism . . . But No One Wants to Be That Guy"[33]

Everyone wants to be on the opposite side of fascism, still widely considered evil in politics. Yet words are easy . . .

Much like "populism," I have argued here that the rise of "illiberalism" as a concept to explain the threats to "democracy" today is not only unhelpful; it is counterproductive and potentially itself a threat. I first highlighted how the use of "illiberalism" in much public discourse leads to a misunderstanding of the current political context, as

30 Jason Glynos, "Critical Fantasy Studies," *Journal of Language and Politics* 20, no. 1 (January 2021): 95–111, https://doi.org/10.1075/jlp.20052.gly.

31 Gavan Titley, *Is Free Speech Racist?* (Cambridge: Polity, 2020).

32 Robert Meister, *After Evil: A Politics of Human Rights* (New York: Columbia University Press, 2010); Mondon and Winter, *Reactionary Democracy*; and Aurelien Mondon, "The French Secular Hypocrisy: The reme Right, the Republic and the Battle for Hegemony," *Patterns of Prejudice* 49, no. 4 (2015): 392–413, https://doi.org/10.1080/0031322X.2015.1069063.

33 Soccer 96 and DePlume, "I Was Gonna Fight Fascism."

it diverts attention from systemic issues onto a bogeyman it legitimizes and thus enables. Building on critical work on populism, I then discussed the processes of hype, euphemization, and false equivalence, all of which have participated in mainstreaming reactionary politics in the name of protecting "us" against it. I then suggested three considerations that should be core to any engagement with the concept, should we take seriously the many crises facing the world currently.

We must therefore also take seriously the consequences of creating phantasmatic enemies to justify the positioning of the current liberal hegemony as "what is good." While it is clear that history has not ended, it is struggling to be reborn, and we remain stuck in the past, chasing windmills rather than building the future. In this, reactionary politics allow for a mix of morbid fascination, voyeurism, and self-righteousness, all of which combine in general inaction. Whether it is under the guise of illiberalism, populism, terrorism, the far/extreme/radical right, authoritarianism, or fascism, much time has been spent since the fall of state communism looking for the next great enemy of liberalism. Yet as we are indeed facing many crises the current liberal settlement appears unable or unwilling to address, it is time for us to explore solutions beyond the past and reclaim the present and future.

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The Ambivalence of the Liberal-Illiberal Dynamic

ANJA HENNIG

Abstract

This essay discusses the democratic ambivalences of situations when researchers or academic institutions have to decide whom to provide a platform, where to draw red lines even at the expense of freedom of speech, whether to hide certain information, and how to label "illiberal" actors in academic pieces—questions which reflect also one's position within academia. The article draws on the experience with the unexpected performance of an academic roundtable discussion in the East German city of Frankfurt (Oder) planned to be about weekly local street protests, which eventually was joined by the street protesters themselves. During the pandemic, these marches contested covid restrictions. With the onset of the Russian war on Ukraine, they had transformed into protests against high energy costs, in support of Putin, and against the German government. This type of protest movement resembles a typical expression of contemporary illiberalism: an ideologically heterogeneous milieu from far-right to politically conservative, if not leftist-minded people, who unite a skepticism towards the democratic state, the rejection of public media, and an affinity for conspiracy theories. The German context is particularly challenging as these "Monday demonstrations" prevailing in East Germany entail a reference to the freedom and democracy claims of the 1989 revolution, and reveal unequal conditions between East and West.

Keywords: East Germany, pro-Russian street protests, freedom, rights, platforming, engaged scholarship

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On a Monday evening in October 2022, just before the winter term at European University Viadrina at Frankfurt (an der Oder, as opposed to Frankfurt am Main) started, more than 2,000 people marched through the city of 57,000 inhabitants, located an hour East of Berlin and connected through a bridge with Słubice, its Polish (until 1945, German) border town. With John Lennon's "Give Peace a Chance" resounding through the main streets, people with posters could be heard calling for peace, blaming the German government and the Green Party in particular for causing the energy crisis. Other posters defended Putin against NATO. Some were holding Russian flags, others a banner with Picasso's white pigeon. One flag combined the pattern of the German and the Russian flags; a reminiscence of the Soviet-East German Friendship flag from the times of the former German Democratic Republic (GDR). The people wore casual jackets, and there were families with strollers—apparently just ordinary people.[1]

Frankfurt (Oder) is the first German city Ukrainian refugees pass through when coming by train through Poland. Shortly after the full-scale Russian invasion of Ukraine that began on February 24, 2022, the city and local volunteers had established an impressive humanitarian aid infrastructure, while housing was provided as well.[2] Through long-established contacts of Viadrina with Ukrainian academic institutions, moreover, many Ukrainian students as well as researchers found a safe place in Frankfurt. But how safe can one feel as a Ukrainian refugee when Russian flags are waving in the streets? Street protests in response to the energy crisis or against coronavirus restrictions took place in other parts of Europe as well, such as in France, Italy, or Great Britain.[3] The German case is particular at least for two reasons: first, these protest marches were more numerous in the Eastern part of Germany that before 1989 was under a Communist regime,[4] and second, they connect to the legacy of the revolutionary moment of pro-democratic demonstrations against the GDR regime at the end of 1980s.

The university has been avoiding taking a position on these still ongoing protests, in which Russian flags are waving in the streets. Against this background, and in reflection of the experience with the unexpected holding of an academic roundtable discussion in East German Frankfurt, the essay discusses the ambivalence within liberal-democratic thinking regarding the amount of room researchers should or should not give to actors which would, despite their heterogeneity, be considered as far-right or illiberal because of their connections to far-right parties or movements. The roundtable discussion, which was planned to be about the weekly local street protests, was eventually joined by the street protesters themselves.

1 Peggy Lohse, " 'Montagsdemos' in Frankfurt an der Oder: Irgendwie dagegen," *Die Tageszeitung (taz)*, October 26, 2022, https://taz.de/Montagsdemos-in-Frankfurt-an-der-Oder/!5894970/.

2 Juliane Kirsch, "Das war auch ein bisschen blinder Aktionismus, weil man so gerne helfen wollte," *Antenne Brandenburg*, March 03, 2023, https://www.rbb24.de/studiofrankfurt/panorama/2023/03/ukraine-krieg-flucht-frankfurt-oder-ersthilfe-bahnhof.html.

3 Susannah Savage, "Protests over Food and Fuel Surged in 2022—the Biggest were in Europe," *Politico*, January 17, 2023, https://www.politico.eu/article/energy-crisis-food-and-fuel-protests-surged-in-2022-the-biggest-were-in-europe/#:~:text=Researchers%20have%20defined%20an%20unprecedented,by%20the%20war%20in%20Ukraine.

4 "East" or "East German" refers here to the four federal states (*Bundesländer*) of Brandenburg, Saxony, Saxony-Anhalt, and Mecklenburg-Pomerania of present-day Germany, which until German reunification in 1990 belonged to the German Democratic Republic (GDR). Frankfurt (Oder) is a town in Brandenburg along the border with Poland. When historical usage intended, the text will refer explicitly to the GDR.

The Case of the Monday Demonstrations

The Monday night demonstrations in October 2022 were the largest, but neither the first nor the last of such protest marches in Frankfurt (Oder). Such *Montagsdemonstrationen* originated in 1989, when East German civil rights activists marched together every Monday to protest against the GDR regime, first in Leipzig (the capital of Saxony), and then in other cities. "We are the people!" they chanted, until the Communist dictatorship ended in 1989.[5]

In 2004, in response to the introduction of another stage of labor market reforms, Monday demonstrations were organized in many parts of East Germany.[6] The causes of the protests could be found in the unresolved problems of the post-1989 transformations, and in the lack of economic prospects for the East's future. This may be the reason why these protests brought far more demonstrators into the streets of the East than in the West.[7] In October 2014, the new protest movement Patriotic Europeans Against the Islamisation of the West (Patriotische Europäer gegen die Islamisierung des Abendlandes: PEGIDA) in East German Saxony revived the revolutionary legacy of Monday demonstrations once again. For the first time, however, people marched with a clear xenophobic message against German immigration and asylum policies through the streets of Dresden.[8]

In 2020, during the pandemic, one could hear the "We are the people"[9] slogan again, when Monday demonstrations or marches became popular also in Western Germany. Protesters attacked the government for its restrictive covid-19 politics that included a hard lockdown, with school and shop closures as well as mandatory masking on public transportation. Much has been written about these new protest alliances, where anti-vaxxer, esoteric, or anthroposophically-minded[10] people marched together with members of the fringe movement to reinstate monarchy (known as the *Reichsbürger*), members of the Identitarian movement, or the far-right party known as the Alternative for Germany (Alternative für Deutschland: AfD).[11] In Frankfurt (Oder), as in other parts, these anti-covid restriction Monday demonstrations with their heterogenous protest scene have never really ceased. The Russian attack on Ukraine, with its energy-policy fallout, however, gave the movement a new boost.[12] As a signal against contemporary appropriation of the *Montagsdemo* legacy, in October 2022, in Leipzig, inhabitants hung banners from churches that were at the

5 "Vor 30 Jahren: Die erste Montagsdemonstration," Bundeszentrale für politische Bildung (BPB) (blog), August 29, 2019, https://www.bpb.de/kurz-knapp/hintergrund-aktuell/295940/vor-30-jahren-die-erste-montagsdemonstration/.

6 Explain, briefly, what (Hartz IV) is.

7 "Protests in East Germany," German History in Documents and Images (website), August 22, 2004, https://ghdi.ghi-dc.org/sub_document.cfm?document_id=3110.

8 "15.000 Anhänger der Pegida protestieren in Dresden," Zeit Online, December 16, 2014, https://www.zeit.de/gesellschaft/2014-12/pegida-demonstration-dresden-islam?utm_referrer=https%3A%2F%2Fwww.google.com%2F.

9 Andrew Curry, " 'We Are the People,' A Peaceful Revolution in Leipzig," Spiegel International, October 9, 2009, https://www.spiegel.de/international/germany/we-are-the-people-a-peaceful-revolution-in-leipzig-a-654137.html.

10 This is an ideology developed by Rudolf Steiner that combines natural healing with spirituality.

11 Paulina Fröhlich, Florian Ranft, and Erik Vollmann: "Mir reichts Bürger: Analyse der Montagsdemonstrationen in Chemnitz und Gera im Winter 2022/23," Bertelsmannstiftung Jahrbuch Extremismus & Demokratie 33, https://www.progressives-zentrum.org/wp-content/uploads/2023/02/Studie_Mir_reichts_Buerger_Montagsdemonstrationen_Progressives-Zentrum.pdf

12 Rieke Wiemann, "Studie über Montagsdemonstrationen: Russlandverständnis und Grünenhass", *Die Tageszeitung* (*taz*), March 1, 2023, https://taz.de/Studie-ueber-Montagsdemonstrationen/!5919384/.

heart of the Communist-era protests, reading: "2022 is not 1989—we're not living in a dictatorship."[13]

Taking Up Positions

"Green fascist!"—as my colleague, a professor of sociology, was greeted when looking from his office window down onto a noisy crowd. Evening courses were disturbed when the protest march passed back and forth in front of the main university building. As a political scientist raised in Berlin, I am interested in local developments and in illiberal politics. At the beginning, I approached this disturbing situation more in my role as an individual researcher with the duty to transfer knowledge to a broader public, and planned to organize a roundtable discussion about the protests to better understand what was going on here in East Brandenburg. We briefly discussed how such an endeavor could create an asymmetric power situation in which "we experts" would talk about "them," the "illiberal-minded protesters." In conclusion, however, we considered it normal academic practice not to invite activists to sit on a roundtable with experts.

Another colleague, arguing as a private politically-sensitive person who belongs to a public academic institution, was bewildered about the silence of our president and about the silent acceptance among us, the community of individual researchers united in the publicly-voiced unconditional condemnation of Russia's attack on Ukraine. The university, my colleague argued, should issue a public statement guaranteeing a safe place for its students, for Ukrainians, as well as people of color. She did not agree with the dean and the president, who called for the respect for freedom of speech as one of the central liberal principles. Doesn't a university have, especially in such a particular and here present situation of Ukrainian trauma due to Russian aggression, the duty or authority to intervene—with a public statement, or even by calling for a ban area following the idea of "safe spaces"?[14] This political question has not been internally discussed yet, despite the fact that the demonstrations continue—every Monday evening. We realized the obvious, that one's perspectives can differ depending on the position or role one has. As a representative of a public institution, one acts differently than as an individual researcher with academic habits and the potential to create a knowledge gap with non-academics. As politically engaged individual, one may have a clear understanding of where to draw a red line. In reality, however, these positions are even difficult to discern in a university setting.

The Ambivalence of the Liberal-Illiberal Dynamic

From a social science perspective, the Monday demonstrations represent an interesting case study for researching what my colleague Oliver Hidalgo and I had called "the ambivalences of democracy."[15] At the center stands the idea that neither democracy nor liberal projects are free of illiberal elements. Liberal principles such as freedom and rights always find a counterpart that can turn towards an illiberal direction if one side gets overemphasized. The meaning of "illiberal" that applies also

13 Kate Connolly, " 'Angry Winter': Germany's Monday Night Protests Unite Far-Right and Left." *Guardian*, December 7, 2022, https://www.theguardian.com/world/2022/dec/07/angry-winter-germanys-monday-night-protests-unite-far-right-and-left.

14 Asli Telli Aydemir, "No Platforming: Safe Campus and Ambivalent Twists on Freedom of Speech," *Navigationen - Zeitschrift für Medien- und Kulturwissenschaften* 19, no. 2 (2019): 107–120, https://doi.org/10.25969/mediarep/13821.

15 Anja Hennig and Oliver Hidalgo, "The Ambivalences of Democracy: Religion and Illiberal Politics," in *Illiberal Politics and Religion in Europe and Beyond: Concepts, Actors, and Identity Narratives*, edited by Anja Hennig and Mirjam Weiberg-Salzmann (Frankfurt/New York: Campus/University of Chicago Press, 2021), 46.

to the case study is linked here to an opposition or misuse of political liberal freedom and equality principles. The protesters (or some of them) can be considered illiberal because they tend to claim freedom rights for one side only, which in reality implies intolerance of the right to dissent, the support of Putin as a warlord or the aggressive defamation of members of the governing elite. The relationship between the liberal and illiberal is, thus, dynamic and actor-centric. Do we protect individual freedom or the freedom of a group? A pure majoritarian approach to freedom would restrict the individual one. An authoritarian overemphasis of individual rights leads to what is perceived as leftist illiberalism.[16] In this vein, to ban those protesters from walking along the University building would violate their right to freedom of assembly and of expression, but may help Ukrainian students feel safer and free to decide where to go.

Looking from liberal democracy theories under the conditions of cultural pluralization, the question is to what extent a democracy should tolerate the intolerant.[17] With Stepan's Twin Toleration, the solution seems simple: the freedom of one group ends where it threatens the freedom of others.[18] It follows the human rights approach to freedom of speech and expression for individuals and groups. Article 10 of the Human Rights Convention protects one's right to hold one's own opinions and to express them freely without government interference. An authority may be allowed to restrict your freedom of expression only if, for example, someone expresses views that encourage racial or religious hatred. However, the relevant public authority must show that the restriction is appropriate.[19]

A more rigid approach that only recently is seen increasingly also in Germany, concerns the practice among students of "no platform," a policy instituted by the British National Union of Students (NUS) in the 1970s. It allowed students to withhold space and funds from fascist or racist groups and speakers and to disinvite them if invited by certain student groups or encourage protest to prevent them from speaking on campus.[20] Over time, the NUS's targeted campaign was applied to a wider range of speakers, espousing a variety of unpopular views, including racist, anti-Semitic, misogynistic, Islamophobic, and transphobic views—a practice also established at colleges and universities in the U.S. and in Australia.[21]

Debates about "no platform" and free speech at universities nowadays often overlap with discussions on academic freedom, especially in the context of cases of academics known for espoused racialist science or racist statements.[22] However, similar to the gray areas entered into by our protesters, not every anti-pluralist

16 Hennig and Hidalgo, "The Ambivalence of Democracy," 46; Marlene Laruelle, "Illiberalism: A Conceptual Introduction," *East European Politics* 38, no. 2 (June 2022), 303-327, https://doi.org/10.1080/21599165.2022.2037079.

17 Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (Cambridge, UK: Cambridge University Press, 1998), https://doi.org/10.1017/CBO9780511813245; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), https://doi.org/10.1093/0198290918.001.0001.

18 Alfred C. Stepan, "Religion, Democracy, and the 'Twin Tolerations,' " *Journal of Democracy* 11, no. 4 (October 2000): 37–57. https://doi.org/10.1353/jod.2000.0088.

19 "Article 10: Freedom of Expression," Equality and Human Rights Commission, June 3, 2021, https://www.equalityhumanrights.com/human-rights/human-rights-act/article-10-freedom-expression.

20 Evan Smith, "No Platform: A History of Anti-Fascism, Universities and the Limits of Freedom of Speech," (London: Routledge, 2020), 3.

21 Aydemir, "No Platforming."

22 Smith, "No Platform, 12, 14; Anja Hennig, "Political Genderphobia in Europe: Accounting for Right-Wing Political-Religious Alliances against Gender-Sensitive Education Reforms since 2012," *Zeitschrift für Religion, Gesellschaft und Politik*, no. 2 (2018): 193–219.

perspective is automatically racist or visible as such. Aydemir brings the liberal-illiberal ambivalence of the "no platform" practice to the point: the "No platform" movement's supporters "seem to flout liberal ideals of tolerance, pluralism, and open public discourse." Unlike the situation in the 1970s with the former British far-right National Front as the main enemy, critiques now consider no-platforming also a way "to suppress credible positions that are widely accepted by reasonable, sincere, and informed people." While Aydemir agrees that "some practitioners of no platforming expressly would reject liberal ideals," she also refers to the ambivalences of liberalism through "its focus on individual negative liberty, its insistence on a distinction between the public and private realms, and its idealization of the public square as a place of reasoned deliberation." From this point of view, "no platforming might be seen as an organized mode of resistance to the abuse of liberal ideals for oppressive ends."[23]

The liberal-illiberal dynamic became even more complex as actors from the far right and conservative academic or political scene now make their own free speech, academic freedom, or autonomy claims, a weaponization of liberal principles with the potential to disguise its illiberal intention.[24] In the case of Monday demonstrations already during the pandemic, it is the quest for freedom and sovereignty, prominently proclaimed in Thüringen, where the outstanding far-right politician Bernd Höcke[25] leads the AfD.[26] Coming back to the Monday demonstrators, one can argue that liberal rights do not automatically imply that they have a right to speak at a university, while the AfD as an elected party has a right to appear in public broadcasting. In conclusion, the existence of liberal principles such as academic freedom, free speech, or freedom of assembly, does not prevent one from individually or as part of an academic institution defining red lines and dealing with potential consequences of implementing them.

East German Particularities

West Germans on average still earn more for the same work and many will inherit real estate. In the context of crisis, the *Guardian* concludes that "the cost-of-living crisis" has driven the agenda, "with Germans in the east having been hit disproportionately hard by rising prices, owing to having lower wages, smaller pensions and less long-term accumulated wealth—whether property, inheritance or investments—than those in western Germany." In this light, protesters who have urged "the government to repair and reopen the Nord Stream 2 gas pipeline to Russia," are concerned about inflation, which is at its highest level in 70 years, and about the war in Ukraine, to which they believe Germany should not be contributing weapons.[27]

The quest for autonomy or self-determination can be also read as resistance to top-town state decisions such as mask-wearing rules during the pandemic or sanctions on Russia as punishment for its invasion of Ukraine.[28] The dilemma of that ambivalence is that most concerns about the social and economic effects of the war are legitimate

23 Aydemir, "No Platforming," 10.

24 Smith, *No Platform*, 3.

25 Verfassungsschutzbericht 2021 Freistaat Thüringen, https://verfassungsschutz.thueringen.de/fileadmin/Verfassungsschutz/VSB_2021.pdf.

26 Lisa Wudy, Anna Hönig, and Uwe Kelm, "Hauptsache Protest: Was Demonstranten in Thüringen fordern," Mitteldeutscher Rundfunk (broadcast station), Thüringen, September 13, 2022, https://www.mdr.de/nachrichten/thueringen/demos-protest-politik-energiekrise-ukrainekrieg-corona-100.html.

27 Connolly, " 'Angry winter.' "

28 Connolly.

and comprehensible; however, the coalition of actors, their support of a dictator, and their freedom quest against the state, are problematic from a liberal-democratic point of view.

In the case of Frankfurt (Oder), as with other East German universities, the academic elite is with few exceptions of West German origin and/or lives in Berlin. Most students and academic workers, moreover, commute from Berlin to Frankfurt, and are therefore on the way back home, when Monday protests start. It is an asymmetric relationship between the university and parts of the city,[29] a situation which could be also interpreted through the lens of post-colonialism. In this vein, the remainder of this essay takes the mentioned roundtable event as an example to elaborate four patterns of ambivalence of such a liberal-illiberal dynamic, and to discuss how these can impact academic research and a researcher's positionality.

Four Lessons from a Roundtable Discussion with Monday Protesters

The roundtable discussion was scheduled for a Wednesday evening. During the Monday protest two days before, the organizers encouraged fellow protesters to join our discussion. Since nobody could foresee what would going to happen, the university administration asked us to elaborate a security concept and to enforce our "house rules."[30] The panel consisted of a professor of history and expert on Russian propaganda and the current war situation, a master's-degree student completing her thesis about anti-covid-restriction protests in a city nearby, and the head of the local Democracy Learning program sponsored by the German government. An invited journalist and expert on radical-right networks in the region of Brandenburg was announced as a panelist but resigned two hours before because he had to join a TV talk on mass house searches by the police against *Reichsbürger* accused of planning a *putsch* in Germany, which had astonishingly happened on that same day.[31]

Our discussion at the roundtable went well. I only had to prevent two people from individually filming the event. The situation became emotional only when the floor was opened to the audience. Interestingly, only speakers from the protest scene (about 30 to 40 people) made comments, some of them impolite and politically difficult to accept (the defense of Putin was a dominant theme). At the same time, this unusual event had provided room for conversation with two usually separated groups. Several protesters even remained for informal talks afterwards. Could this be the beginning of a beautiful friendship? Not really, since the marches with Russian flags continued, local anti-march activists got attacked, and we as organizers did not agree on a follow-up event that would addresses the protest milieu.

What are the lessons to be learned? I find four interrelated patterns of ambivalence noteworthy which might be relevant also for other case studies: The first concerns again the public space one should give or limit to those who present a vision of reality that differs from the common liberal-democratic sense. The second point refers to the unintended practice or danger of self-censorship that may even function as a strategy to prevent unpleasant encounters. The third point addresses the question

29 In more generalized terms, we can speak of an urban-rural or center-periphery divide that exists also in many other parts of the world.

30 These house rules stipulate that we as university members can decide what cannot be done. An example was an individual recording of the event that was transmitted via livestream. Moreover, in the case of an attempted heckler's veto we would have called the security officer to escort such a person outside the building or to call the police, all of which was stated prior to the start of the event.

31 Florian Fade, "Was nach der Razzia kommt," *Tagesschau*, February 15, 2023, https://www.tagesschau.de/investigativ/wdr/razzia-reichsbuerger-111.html.

of public education for such environments, and the role of academia. The final aspect addresses the academic practice of using prefigurative concepts to categorize something as illiberal or right-wing. To what extent does the search for right-wing/illiberal elements narrow the focus too much and exclude other facets of a policy or an actor? Are there alternatives?

No-Platforming or Representation Losers?

The first point has at least two facets. One concerns a question fiercely discussed in German politics and public media: whether (in the case of politics the "firewall debate") it is legitimate for a democratic party to cooperate with AfD representatives at the municipal level and whether it is legitimate to provide AfD representatives a platform on public broadcast stations or talk shows. How much public space and, thus, possibilities to influence people on public broadcast platforms, should representatives from a right-wing nationalist party that got more votes than the threshold of 5% and entered the parliament get?[32] The ambivalence is here between the social duty to represent the variety of society and the danger of normalizing illiberal utterance as well as a self-victimization following the populist friend-enemy narrative of "we the normal people" versus "those above us, the elite."[33] The German public media, which tries to represent a range of views from across the political spectrum, is often considered such an elite project. Studies show that trust in the media in Germany—including public broadcasting—remains high, but the number of people who say that the media does not represent social diversity (or their own opinions and values) is surprisingly high.[34] A second facet deals with the aforementioned freedom of speech and expression principle, and is partly regulated by law if it comes to hate speech or Holocaust denial. But there exists a gray area in between the radical margins if one thinks of conspiracy narratives.

We had the Great Reset idea expressed in the audience, a term which emerged during the World Economic Forum 2020 in Davos, Switzerland, expressing ideas about how to transform the post-pandemic economy to make it sustainable and to foster more social participation.[35] This idea went viral on the global anti-covid-restriction protest scene, which generated the "baseless statements that the Great Reset is a strategic part of a grand conspiracy by the global elite, who somehow planned and managed the covid-19 pandemic. In this narrative, lockdown restrictions were introduced not to curb the spread of the virus, but to deliberately bring about economic collapse and a socialist world government, albeit run for the benefit of powerful capitalists."[36]

Another person began his talk stating that we all would know that our media system is "synchronized" (*Gleichgeschaltete Presse*), a term used to describe the process of

32 "Thüringen / AfD, CDU und die Diskussion um die Brandmauer," *Deutschlandfunk*, September 26, 2023, https://www.deutschlandfunk.de/brandmauer-cdu-afd-politik-100.html.

33 For an analysis of the discursive strategies of right-wing populists, see Ruth Wodak, *The Policy of Fear: What Right-Wing Populist Discourses Mean*. (Los Angeles: Sage, 2015), https://doi.org/10.4135/9781446270073.

34 Wolfgang Schulz, "Müssen ARD und ZDF in ihre Talkshows AfD-Politiker einladen?" Legal Tribune Online (LTO), July 2, 2023, https://www.lto.de/recht/hintergruende/h/afd-politiker-maischberger-illner-afd-talkshows/; Hansjörg Friedrich Müller, "Mit der AfD reden, nicht nur über sie: Eine Talkshow sorgt für Empörung in Deutschland," *Neue Züricher Zeitung*, July 2, 2019, https://www.nzz.ch/international/mit-der-afd-reden-nicht-nur-ueber-sie-eine-talkshow-sorgt-fuer-empoerung-in-deutschland-ld.1493029.

35 "Great Reset," Bundesamt für Verfassungsschutz, https://www.verfassungsschutz.de/SharedDocs/glosaareintraege/DE/G/great-reset.html

36 "What Is the Great Reset—and How Did It Get Hijacked by Conspiracy Theories?" BBC, June 24, 2021, https://www.bbc.com/news/blogs-trending-57532368.

complete Nazification in Germany also by creating a conformist media regime.[37] Did he cross a red line of what can be publicly said? My colleague quickly interrupted him to clarify that *Gleichschaltung* would not be an accurate description of today's German media system. The speaker went on to defend Russia against the alleged Western pressure created by NATO enlargement.

We were confronted with opinions or worldviews which, in this setting, were not directly harmful but which, in light of the chronology of the Russian war against Ukraine, we felt were hardly acceptable. Our livestream registered an hour of similar statements. Usually, we publish recorded events. This time, however, our dean was hesitating because of the ambivalent "gray area." Freedom of speech was not an argument anymore. According to the legal office, the question of publishing the video would be less an ethical than a political issue: namely, whether the university wants to be associated with such statements or not. The president was also hesitating and, thus, the link remained unpublished.

One conclusion is that we have to be prepared for the probability of such ambivalent situations, such gray areas and their proximity to subjective red lines that may be contested, and which require decisions about limiting the scope of free speech. Another conclusion is: whom should we as individual academics provide a platform and whom should we not, even at the risk of limiting freedom of speech? Is the university campus the right place for bridging gaps between the hierarchically-structured liberal-academic and non-academic groups? And how much room for maneuver does a university representative have? These questions lead to the interrelated subject of self-censorship.

The Danger of Self-Censorship

Self-censorship is a very strong concept for the case discussed here. Unlike with attacks, for example, on gender studies,[38] there was no external pressure not to say or to write something that one would otherwise do. I refer to a more subtle fear: the anticipation of potential consequences if something is said or written. Our master's student on the roundtable was anxious about publishing the name of the city where she was researching anti-coronavirus-restrictions protests. A relative of hers has a house in the area and he did not want to be associated with someone researching anti-covid-restrictions protest marches in the neighborhood. We amended our press release accordingly, but I felt discomfort with her indirect pressure. And I felt ambivalent about accepting her perspective on the limited scope of her freedom but also aware about the anxiety these protesters can cause.

Another situation was less subtle. In preparation for the roundtable, I had a talk with the then-absent expert on far-right regional networks about his insights on Frankfurt (Oder). He had told me that far-right forces would be deeply involved in keeping these Monday demonstrations going. Moreover, he sees the city community in danger of being captured by these actors, who are not, as in the 1990s during the "baseball-bat years,"[39] recognizable as neo-Nazis or hooligans. He described the current scene as one of smart people, who would increasingly get in relevant positions or gain

37 "Gleichschaltung: Coordinating the Nazi State", United States Holocaust Memorial Museum, January 23, 2020, https://encyclopedia.ushmm.org/content/en/article/gleichschaltung-coordinating-the-nazi-state.

38 Elżbieta Klimek-Dominiak, "Gender Studies and Women's Equality as Orwellian 'Thought Crimes'? The Threat of Self-Censorship and Polish Academic Autobiographical Resistance," *Biography*, 42, no. 4 (2019): 784–811, https://doi.org/10.1353/bio.2019.0078.

39 David Begrich, "Baseballschlägerjahre in Ostdeutschland: Sie waren nie weg," *Die Tageszeitung* (*taz*), December 2, 2019, https://taz.de/Baseballschlaegerjahre-in-Ostdeutschland/!5642847/.

properties. Without his expertise[40] at the table, I avoided mentioning the existence or relevance of far-right actors. Interestingly enough, the almost complete absence of this topic seemed to have avoided aggressive encounters. At the same time, I felt like I had addressed only half the truth.

The ambivalence of self-censorship is that it may be more often than not an unintended strategy to facilitate communication between the non-like-minded. Such an approach, however, goes hand in hand with self-restricting one's right to freedom of speech and, depending on the audience, with simultaneously tolerating insulting comments. Doing an interview with a far-right person for research purposes, one certainly should carefully hold back certain information and try to create a friendly atmosphere and even play with gender roles. In such a situation the researcher is the regisseur. Trickier are unintended situations in which verbal attacks are possible.

Engaged Scholarship?

The third ambivalence of the liberal-illiberal dynamic relates to the more practical, but also political, question of whether a university should provide resources, or whether academic teachers should attempt and are able to engage with people who rely on what we call disinformation,[41] who reject public media and institutions and are skeptical towards the democratic state. Viadrina has a well-established center for conflict research and management, which weeks earlier had invited Ukrainian students to talk about their unexpected encounters with the Monday protests. When one of the conflict-management experts, our history professor from the panel, and I suggested organizing a follow-up workshop about the Ukraine-Russia conflict that explicitly addresses the protest scene, university representatives rejected the idea. We were to concentrate on doing research and not on public education. A more general counter-argument relied on the conviction that the targeted group would neither come nor accept the truth about the Russian aggression against Ukraine. Both scenarios were quite probable. But is this reason enough not to try? We had elaborated a more bottom-up-oriented workshop concept to engage with the views of the protesters. However, under the usual conditions of limited time and financial resources, we did not further engage.

A small group of local counter-activists, among them a Russian and two Ukrainian students, were so brave as to confront the protesters with Dadaistic interventions during the protest marches. Slogans such as "We want more sunshine for the city," or "cheese is better than ham" were emblazoned on their banners. "We try to get a few followers away from these protests by involving them in a talk and telling them our stories."[42] The small group of academic Monday demonstrations observers told us that they found a few people who entered into discussion with them and who may have changed their views because of such a respectful conversation. However, a few Mondays later in early 2023, when this small group lay down in the street to block the march in front of the university building, other protesters pushed them aggressively away and the police had to intervene.

40 Olaf Sundermeyer, "Von Rechten organisierte Proteste finden Anschluss an die gesellschaftliche Mitte," *rbb24*, September 27, 2022, https://www.rbb24.de/studiofrankfurt/politik/2022/09/brandenburg-proteste-energiekrise-rechtsextreme-demos.html.

41 "Factsheet 4: Types of Misinformation and Disinformation," United Nations High Commission for Refugees (UNHCR), https://www.unhcr.org/innovation/wp-content/uploads/2022/02/Factsheet-4.pdf.

42 "Gegenprotest auf der 'Montagsdemo' in Frankfurt," *Oderwelle*, October 24, 2022, https://oderwelle.de/gegenprotest-auf-der-montagsdemo-in-frankfurt-oder/.

Given the fact that social inequality, nationalism or gender-, trans-, and homophobia are rising, partly with active networks in universities and transnational institutions, the praxis of scholar-activism is more and more widespread. It is one way to blend rigorous scholarship with committed action that includes research, social activism, teaching-mentorship and policymaking. One goal among others is to make academia a welcoming place for all, also for marginalized communities. This idea is more narrowly grasped by the concept of "engaged scholarship" which encompasses a wide range of research that seeks to impact communities outside academia. Over time it now refers to "virtually any interaction that occurs between communication scholars and those outside the academy and doesn't necessarily have to have a focus on social justice or address the needs of marginalized groups."[43] Unlike scholar-activism engaged scholarship does not require direct engagement with participants throughout the research process and is not necessarily social justice-oriented.[44] This debate on scholar-activism cannot be deepened here; suffice to show that ideas about the duty and scope of research and of universities are in times of various crises shifting. However, even if a scholar is committed to engage with certain social groups beyond considering them a research object, the question remains whether groups with links to the far right should be invited. The last pattern of the liberal-illiberal ambivalence approaches the question of how to approach illiberal scenes from a different point of departure.

Avoiding Labeling "Illiberals"?

At a certain point during the roundtable discussion, one person from the protest milieu blamed the absent expert on far-right networks for "always call[ing] us Nazis. But what actually is a Nazi?" she asked to then conclude: "Not me." This was obviously an exaggeration as the addressed expert, for protesters a public enemy,[45] would use less placative concepts to refer to far-right networks involved in the Monday demonstrations. One professor with an outstanding expertise on comparative research on the radical right remembers how in the 1990s and early 2000 in Frankfurt (Oder), radical and visually identifiable neo-Nazis were beating up people and sometimes also disturbing academic events.[46] Today, fortunately, the violent scene is small, but Frankfurt (Oder) has, as does East Brandenburg in general, one of the highest shares of AfD voters (24%) in Germany.[47] A book on extreme parties in Brandenburg illustrates the right-wing potential in the region.[48]

In academic research, we are trained to provide conceptual clarifications that speak to the respective literature in the field. In anti-gender or radical right research, such

43 Jennifer Richter, Flóra Faragó, Beth Blue Swadeber, Denisse Roca-Servat, and Kimberly A. Eversman, "Tempred Radicalism and Intersectionality: Scholar Activism in the Neoliberal University," *Social Issues* 76, no. 4 (2020), 1015, http://dx.doi.org/10.1111/josi.12401.

44 Jennifer Richter, Flóra Faragó, Beth Blue Swadeber, Denisse Roca-Servat, and Kimberly A. Eversman. "Tempred Radicalism and Intersectionality: Scholar Activism in the Neoliberal University," *Social Issues* 76, no. 4 (2020): 1016/1015. http://dx.doi.org/10.1111/josi.12401.

45 The regional public broadcast station rbb had organized a roundtable discussion where the public was invited to talk with representatives from all parties, the AfD included, and the mentioned expert. He had almost no chance to complete a sentence as the crowed was shouting at him.

46 Jacqueline Westermann, "Studierende der Viadrina wollen Aufarbeitung rassistischer Angriffe in den 90ern," *Märkische Oderzeitung* (MOZ), June 24, 2022, https://www.moz.de/lokales/frankfurt-oder/europa-universitaet-frankfurt-_oder_-studierende-der-viadrina-wollen-aufarbeitung-rassistischer-angriffe-in-den-90ern-65124133.html

47 Take, for instance, the city of Görlitz in the Saxon border region: the AfD won 35.6% of the vote there in the 2021 federal elections. Die Bundeswahlleiterin: Bundestagswahl 2021, Görlitz; https://www.bundeswahlleiterin.de/bundestagswahlen/2021/ergebnisse/bund-99/land-14/wahlkreis-157.html.

48 Christoph Schulze and Gideon Botsch, *Rechtsparteien in Brandenburg: Zwischen Wahlalternative und Neonazismus, 1990–2020* (Berlin: be.bra Verlag, 2021).

concepts usually do not match the self-understanding of those actors who we are investigating. In interviews with representatives from illiberal milieus (e.g., anti-gender activists), we even would avoid addressing them directly as right-wing or illiberal. For a journal publication, however, the evaluation of the content of their utterances would probably lead to a conceptual systematization as "right-wing" or "illiberal." At the same time, and we experienced this during the talk, our academic labels for those who are targeted are perceived more often than not as being turned into an attack.

Actors do exist who openly pursue an illiberal agenda by striving to influence politics and society against minority protection, individual freedom, pluralism, etc. In radical-right research one would refer to "the margins" within a society. If we do not call illiberals by their name and analyze conditions and effects of their agency, we fail; at the same time, however, we help them and their followers to self-victimize as persecuted by liberals.

Most difficult, however, is to investigate actors in the gray area between "the illiberal margins" and "the political center" such as substantial parts of these Monday protesters or followers of far-right driving forces. The organized far right is explicitly targeting that gray area, which may be more open to receiving and disseminating disinformation. Recent literature refers to the danger of normalization of far-right discourse.[49] To me it remains an open question whether one should consider people with respective views simply as far-right or illiberal, or whether one should avoid such pre-configurative concepts and refer to what is observable (political campaigns, rhetoric, narratives, policy proposals) without labeling and condemning it.

A recent German study presenting data from interviews with Monday protesters concludes that they would share "a different understanding of democracy."[50] Is that euphemistic or a helpful attempt to better understand these people? The differentiation between types of democracies is not new. Fareed Zacharias coined in 1998 in contrast to liberal democracy the concept of illiberal democracy[51] that Victor Orban had applied to refer to his own—clearly different—understanding of a democracy that objects central principles of political and cultural liberalism.[52]

Raj Kollmorgen - and this links back to the previous question about engaged scholarship and with whom to engage - a German sociologist with distinguished expertise on the societal effects of post-communist transformations in Eastern Germany calls for a better dialogue and appreciation of different views on democracy resulting from partly painful post-communist transformation experiences. With regard to the increase of protests movements (climate, anti-Covid, social justice, energy), he proposes to think about new institutional forms of democratic representation which includes more actors than political parties only.[53] Another recent study on mass radicalization by Julia Ebner, which results from undercover

49 Wodak, *The Politics of Fear*; Cas Mudde, *The Far Right Today* (Cambridge, UK: Polity Press, 2019).

50 https://www.progressives-zentrum.org/publication/mir-reichts-buerger/.

51 Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs* 76, no. 6 (November/December 1997): 22–43.

52 András L. Pap, *Democratic Decline in Hungary: Law and Society in an Illiberal Democracy* (London: Routledge, 2018), https://doi.org/10.4324/9781315168005.

53 Henry Bernhard, "Soziologe: Wir müssen die demokratischen Institutionen sinnvoll ergänzen, " *Deutschlandfunk*, January 22, 2023, https://www.deutschlandfunk.de/wehrhafte-demokratie-raj-kollmorgen-ueber-fehlende-akzeptanz-demokr-prozesse-dlf-f5099164-100.html.

research in the most radical digital communication bubbles such as incels, concludes that humaneness is the only meaningful way to engage with these milieus.[54]

For some such tolerant and emphatic approach may downplay how liberal democracies are under siege now. Moreover, it is challenging to engage with views hostile to the democratic constitutionality of the state of various facets. From a normative or ethical point of view, it may have some political impact to recognize such "different views" as relevant and to include them into one´s conceptual work beyond the labels of far-right, right-wing or illiberalism. Whether such recognition of "other understandings of democracy" paves the way to a "normalization" of illiberal worldviews or to an inclusive discourse,[55] may depend among others on the governance of discursive hierarchies.

Conclusion: Dealing with the Illiberal-Liberal Dynamic

In conclusion, researchers and representatives of academic institutions should be both sensitive and investigative regarding signs of anti-state positions, and open to dialog with a constant discussion about where to draw red lines and how to respond if they are crossed. "No platform" per se is not a solution. Individual researchers should be attentive towards self-censorship or respective subtle fears and simultaneously defend the value of freedom of speech. The different political cultures in different countries may confine the limits of what can be said in different ways. Due to the Nazi past, in German public institutions, forums tend to be quite limited. Due to the Communist legacy, social and geopolitical inequalities continue to shape the public discourse in unequal ways and foster a West German academic elitist perception of East German deviancy, upholding West Germany as the norm.[56]

At the same time, the academic field is increasingly under pressure from those who consider certain truths as lies and threats or who do not accept the idea of freedom of inquiry. This requires sensitive strategies for how to react—as an individual researcher, as a university, as a private person. The concepts of scholar activism or engaged scholarship legitimate academic activities beyond teaching, researching, or consulting. The final conclusion is ambivalent: on the one hand, most potential for positive change seems a more sensitive approach towards labels and attempts to engage with certain illiberal ideas accepting them also as contribution to the public discourse; on the other hand, however, there is the danger of providing a platform for or legitimating certain positions that are hostile to the democratic constitutionality of the state or discriminatory.

54 Julia Ebner, *Massenradikalisierung: Wie die Mitte Extremisten zum Opfer fällt* (Berlin: Suhrkamp 2023). https://www.suhrkamp.de/buch/julia-ebner-massenradikalisierung-t-9783518473146.

55 Wodak, *The Politics of Fear*.

56 Dirk Oschmann, *Der Osten: eine westdeutsche Erfindung: Wie die Konstruktion des Ostens unsere Gesellschaft spaltet* (Berlin: Ulstein, 2023).

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Illiberal Constitutionalization and Scholarly Resistance: The Cases of Israel and Hungary

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Abstract

This paper explores the role of constitutional scholars in resisting illiberal constitutionalization attempts or combating existing illiberal constitutional systems. I use Israel as a case study for the former and Hungary for the latter scenario. In Israel, following the initiation of a judicial reform by the new government of Benjamin Netanyahu in early 2023, supported by far-right nationalist and ultra-Orthodox parties with the aim of dismantling the separation of powers and establishing an unbound executive, constitutional scholars, alongside street protesters, voiced their opposition to illiberalism. Since the start of the war in Gaza, triggered by Hamas' attack on Israel in October 2023, it became evident that the Palestinian issue also calls for a constitutional solution. In stark contrast, Hungary has seen minimal resistance after the enactment of the Fundamental Law in April 2011, Viktor Orbán's new constitution for an illiberal regime. The paper investigates the role of constitutional scholars in both countries in seizing or missing the constitutional moment.

Keywords: illiberal constitutions, resistance, Israel, Hungary

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Constitutional Moments and the Role of Intellectuals and Scholars

"Constitutional moments" are points in history when constitutional changes are fostered by a particular mobilization and engagement of the people, representing a transformative expression of popular sovereignty through the self-conscious consent of a majority of ordinary citizens.[1] The concept was coined and developed by American legal scholar Bruce Ackerman in his trilogy on the evolution of the US Constitution. Usually, constitutional moments occur when a state is about to alter its constitutional system, but sometimes, a constitutional crisis or failure leads to constitutional change.[2]

The question I seek to address here is whether the current situations in Israel and Hungary can be considered constitutional moments, necessitating popular mobilization led by the political and professional elite, such as constitutional scholars. Israel is used as a case study since it is currently undergoing an attempt at illiberal constitutional change, while Hungary represents an already existing illiberal constitutional system. In Israel, in early 2023, the new government of Benjamin Netanyahu, supported by far-right nationalist and ultra-Orthodox religious parties, initiated a judicial reform aiming to dismantle the separation of powers and establish an unbound executive. Ever since the onset of the war in Gaza, which was reignited after Hamas' attack on Israel on October 7, 2023, it has become clear that the Palestinian issue also calls for a constitutional solution. This raises the question whether, after more than 75 years since the establishment of the modern State of Israel, the moment has finally arrived to enact a written constitution for it. The various attempts to draft such a formal document since 1948 have so far fallen short. In Hungary, meanwhile, the current political and constitutional system was introduced with the adoption of the Fundamental Law in April 2011, the new constitution of Viktor Orbán's illiberal regime. There have been limited attempts to call for a return to liberal-democratic constitutionalism, either by amending or replacing the current constitution.

In both cases of illiberal attempts to change the constitution, I investigate the role that constitutional scholars play, either seizing or missing the constitutional moment to protect liberal-democratic constitutionalism. The focus is on constitutional scholars because throughout the history of constitutionalism, beginning with *The Federalist Papers* promoting the ratification of the Constitution for the United States, "scholactivism" (a blurring of the line between scholarship and activism) has been consistently instrumental in triggering changes. The participation of scholars in political action, in itself, is a contested issue, and the debate on whether intellectuals bear the responsibility to resist autocratization has a long history. Already in 1927, the French philosopher Julien Benda published his much-debated short book, *La Trahison des Clercs* (published in English as *The Treason of Intellectuals*), denouncing as moral traitors those who refuse to defend truth due to political considerations.[3]

1 See Bruce Ackerman, *We the People*, 3 vols. (Cambridge, Mass.: Harvard University Press, 1991–2014).

2 This theory extends Ackerman's concept beyond American constitutional history. See Sujit Choudhry, "Ackerman's higher lawmaking in comparative constitutional perspective: Constitutional moments as constitutional failures?", *International Journal of Constitutional Law*, Volume 6, Issue 2, April 2008, Pages 193–230, https://doi.org/10.1093/icon/mon002.

3 In 1928, the Hungarian poet Mihály Babits published a comprehensive review of Benda's book with the same title in the literary montly *Nyugat*, also sparking controversy in Hungary. See Babits Mihály, *Az írástudók árulása* (Magvető: Budapest, 1986).

The activist role of constitutional scholars has also been the subject of recent debates within legal academia. One side of the debate posits that truth-seeking and knowledge dissemination are constitutive of the role of a scholar, and the research driven by "scholactivism" is distinguished by a motivation to directly pursue specific concrete outcomes (that is, outcomes that are more than merely discursive) through one's scholarship.[4] Critics of this perspective emphasize that scholarship in general, and constitutional scholarship in particular, cannot be apolitical, value-neutral, disengaged, insular, confined to the ivory-tower, a part of the status-quo, elitist, and dispassionate, motivated by reason alone.[5] The debate is particularly relevant for scholars dealing with illiberal constitutional regimes that contradict the value system of global constitutionalism.[6] And especially in the context of a historically important constitutional moment, scholars may need to reflect on their place in society when proponents of constitutional democracy need the professional help of constitutional scholars.

Israel: Towards Autocracy?

To delve into the consitutional moment in the case of Israel, a brief historical overview is warranted. The State of Israel was established on May 14, 1948, through its Declaration of Independence, ensuring "complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex."[7] Primarily a political document, it sought to distinguish between legislative and constitutive powers by creating a Provisional State Council and a Constituent Assembly. However, several arguments against the adoption of a written constitution have persisted.[8] A significant impediment to enacting a constitution comes from the divergence between Orthodox and secularist circles regarding the unresolved questions of the relationship between religion and state, as well as the national-cultural or religious nature of the declared Jewishness of the state.[9] In essence, the main reason for uncertainty has been the profound ideological rift in Israeli society between the secular and religious visions of the state.

Some other reasons have also contributed to the hesitation towards adopting a written constitution for the State of Israel: its first Prime Minister, David Ben-Gurion, sought minimal restrictions on his power; a considerable number of Jews resided abroad, raising concerns about entrenching a constitution by those who are residing in Israel; the British, from whose League of Nations mandate the State of Israel declared its

4 See Tarunabh Khaitan, "On scholactivism in constitutional studies: Skeptical thoughts", *International Journal of Constitutional Law*, Volume 20, Issue 2, April 2022, Pages 547–556, https://doi.org/10.1093/icon/moac039.

5 See the summary of and the rejoinder to the discussion written by its instigator: Tarunabh Khaitan, "Facing Up: Impact-Motivated Research Endangers not only Truth, but also Justice," *Verfassungsblog: On Matters Constitutional*, September 6, 2022, https://verfassungsblog.de/facing-up-impact-motivated-research-endangers-not-only-truth-but-also-justice/.

6 "Global constitutionalism claims that the principles of the rule of law, a separation of powers, fundamental rights protection, democracy, and solidarity, together with institutions and mechanisms securing and implementing these principles … should be used as parameters to inspire strategies for the improvement of the legitimacy of an international legal order and institutions without asking for a world state." See Anne Peters, "Global Constitutionalism," in *The Encyclopedia of Political Thought*, ed. Michael T. Gibbons (London: Wiley-Blackwell, 2015): 1484–1487, DOI: 10.1002/9781118474396.wbept0421.

7 Provisional Government of Israel, Declaration of Independence, *Official Gazette*, no. 1; Tel Aviv, 5 Iyar 5708 (May 14, 1948), p. 1, https://main.knesset.gov.il/en/about/pages/declaration.aspx.

8 See, for instance, Amos Shapira, "Why Israel Has No Constitution," *St. Louis U. Law Journal* vol. 37, no. 2 (1993), p. 283.

9 See Declaration of Independence: "We, members of the People's Council, representatives of the Jewish community of Eretz-Israel and of the Zionist movement … hereby declare the establishment of the Jewish State in Eretz-Israel, to be known as the State of Israel."

independence in the first place, have no codified, written constitution of their own either; and religious communities have objected, asserting that there was already a constitution for Israel—the Hebrew Bible. Since both secular and religious parties opposed it, albeit for different reasons, Israel's unicameral legislature, the Knesset, decided in June 1950 not to draft a singular constitutional document. Following a heated debate on the religious as opposed to the secular vision of Israel as a Jewish state, a compromise resolution was passed. Named after its initiator, Haim Harari, the chair of the Constitutional, Law, and Justice Committee of the Knesset, it outlined that the Basic Laws collectively would form the state constitution.[10]

In contrast to the relatively straightforward process of enacting the first nine Basic Laws after 1958, primarily addressing institutional considerations and essentially formalizing the existing government structure, objections arose from religious parties regarding the draft of two Basic Laws on Human Rights. They contended that these laws would undermine the religious status quo. Justice Aharon Barak, the Court's Chief Justice for 12 years and the person most closely identified with the Court's activism, in his opinion in the *Bank Mizrahi* case, characterized the enactment of these two Basic Laws in 1992 as a "constitutional revolution."[11] As a response to the Supreme Court's activism, Jewish nationalists consistently made efforts to propose a new Basic Law, defining Israel as the nation-state of the Jewish people and aiming to restore the balance between the country's Jewish and democratic values, allegedly tilted in favor of the latter. This new law, which was finally enacted in 2018, prevents Israel from becoming a binational state.[12]

The most recent institutional reaction to this "constitutional revolution" has been the judicial reform attempt led by the current far-right governing coalition under Prime Minister Benjamin Netanyahu, aimed at dismantling the judicial independence of the Supreme Court. The proposed amendment to the Basic Law on the Judiciary sought to[13] (a) introduce a government majority in the judicial appointment committee,[14] (b) require a threshold of at least 80% of all Supreme Court justices in order to strike down primary legislation as being unconstitutional, (c) determine that a decision on the judicial review of a statute will not serve as a precedent regarding any other statute, (d) allow for a majority vote in the Knesset to override any ruling by the Court, (e) prohibit the judicial review of Basic Laws, and (f) prohibit the judicial review of administrative actions to be carried out on the basis of the reasonableness doctrine.[15]

10 For more on these constitution-making attempts, including the Knesset debates, see Hanna Lerner, "Informal Consociationalism in Israel," chap. 3 in *Making Constitutions in Deeply Divided Societies* (Cambridge, UK: Cambridge University Press, 2011): 51–108.

11 *United Mizrahi Bank Ltd. vs. Migdal Village*, Supreme Court, CA 6821/93, 49(4)P.D.221 (1995).

12 See Basic-Law: Israel—The Nation State of the Jewish People (originally adopted in 5778–2018), section 1(c), https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf.

13 These elements are dicussed in detail in Aeyal Gross, "The Populist Constitutional Revolution in Israel," *Verfassungsblog: On Matters Constitutional*, January 19, 2023, https://verfassungsblog.de/populist-const-rev-israel/.

14 In accordance with Basic Law: The Judiciary, adopted in 1984, the committee currently has nine members, as follows: the minister of justice (chairman); one cabinet minister, chosen by the cabinet; two Knesset members, chosen by the Knesset (since 1992, they usually appoint one member from the coalition and one from the opposition); and two members of the Bar Association. See: https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawTheJudiciary.pdf.

15 Memo: "Israel's Recent 'Unreasonableness Amendment' and its Implications," *The Israeli Law Professors' Forum for Democracy*, July 24, 2023, https://www.lawprofsforum.org/post/israel-s-recent-unreasonableness-amendment-and-its-implications. The reasonableness issue passed as the first piece of the legislation package on July 24, 2023, and became the first subject of Supreme Court review.

The reform package also faced massive opposition beyond the Knesset. Starting in mid-January 2023, weekly street demonstrations on Saturday nights took place in cities across the country, organized by a web of nonpartisan civil society organizations, student protesters, LGBT groups, and members of the "Anti-Occupation Bloc" comprised of organizations advocating for Palestinian rights. These protests involved several hundred thousand people in total.[16] Various segments of society expressed their dissent by writing letters, petitions, and memorandums.[17] Three hundred sixty-seven Israeli economists, alongside senior foreign ones, warned about the financial implications of the proposed legislation.[18] Leaders from the highly successful Israeli tech industry signed a letter stating that the proposed changes would discourage international investors and announced intentions to move their funds out of the country subsequent to the bill's prospective passage.[19] Perhaps the most influential opposition came from the military, with some 10,000 IDF reservists, including over 1,000 Air Force reservists, protesting and declaring their refusal to attend regular training.[20]

Representatives from the legal profession were notably active, with former Israeli attorney generals, state attorneys, and retired judges expressing their opposition to the plan.[21] Legal scholars were among the most organized. The newly-established Israeli Law Professors' Forum for Democracy issued a public statement[22] and several position papers criticizing various elements of the proposed judicial overhaul.[23] Dozens of constitutional law professors engaged in educating the public about the importance of liberal constitutional democracy.[24] Israeli constitutional law professor Yaniv Roznai expressed his conviction that with such a level of public engagement on constitutional matters, Israel has reached a constitutional moment.[25] Opposition leader Yair Lapid even introduced a plan to enact a new constitution.

16 On March 25, 2023, I had the opportunity to participate at the weekly protest event in Jerusalem; see: https://www.facebook.com/photo/?fbid=10233535329470898&set=a.10231006106801912.

17 For an overview of such action, see: Aeyal Gross, "The Battle Over the Populist Constitutional Coup in Israel," *Verfassungsblog: On Matters Constitutional*, March 31, 2023, https://verfassungsblog.de/the-battle-over-the-populist-constitutional-coup-in-israel/.

18 Times of Israel staff, "Hundreds of Top Economists Warn Judicial Overhaul Could 'Cripple' Economy," *Times of Israel*, January 25, 2023, https://www.timesofisrael.com/hundreds-of-top-economists-warn-judicial-overhaul-could-cripple-economy/.

19 Assaf Gilead, "Papaya Global Moving All Money out of Israel," *Globes*, January 26, 2023, https://en.globes.co.il/en/article-papaya-global-moving-all-money-out-of-israel-1001436560.

20 Emanuel Fabian, " 'This Is Where We Draw the Line': 10,000 More Reservists to Stop Volunteering," *Times of Israel*, July 22, 2023, https://www.timesofisrael.com/this-is-where-we-draw-the-line-10000-more-reservists-to-stop-volunteering/.

21 Times of Israel staff, "78 Retired Judges Warn against Incoming Government's Judicial Reforms," *Times of Israel*, December 28, 2022, https://www.timesofisrael.com/78-retired-judges-warn-against-incoming-governments-judicial-reforms/.

22 Israeli Law Professors' Forum, "Preliminary Response of the Israeli Law Professors [*sic*] Forum for Democracy to the President's Proposal," *Israeli Law Professors' Forum*, February 13, 2023, https://lawprofsforum.wixsite.com/home/post/preliminary-response-of-the-israeli-law-professors-forum-for-democracy-to-the-president-s-proposal.

23 Israeli Law Professors' Forum, "The Government's Plan Is a Revolutionary Regime Transformation. Period." *Israeli Law Professors' Forum* (blog), n.d. (list of related articles from a range of publication dates in 2023, https://www.lawprofsforum.org/en.

24 See Maximilian Steinbeis' interview with Tamar Hostovsky Brandes (in German), *Verfassungsblog: On Matters Constitutional*, February 23, 2023, https://verfassungsblog.de/verfassungsschutz/. At a conference organized by the Israel Democracy Institute in Jerusalem on March 26, 2023, constitutional law professors from other countries also warned about the threats to democracy posed by judicial capture; see Jeremy Sharon, "Legal Scholars from Poland, Hungary Warn of Judical Overhaul's Dangers to Democracy," *Times of Israel*, March 27, 2023, https://www.timesofisrael.com/legal-scholars-from-poland-hungary-warn-of-judicial-overhauls-dangers-to-democracy/?fbclid=IwAR0l6IXRmPEO_DfKuba0HYnLEgjKje4-XmaJBWfwAedr88j1yIhw5Auqc5.

25 Doreen Lustig and Ronit Levine-Schnur, "Brwkym hb'ym lrg' hḥwqty," Telem Online, March 28, 2023, https://telem.berl.org.il/7542/.

This exceptional constitutional moment, when two-thirds of the population opposed the judicial overhaul and believed the Supreme Court would annul the unconstitutional reform[26], was abruptly interrupted by Hamas' genocidal attack on October 7, 2023. The war in Gaza, however, also put on hold any talk of judicial reform.[27] On January 1, 2024, the Supreme Court struck down the highly disputed law passed by the Netanyahu-led coalition government.[28] Following the decision, constitutional scholars started to talk about a second and permanent constitutional revolution, which could lead even to the adoption of a written constitution.[29] At the same time, Israeli society still faces serious problems exacerbated by the war in Gaza—which the overwhelming majority of the society, including scholars, seem to support[30]—putting the possibility of a two-state solution and a new constitution for Israel based on the equal rights of all its citizens, further away.

Hungary: Semi-Electoral Autocracy

After the democratic transitions of 1989–90 in Eastern and Central Europe, Bruce Ackerman extended his theory of the constitutional moment to encompass the constitutional transformations in the region. Ackerman cautioned that the time window for the adoption of a new liberal-democratic constitution does not stay open indefinitely: "The constitutional guarantees of a liberal rule of law state can be established only if a new constitution is adopted, and the possibility to adopt a new basic law fades as the time passes."[31] According to him, there would have been an opportunity, and indeed a necessity, for the adoption of a new constitution in Hungary at the onset of the political transition. This would have addressed the legitimacy deficit of the systemic change, similar to what was accomplished with the German Basic Law (Grundgesetz) of 1949. In an interview given more than a decade after the dissolution of the USSR, he regretfully observed that Hungary had missed the opportunity of its constitutional moment.[32] Contrary to Ackerman's view, András Sajó argues that there has been no constitutional moment in Hungary—neither in 1989, nor during the 1990s—as there was no "constitutional enthusiasm" among the people.[33]

26 Luke Tress, "Majority of Israelis Opposes Key Planks of Judicial Overhaul Plan, Survey Finds," *Times of Israel*, February 21, 2023, https://www.timesofisrael.com/majority-of-israelis-opposes-key-planks-of-judicial-overhaul-plan-survey-finds/.

27 Noam Kozlov, "How the War in Gaza May Upend Israel's Constitutional Limbo," *Verfassungsblog: On Matters Constitutional*, November 9, 2023, https://verfassungsblog.de/how-the-war-in-gaza-may-upend-israels-constitutional-limbo/.

28 Jeremy Sharon, "In Historic Ruling, High Court Strikes Down Key Judicial Overhaul Legislation," *Times of Israel*, January 1, 2024, https://www.timesofisrael.com/in-historic-ruling-high-court-strikes-down-key-judicial-overhaul-legislation/.

29 Jeremy Sharon, "Will the High Court Rulings against the Judicial Overhaul Become a Permanent Revolution?" *Times of Israel*, January 8, 2024, Analysis, https://www.timesofisrael.com/will-the-high-court-rulings-against-the-judicial-overhaul-become-a-permanent-revolution/.

30 One sign of this support is that PM Netanyahu appointed former Supreme Court President Aharon Barak to the Judicial Panel of the International Court of Justice to represent Israel in the genocide case brought before ICJ by South Africa. See Chen Maanit and Jonathan Lis, "Israel Appoints Former Supreme Court Justice President Aharon Barak to Judicial Panel in ICJ Genocide Case," *Haaretz*, January 7, 2024, Israel News, https://www.haaretz.com/israel-news/2024-01-07/ty-article/.premium/israel-appoints-ex-top-court-president-aharon-barak-to-judge-panel-in-icj-hearing/0000018c-e4f0-db55-a39e-f7f4a4a60000.

31 Bruce Ackerman, *The Future of Liberal Revolution* (New Haven: Yale University Press, 1992), p. 47.

32 Gábor Halmai, "A magyar alkotmányos vívmányok túlságosan sérülékenyek," interiew with Bruce A. Ackerman, *Fundamentum*, 2003, no. 2. p. 52.

33 András Sajó, "Constitution without the Constitutional Moment: A View from the New Member States, *ICON: International Journal of Constitutional Law*, 2005 vol. 3, no. 2–3. p. 243, https://doi.org/10.1093/icon/moi018.

Indeed, the Hungarian democratic transition process was primarily an elitist project marked by significant contributions by the intellectuals involved in scholactivism. In October 1989, the formally undemocratic (that is, not democratically-elected), illegitimate legislature enacted comprehensive modifications to the 1949 Constitution after peaceful negotiations between the representatives of the Communist regime and the democratic opposition. This process is often referred to in the literature as "post-sovereign" or "pacted" constitution-making.[34] Public engagement for the adoption of a new constitution was also lacking in the summer of 1996: a draft constitution prepared by the governing parties, with some opposition support, failed to secure the necessary two-thirds majority of votes in Parliament due to a lack of support from a faction of the main governing party.[35]

A new constitution, called the Fundamental Law, was ultimately adopted in 2011 after the electoral victory of the Fidesz party in 2010. The adoption took place exclusively with the votes of Fidesz, without any public, professional, or even parliamentary consultation. Prime Minister Viktor Orbán's intention with this constitution for his "illiberal state" was to eliminate checks and balances, parliamentary rotation of governing parties, as well as institutional guarantees of fundamental rights by dismantling the independence of the Constitutional Court and the ordinary judiciary.[36] Hungary has since transformed into an autocracy. Freedom House has traced the country's transition from a "consolidated" democracy as of 2010,[37] to one that was only "semi-consolidated" by 2015.[38] The Varieties of Democracy Institute classified Hungary as an "electoral autocracy" in 2020,[39] in which year Freedom House categorized the country as a "hybrid regime."[40] In a country no longer functioning as a constitutional democracy capable of ensuring a peaceful rotation of power; lacking free media, academic freedom, and independent civil society; the possibilities for resistance, both in general and scholarly contexts, are severely limited.

The only exception to the lack of serious professional discussion about a liberal-democratic constitution over the last 14 years was a scholarly debate preceding the 2022 parliamentary elections, following the unification of all opposition parties in a joint list against Fidesz. The subject of this scholarly discussion was how to escape

34 See, respectively, Andrew Arato, *Post Sovereign Constitutional Making: Learning and Legitimacy* (Oxford: Oxford University Press, 2016), p. 123; Michel Rosenfeld, *The Identity of the Constitutional Subject: Selfhood, Citizenship, Culture, and Community* (London: Routledge, 2009), p. 245, https://doi.org/10.3167/004058105780929273.

35 See Gábor Halmai, "The Evolution and Gestalt of the Hungarian Constitution," in *The Max Planck Handbooks in European Public Law, Volume II: Constitutional Foundations*, eds. Armin von Bogdandy, Peter M. Huber, and Sabrina Ragone (Oxford: Oxford University Press, 2023), p. 217, https://doi.org/10.1093/oso/9780198726425.003.0005.

36 In his infamous speech a year later, Orbán proclaimed his intention to turn Hungary into an illiberal state: "Full Text of Viktor Orbán's Speech at Băile Tuşnad (Tusnádfürdő) of 26 July, 2014," Budapest Beacon (former news site), July 29, 2014, http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/.

37 Lisa Mootz, ed., *Nations in Transit 2010: Democratization from Central Europe to Eurasia*, (Washington, DC: Freedom House, 2010), https://www.freedomhouse.org/sites/default/files/NIT%202010%20Ratings%20Tables.pdf, p. 45.

38 Sylvana Habdank-Kołaczkowska and Zselyke Csaky, eds., *Nations in Transit 2015: Democracy on the Defensive in Europe and Eurasia* (Washngton, DC: Freedom House, 2015), https://freedomhouse.org/country/hungary/nations-transit/2015.

39 Anna Lührmann, Seraphine F. Maerz, Sandra Grahn, Nazifa Alizada, Lisa Gastaldi, Sebastian Hellmeier, Garry Hindle, and Staffan I. Lindberg, "Autocratization Surges—Resistance Grows: Democracy Report 2020," Varieties of Democracy Institute (Gothenburg: University of Gothenburg, 2020), p. 27, https://www.v-dem.net/static/website/files/dr/dr_2020.pdf.

40 Zsuzsanna Végh, "Hungary," in *Nations in Transit 2020: Dropping the Democratic Facade*, ed. by Zselyke Csaky et al. (Washignton, DC: Freedom House, 2020), https://freedomhouse.org/sites/default/files/2020-04/05062020_FH_NIT2020_vfinal.pdf

the trap of the illiberal Fundamental Law if the opposition won the election but did not have the 2/3 majority required to replace some high ranking public officials elected by supermajority, such as Constitutional Court judges, the president of the State Audit Office, or justices of the Supreme Court. It was clear that even if Fidesz lost the national election and a new government was formed, the latter would not be able to function properly in the legal, economic, and cultural domains. The Fundamental Law would continue to grant full power to these incumbent holdovers, hindering the new government's ability to govern effectively. Measures proposed by the new government could be sabotaged by state officials, including constitutional judges who, under the Fundamental Law, cannot be removed or replaced during the parliamentary term. Therefore, if a democratically-elected government aimed to replace the autocratic system institutionalized by the Fidesz government, it would need to free itself from the constraints of the Fundamental Law.[41]

Constitutional Scholars' Role

German political philosopher Jan-Werner Müller criticizes the convenient but ultimately misleading response to democracy's decline: to blame the people.[42] He argues that ordinary folks, even the well-informed, can be misled by demagogues. In other words, blaming exclusively the people cannot help one to understand the crisis of democracy.[43] The crucial decisions to empower dictators are made by parts of the conservative establishment.[44] Regarding contemporary right-wing populists, Müller claims that none of them has come to power without the collaboration of established conservative elites.[45] Neither Netanyahu nor Orbán are exceptions, and conservative intellectuals and academics, including constitutional law scholars supporting illiberal theories, bear responsibility for their counsel.

In Israel, there has been a relatively weak illiberal legal academic support for the government's judicial overhaul plan. Although in early 2023 about 120 academics (members of the right-wing "Professors for a Strong Israel" association) announced their support for the government's proposed reforms with the reasoning that these were needed against "constitutional revolution led by Aharon Barak, which violated the balance between the branches of goverment in Israel," but the signatories are non-legal scholars.[46] This does not not mean that there has not been serious academic opposition to the "constitutional revolution" ever since the mid 1990s, but those legal scholars opposing it have never supported the autocratic persuits behind the current judicial reform. The most vocal prestigous conservative law

41 See the various scholarly suggestions in Viktor Zoltán Kazai, "Restoring the Rule of Law in Hungary: An Overview of the Possible Scenarios," *Fascicoli* no. 3 (2021), https://www.osservatoriosullefonti.it/archivi/archivio-saggi/fascicoli/3-2021/1675-restoring-the-rule-of-law-in-hungary-an-overview-of-the-possible-scenarios.

42 Jan-Werner Müller, *Democracy Rules*, (New York: Picador, 2021), ix–xi.

43 See Eric Posner, *The Demagogue's Playbook* (New York: All Points Books, 2020), which mainly blames the American people for Trump's rise. This has been criticized by Yale Law School historian Samuel Moyn, in his review of Posner's book: "The Guardians: Does 'the Resistance' Actually Want More Democracy or Less?" *The Nation*, August 24, 2020, https://www.thenation.com/article/culture/eric-posner-demagogues-playbook/. Similarly, Joseph Weiler has blamed the Hungarian people for supporting Orbán: see "Editorial: Orbán and the Self-Asphyxiation of Democracy," *ICON: International Journal of Constitutional Law* vol. 18, no. 2 (July 2020), https://academic.oup.com/icon/article/18/2/315/5878827. For a critique of this position, see Viktor Z. Kazai, "Blaming the People is not a Good Starting Point," *Verfassungsblog: On Matters Constitutional*, August 8, 2020.

44 See, for instance, the novel by Éric Vuillard, *Ordre du jour* (Arles: Actes Sud, 2017); see also Müller, *Democracy Rules*, 18.

45 Müller, *Democracy Rules*, 18.

46 Jeremy Sharon, "120 Israeli Academics Express Support for Government's Judicial Overhaul Plan," *Times of Israel*, March 2, 2023, https://www.timesofisrael.com/120-israeli-academics-express-support-for-governments-judicial-overhaul-plan/.

professor opposing the activist role of the Supreme Court was the late Ruth Gavison, who despite her harsh criticism, never supported any illiberal ideas.[47]

The ideological foundation of Orbán's illiberalism, however, can be found among scholars: for instance, in the works of his two court ideologues, the sociologist and former liberal MP Gyula Tellér, and the political scientist András Lánczi. Orbán's 2014 speech on "illiberal democracy" notably cited one of Tellér's studies, published earlier that year, which Orbán assigned as required reading to all his ministers.[48] Tellér claims that the "system of regime-change" in 1989 failed because the liberal constitution focused on global individual rights and did not obligate the government to protect national interests.[49] Therefore, according to Tellér, the new "national system" must strengthen national sovereignty, granting the government greater freedom.[50] This move is deemed necessary against the moral command of the liberal rule-of-law regime, which, in Tellér's view, asserts that "everything is allowed, which does not harm others' liberty," and fails to prescribe duties for the citizens.[51] Lánczi's anti-liberal concept of a state is outlined in his book *Political Realism and Wisdom,* published in English in 2015, as well as in an article from 2018, following Fidesz' third consecutive electoral victory.[52] Lánczi's critique rejects liberalism outright as a utopian ideology, claiming that—like Communism—it is incompatible with democracy. This is the basis of Orbán's concept of illiberal democracy.

In particular, Hungarian illiberal constitutional theorists have contributed to attempts to legitimize the new populist constitutional system in Hungary by referring to political constitutionalism.[53] István Stumpf, a Constitutional Court justice and Fidesz loyalist nominated by Fidesz without the its consulting with opposition parties[54] immediately after the new government took over in 2010, and who was then elected exclusively with the governing parties' votes, argued for a strong state in his 2014 book. He claimed that the changes introduced by Fidesz's new constitution, known officially as the Fundamental Law, expanded political constitutionalism.[55] Notably, two other members of the current packed Constitutional

47 *Brwkym hb'ym brg' hfwqty,* Israel Democracy Institute, 1998. Before her death in 2020, I had the privilege to take part in a conference of the Israel Democracy Institute, Ruth Gavison being one of the commentators of a liberal law professor's work. Here I could witness her true commitment to the values of constitutionalism. And this applied to all conservative legal scholars. In other words, her and most of the conservative law professors' conservativism means true committment to the idials of constitutionalism.

48 See Tellér Gyula, "Született-e Orbán-rendszer 2010 és 2014 között?" *Nagyvilág* (March 2014): 346–367.

49 Tellér, "Született-e Orbán-rendszer 2010 és 2014 között?" 349.

50 Tellér, 357.

51 Tellér, 346.

52 András Lánczi, "The Renewed Social Contract—Hungary's Elections, 2018," *Hungarian Review* vol. IX, no. 3 (May 2018), http://www.hungarianreview.com/article/20180525_the_renewed_social_contract_hungary_s_elections_2018. For a detailed analysis of Lánczi's arguments, see Kim Lane Scheppele, "The Opportunism of Populists and the Defense of Constitutional Liberalism," *German Law Journal* 20, no. 3 (April 2019): 314–341, https://www.cambridge.org/core/journals/german-law-journal/article/opportunism-of-populists-and-the-defense-of-constitutional-liberalism/687EC99BB43AB8AE88FAA42ED4D83DB0.

53 As opposed to legal constitutionalism, which focuses on the role of courts to rule on the constitutionality of legislative acts, political constitutionalism makes it to duty of elected bodies to take into account the principles and norms of the constitution. One of the main representatives of political constitutionalism is Richard Bellamy; see his seminal work, *Political Constitutionalism* (Cambridge, UK: Cambridge University Press, 2007).

54 Ever since in 2010, when Fidesz has changed the election procedure this has ceased to be a legal obligation, but rather a principle of global constitutionalism. Prior to this change, the law on the Constitutional Court required a consensus among parliamentary parties.

55 See István Stumpf, *Erős Állam—Alkotmányos Korlátok* (Budapest: Századvég Kiadó, 2014), 244–249.

Court, consisting of members all loyal to the government, also argue against legal constitutionalism, denouncing it as "judicial dictatorship"[56] or "juristocracy."[57]

Moreover, the legal scholar Attila Vincze has argued that the Constitutional Court's decision to declare the Fourth Amendment to the Fundamental Law as constitutional—and thus, among other things, invalidating the Court's entire body of case law predating the new Constitution—was a sign that political constitutionalism had prevailed over legal constitutionalism.[58] Even those scholars who claim, as do Kálmán Pócza, Gábor Dobos, and Attila Gyulai, that the Court has not acted confrontationally towards the current legislature and government, characterize this government-friendly behavior as a special approach within the system of the separation of powers, best described as a partnership in a constitutional dialogue and not as a denial of any checks and balances on the executive branch.[59]

Conclusion

After comparing the engagement of constitutional scholars in Israel and Hungary through Ackerman's concept of a "constitutional moment," we can establish that there is currently a process of illiberal constitutionalization taking place in Israel, and that a constant state of illiberal constitutionalism exists in present-day Hungary.

In Israel, despite the governing coalition parties' 64–56 majority in the Knesset, recent opinion polls indicate that almost two-thirds of Israelis oppose the proposed judicial reform. They believe that the Supreme Court should have the power to strike down laws that are incompatible with the Basic Laws.[60] This aligns with one of the central tenets of Ackerman's "constitutional moment" concept: the self-conscious consent of a majority of ordinary citizens to constitutional values.[61] This commitment to the separation of powers and judicial independence does not necessarily mean that the same majority of citizens would support changing the constitutional identity of Israel as the nation-state of the Jewish people and guaranteeing equal rights for all citizens of the country, including non-Jewish Arabs. Indications against this include the same survey results showing only a minority of the repondents feared a negative impact of the proposed overhaul on the rights of Arab Israelis.[62] And this has most probably worsened with the onset of the war in Gaza. At the same time, the January 1, 2024 decision of the Supreme Court gives some reasons for optimism, as it increased the chances of a return to the ideals of liberal Zionism originally envisaged by Theodor Herzl and codified in the Declaration of Independence. This

56 András Zs. Varga, *From Ideal to Idol? The Concept of the Rule of Law* (Dialóg Campus: Budapest, 2019), 16.

57 Béla Pokol, *The Juristocratic State: Its Victory and the Possibility of Taming* (Dialóg Campus: Budapest, 2017).

58 Vincze Attila, "Az Alkotmánybíróság határozata az Alaptörvény negyedik módosításáról: az alkotmánymódosítás alkotmánybírósági kontrollja," *Jogesetek Magyarázata* vol. 12, no. 3 (March 2013): 3–21.

59 See Kálmán Pócza, Gábor Dobos, and Attila Gyulai, "The Hungarian Constitutional Court: A Constructive Partner in Constitutional Dialogue," chap. 5 in *Constitutional Politics and the Judiciary: Decision-Making in Central and Eastern Europe*, ed. Kálmán Pócza (London: Routledge, 2018) Chapter 5.

60 Tress, "Majority of Israelis Opposes Key Planks of Judicial Overhaul Plan, Survey Finds."

61 See the scholarly support of the Supreme Court judgement 5658/231 of January 2024 in *Movement for Quality Government v. Knesset*. This annuled the first piece of judicial overhaul legislation, the amendment of "The Basic Law: The Judiciary," prohibiting the use "reasonableness" as a reason for declaring a law unconstitutional. Aeyal Gross, "Did the Israeli Supreme Court Kill the Constitutional Coup?" *Verfassungsblog: On Matters Constitutional*, January 9, 2024, https://verfassungsblog.de/did-the-israeli-supreme-court-kill-the-constitutional-coup/.

62 In my personal experience during the anti-judicial-reform demonstration on March 25, 2023, in Jerusalem, where those for this cause and against the occupation were representing a clear minority of all demonstrators, and also segregated from the others, underlines this assumption.

hope is supported by some opinion polling results, according to which 72% want Netanyahu to resign, and the far-right Religious Zionist Party would not even enter the Knesset.[63]

In Hungary, by contrast, there is no significant support for any change to the Orbán government's 2011 constitution. And, as the scholarly debate in the country has shown, there are few democratic means left to amend the Fundamental Law. This also means that while in Israel the current constitutional crisis may be a sign of a constitutional moment, in Hungary the overwhelming majority of voters does not consider the illiberal constitutional sytem to be a failure. These differences in the attitudes of the people, including their respective groups of intellectuals and scholars, which are determined by democratic developments and the salience of constitutional issues, explain the differences in scholarly resistance to illiberal constitutionalization in the two countries. Israel has been a democracy with a strong civil society, and scholarly activism giving weight to the values of constitutionalism despite the lack of a traditional written constitution as a single document ever since its establishment in 1948. On the contrary, in Hungary there had been no democratic tradition, nor vibrant civil society and scholactivism, prior to the 1989 democratic transition, and the priority given to economic development and the speedy increase in living standards failed to increase the importance of constitutional issues in the perception of the people.

63 Times of Israel staff, "Poll Shows Gantz's Party Soaring as Likud Nosedives, Smotrich out of Knesset," *Times of Israel*, December 19, 2023, https://www.timesofisrael.com/poll-shows-gantzs-party-soaring-as-likud-nosedives-smotrich-out-of-knesset/.

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Scholarly Activism for the Rule of Law in the EU

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Abstract

The engagement, or even activism, of scholars promoting the rule of law has been celebrated recently in the European Union (EU). But how often do we reflect on its risks? This self- reflection paper focuses on three cautionary tales of the mobilization of legal scholars for the rule of law in the EU. As scholars, our political or public engagement risks reinforcing the center-periphery dynamics of European legal expertise, if carried out without involving the affected communities. Further, it risks reinforcing the critiques of judicial activism, if it focuses on the institutional independence of the courts rather than the substance of their rulings. Finally, it even risks reinforcing illiberal narratives more generally, if the scholarly interventions do not manage the difficult task of legitimizing the proposed liberal solutions. This does not mean that scholars should refrain from social activism. This reflection is rather meant to reinforce the professional ethics and moral awareness of academics when mobilizing against illiberal reforms and narratives.

Keywords: rule of law, European Union, scholarly activism

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Social polarization has trickled down to debates regarding academic ethics. Depending on one's view on climate change, academic research helping to prevent it might be perceived as either a necessary neutral contribution to the production of knowledge for dealing with this global challenge, or simply as partisan support for political views not shared by everyone.[1] Similar backlash has been faced by scholars researching migration issues.[2] This has led many European universities to revisit their policies on ethics and academic activism. In this broader social context, this paper focuses specifically on the mobilization of legal scholars at European universities in the specific context of the European Union's (EU) engagement with the illiberal reforms in Hungary and Poland during the period from 2011 to 2024. The question of scholarly activism and legal mobilization in the context of illiberalism causes a particular set of ethical tensions.

When discussing the societal impact of legal mobilization against illiberalism, we need to reflect on its impact on illiberal discourse, reforms, and social polarization. If we understand illiberalism as an ideology and not as a violation of the values enshrined in liberal-democratic constitutions, then legal mobilization in the courts and through law journals can also become forums for ideological debates and power struggles. In order to assess the broader societal impact of this mobilization, it is necessary to reflect on the embeddedness of scholars in the affected communities, illiberal backlash against the judiciary and the rhetorical effects of a legal framing of political and social problems. Our political or public engagement as scholars risks reinforcing the center-periphery dynamics of European legal expertise, if carried out without involving the affected communities. Further, it risks reinforcing the critiques of judicial activism, if it focuses on the institutional independence of the courts rather than the substance of their rulings. Finally, it even risks reinforcing illiberal narratives more generally, if the scholarly interventions do not manage the difficult task of legitimizing the proposed liberal solutions. Based on some anecdotal evidence on the engagement of legal scholars with countering illiberal reforms in Hungary and Poland within the framework of the EU, this paper highlights crucial points for reflection about the engagement of EU legal scholars with illiberalism.

Highlighting the cautionary tales of scholarly activism in the context of the EU rule of law crisis (as the tensions between Brussels, on the one side, and Budapest and Warsaw, on the other have been dubbed), contributes to the reflection on the methods and ethics of studying illiberalism. This framework attempts to bring together more general discussions with regard to scholarly activism, which can also concern other domains such as climate change or migrant rights.[3] The purpose of identifying these cautionary tales is not to elaborate a set of systematic solutions, but rather a set of ethical questions that we should repeatedly ask ourselves as researchers involved in pursuing broader socio-political change.

This reflection paper is written from the insider perspective of EU legal scholars, stemming from the newer EU member states and taking a stance on the illiberal developments in our societies. As a scholar studying judicial politics in Europe, educated and based in the founding EU Member States and seeking to be engaged with the democratic backsliding in Hungary and Poland, I consider myself well placed for a self-reflection on the field of EU lawyers. In this context, EU lawyers mobilize

1 Lisa Gilson, "Activism versus Criticism? The Case for a Distinctive Role for Social Critics," *American Political Science Review* 118, no. 2 (February, 2024): 1–14, https://doi.org/10.1017/S000305542300045X.

2 See Sarah Bracke, "Zorgen bij de UvA om 'woke': 'De academische vrijheid zit in een grote crisis,' " *NRC Handelsblad*, February 23, 2023, https://www.nrc.nl/nieuws/2023/02/24/ongemak-aan-de-uva-waar-eindigt-debat-en-begint-belediging-2-a4158028?t=1709038367.

3 Gilson, "Activism versus Criticism? The Case for a Distinctive Role for Social Critics," 1–14.

the law and the judicial venues to counter political reforms which pursue an illiberal agenda. This self-reflection on the power and vulnerability of academics studying illiberalism is necessary not only from the point of view of academic integrity, but also for their societal impact. In my research, I seek to maintain objectivity in presenting a variety of evidence and opinions, but not neutrality with regard to the challenges faced by our societies. This reflection paper is not based on systematic research and data, but rather framed as a provocative self-reflection of scholarly activism against illiberalism by EU lawyers.

In order to understand the scholarly engagement with the law and politics of the EU around the rule-of-law crisis, it is necessary to highlight certain features of this particular socio-legal situation. The values of liberal democracy have been codified in the EU legal system in a particular historical and political context of the end of the Cold War and the construction of the internal market. These legal guarantees have not proven easy to operationalize. Instead, they have provided a platform for political and legal mobilization that has led to many indirect solutions for enforcing democratic standards in Hungary and Poland from 2015 to 2023. Against this background, I highlight three focal points of ethical concern around academic activism specifically in this socio-legal context of the EU rule-of-law crisis. These cannot simply be avoided. Rather, they should serve as the difficult questions that help us maintain reflexivity with regard to our professional ethics.

EU Law against Illiberal Reforms

The mobilization of EU law by scholars, searching for creative solutions to enforce liberal-democratic values in the backsliding member states of the EU, is rooted in the structure of EU law. The ways that these values have been constitutionally embedded and the political stalemates in the main institutions have shaped the space for creativity of engaged legal scholars. In order to delimit that creative space, it is important to highlight certain features of the history and politics of enforcing liberal-democratic values by the EU.

Historical Baggage of Liberal-Democratic Values in EU Law

The undermining of liberal democracy in Hungary and Poland has been framed in EU policy circles predominantly as the "Rule of Law Crisis."[4] Viktor Orbán and the Fidesz party took power in Hungary in 2010. In Poland, Prawo i Sprawiedliwość (Law and Justice: PiS) led by Jarosław Kaczyński, was in power between 2015 and 2023. During this period, both countries have introduced reforms curtailing freedoms of the press and of assembly, judicial independence, women's rights, data protection, and have carried out restrictive migration policies.[5] The EU institutions have gradually built up a set of legal and political tools to push back against these illiberal reforms.[6]

4 See for example Laurent Pech and Kim Lane Scheppele "Illiberalism Within: Rule of Law Backsliding in the EU." *Cambridge Yearbook of European Legal Studies* 17 (2017): 3–17, https://doi.org/10.1017/cel.2017.9; Cassidy Emmons and Tommaso Pavone, "The Rhetoric of Inaction: Failing to Fail Forward in the EU's Rule of Law Crisis," *Journal of European Public Policy* (July, 2021): 1611–1629, https://dx.doi.org/10.2139/ssrn.3780011; Piotr Bogdanowicz and Matthias Schmidt, "The Infringement Procedure in the Rule of Law Crisis: How to Make Effective use of Article 258 TFEU," *Common Market Law Review* 55, no. 4 (2018): 1061–1100, https://doi.org/10.54648/cola2018093.

5 Tímea Drinóczi and Agnieszka Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law* (New York: Routledge, 2021).

6 Carlos Closa and Dimitry Kochenov, *Reinforcing Rule of Law Oversight in the European Union* (Cambridge, UK: Cambridge University Press, 2016).

Initially, these reforms struck in a sensitive domain of the EU's governance structure as its commitment to democratic values had never been operationalized beforehand.

The commitment to liberal-democratic values has emerged incrementally and in particular historical moments with the European Communities. A major critical juncture had been the fall of the Berlin Wall and the end of the Cold War. The unwritten values of the EU have gradually been made more explicit and codified in various legal instruments relating to third countries and candidate countries.[7] However, internally, they remained largely presumed, without internal enforcement mechanisms. Since the onset of the European integration project, there has been an implicit expectation that economic integration would create solidarity among the member states.[8] However, the actual image of the common EU values was purposefully left open in the legal framework of the EU Treaties. While specific provisions of EU law regarding the internal market, environment, or agriculture were meant to be directly applied by national courts and administrations, there was no enforcement mechanism for the values of democracy, equality, or the rule of law. As a result, the EU has been characterized by a mismatch between the mechanisms foreseen for enforcing EU norms, on the one hand, and EU values, on the other hand.[9]

A political reshuffling took place in anticipation of the Eastern enlargement. The EU was facing the "Copenhagen dilemma" of matching the conditionality regarding EU values operationalized in the Copenhagen criteria with an enforcement system for these values vis-à-vis the member states inside of the EU.[10] The EU's increased presence as a global actor and its rule-of-law promotion beyond the EU's immediate neighborhood only added complexity to this tension.[11] In light of the imminent "big-bang" enlargement, the EU member states agreed to include general provisions codifying EU values and a procedure to be followed in case of their violation. This treaty amendment entered into force on May 1, 1999, with the Treaty of Amsterdam.

The democratic values of democracy, rule of law, and human rights protection became enshrined in European constitutional law only in the 1990s, decades after the establishment of the rules for the common internal market. They were meant to send a message to the prospective member states, emerging from behind the Iron Curtain, rather than create too many constraints on the existing ones. This can be illustrated by the classic liberal question of minority rights. European institutions were alert to the need to include the protection of minority rights within the accession negotiation packages with the Central and Eastern European countries, since allegedly those countries had more minorities than the existing EU member states.[12] However, these accounts of the scale of minorities depend also on the definition of minorities, in particular on the categorization of minorities from the

7 The Court asserting that the EU was a "Community based on the rule of law" already in 1986 in CJEU, April 23, 1986, C-294/83, *Parti écologiste Les Verts v. European Parliament*, ECLI:EU:C:1986:166.

8 Robert Schuman, "Declaration of 9th May 1950," (speech, May 9th, 1950), Foundation Robert Schuman, https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-204-en.pdf.

9 Dimitry Kochenov and Petra Bárd, "Rule of Law Crisis in the New Member States of the EU: The Pitfalls of Overemphasising Enforcement," *Reconnect Working Papers* no 1 (August, 2018): 1–29.

10 The Copenhagen criteria for accession to the EU were geographical (European country), political (democracy, rule of law, human rights, protection of minorities), and economic (functioning market economy). For more on the context in which they were established, see Ronald Janse, "Is the European Commission a Credible Guardian of the Values? A Revisionist Account of the Copenhagen Political Criteria during the Big Bang Enlargement," *International Journal of Constitutional Law* 17, no. 1 (2019): 43–65, https://doi.org/10.1093/icon/moz009.

11 Kalypso Nicolaidis and Rachel Kleinfeld, "Rethinking Europe's 'Rule of Law' and Enlargement Agenda: The Fundamental Dilemma," *SIGMA Papers*, no. 49 (2012), http://dx.doi.org/10.1787/5k4c42jmn5zp-en.

12 Nicolaidis and Kleinfeld, "Rethinking Europe's 'Rule of Law' and Enlargement Agenda," 11.

neighboring country living in the border regions, which are so common in Central and Eastern Europe. The reporting of the Open Society Foundation in response to this lack of common definition of minorities has suggested that the EU should "[e]ncourage dialogue among member States toward developing a common baseline understanding of terms such as 'minority,' 'minority protection' and 'integration,' encouraging definitions which are as expansive and inclusive as possible; articulate minimum standards to guarantee equal treatment for groups that do not fit within the definitions adopted."[13] It shows that there have been divergences in the legal approaches to minority protection between the "old" and the prospective member states. When the Treaty of Amsterdam elevated the constitutional values to the level of primary law, the values expressly mentioned were only: "liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law." However, if avoiding mentioning the controversial question of minorities' protection at the time was a gesture of the EU member states reaching out to their new partners, it did not last for very long. The express mention of "rights of persons belonging to minorities" was introduced in Article 2 of the TEU by the Treaty of Lisbon alongside the mention of other values, such as "pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men."

The initial codification of human rights and liberal-democratic values in the EU Treaties appears to fit well with the international logic that human rights rose to relevance during the Cold War, as they provided a language for the West to talk to the East.[14] Similarly, in the EU context, human rights and the commitment to liberal democracy were codified in a particular historical moment—after the Fall of the Berlin Wall and with the Eastern Enlargement of the EU being imminent. This particular historical baggage has contributed to the fact that the mechanisms meant to counter democratic backsliding and illiberalism were not meant to be applied outside of some extreme circumstances of general consensus over a country having to be suspended from EU membership. In fact, Article 7 of the TEU, which was meant to enforce democratic values, has never been used in practice. The protection of democratic values, enshrined today in Articles 2 and 7 of the Treaty on European Union (TEU), has been difficult to operationalize due to its historical baggage.

The EU Rule-of-Law Crisis

The commitment to and enforcement of liberal-democratic values in the EU has been subject to dynamic changes since 2015. Facing the pushback from the self-proclaimed "illiberal democracies" in Hungary and Poland, EU institutions have garnered more political commitment to enforce the values of liberal democracy enshrined in Article 2 of the TEU. The period between 2015 and 2023, when PiS was in power in Poland, was marked by a creative use of the existing legal framework of the EU to address the democratic backsliding in Hungary and Poland without expanding the EU's competences. Such strategies involve a certain degree of legal mobilization and creativity.

While the main political sanctioning route of suspending a member state according to the procedure of Article 7 of the TEU has remained blocked, EU institutions have deployed a plethora of tools addressing democratic backsliding indirectly.

13 "Monitoring the EU Accession Process: Minority Protection," *Open Society Institute*, (November 25, 2002): 67, https://www.opensocietyfoundations.org/sites/default/files/overview.pdf.

14 Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge Mass.: Harvard University Press, 2010).

These measures often address specific domains, such as non-discrimination, media pluralism, or the EU budget.

A paramount example of the indirect mechanisms developed in response to the rule-of-law crisis is the Conditionality Regulation adopted in December 2020.[15] It is a regulation based on Article 322 of the Treaty on the Functioning the EU (TFEU), which makes the protection of the EU budget its main goal. The Conditionality Regulation creates the possibility for the EU to suspend paying out certain funds from the EU budget in cases of violations of the principle of the rule of law. During the legislative process, it became clear that, at least the Legal Service of the Council would oppose a very broad interpretation of the rule-of-law violation.[16] Otherwise, there is a risk of exceeding the legal basis of Article 322 of the TFEU. A violation must be actually linked to the spending of the EU funds concerned, such that it would not be possible to block subsidies for building a bridge in a certain municipality due to the lack of judicial independence of a constitutional court. Still, the political intention to use this regulation to suspend funds for Hungary and Poland was clear.[17]

In view of these controversies, the compromise reached to overcome the risk of a Hungarian and Polish "veto" threatening the approval of the 2021–2027 Multiannual Financial Framework and of the reform of the Own Resources Decision needed to greenlight the "Next Generation EU" package, was to wait for the implementation of the Conditionality Regulation until the CJEU ruled on its legality.[18] This case represents an important instance of acceptance of the CJEU as an arbiter, not only by EU institutions but also by Hungary and Poland. The Grand Chamber of the CJEU ruled on the case on February 22, 2022, upholding the legality of the Conditionality Regulations and dismissing the claims raised by the Hungarian and Polish authorities.[19] The Court emphasized throughout the analysis of individual provisions of the Regulation the need to demonstrate a genuine and direct link between breaches of the rule of law and sound financial management of the EU budget.[20] This narrow framing creates uncertainty as to the practical scope of application of the Regulation in the future.[21]

Another example of softer measures used to address the illiberal reforms in Hungary and Poland is the Rule of Law Framework. This is essentially a structured dialog with a member state that the European Commission considers to be in violation of

15 "Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of December 16, 2020 on a general regime of conditionality for the protection of the Union budget," OJ L 433I, December 22, 2020, 1–10: https://eur-lex.europa.eu/eli/reg/2020/2092/oj.

16 Kim Lane Scheppele, Laurent Pech, R. Daniel Kelemen, "Never Missing an Opportunity to Miss an Opportunity: The Council Legal Service Opinion on the Commission's EU budget-related rule of law mechanism," *Verfassungsblog: On Matters Constitutional*, (2018), https://doi.org/10.17176/20181115-215538-0.

17 R. Daniel Kelemen, "Time to Call Hungary and Poland's Bluff," Politico, Opinion, November 19, 2020, https://www.politico.eu/article/time-to-call-hungary-and-polands-bluff/.

18 Marco Fisicaro, "Protection of the Rule of Law and 'Competence Creep' via the Budget: The Court of Justice on the Legality of the Conditionality Regulation: ECJ Judgments of February 16, 2022, Cases C-156/21, Hungary v. Parliament and Council and C-157/21, Poland v. Parliament and Council," *European Constitutional Law Review* 18, no. 2 (2022): 334–356, https://doi.org/10.1017/S1574019622000128.

19 C-156/21 - Hungary v Parliament and Council (2022), https://curia.europa.eu/juris/liste.jsf?num=C-156/21.

20 Andi Hoxhaj, "The CJEU Validates in C-156/21 and C-157/21 the Rule of Law Conditionality Regulation Regime to Protect the EU Budget," *Nordic Journal of European Law* 5, no. 1 (2022): 144, https://doi.org/10.36969/njel.v5i1.24501.

21 Hoxhaj, "The CJEU Validates in C-156/21 and C-157/21 the Rule of Law Conditionality Regulation Regime to Protect the EU Budget," 144.

the values of Article 2 of the TEU.[22] The Rule of Law Framework took on the form of a press release and had the objective of creating a non-legally-binding pre-Article 7 procedure that would make the actual suspension procedure of a member state seem less "nuclear" in nature.[23] The Framework emphasizes a structured diplomatic dialog with the member state concerned throughout the whole procedure rather than an automatic recourse to legal consequences.[24] In practice, the Commission has run through the entire procedure of exchanging positions with the Polish government, to no avail, and referred it to the Council, which never voted on any of the sanctioning motions. Therefore, commentators have judged this framework to be a "modest step," at best.[25]

The selected examples illustrate an increased activity of the EU to fight the illiberal reforms in Hungary and Poland. Presenting a common front did not necessarily happen through the political and constitutional channels, but rather by a plethora of indirect and domain-specific measures, which required legal mobilization and clever lawyers to operate within the set limits of EU powers and available majorities.

Scholactivism and the Rule-of-Law Crisis

The developments within the context of the rule-of-law crisis in the EU since 2011 were marked by a high degree of legal mobilization and scholarly activism. Lawyers, judges, and legal scholars have been advocating in defense of the rule of law and liberal democratic values.

Legal mobilization, more broadly, implies translating desires into rights and using the law and courts to press for social change.[26] The actors of legal mobilization are most commonly activists from the non-governmental sector.[27] The means of legal mobilization of EU legal scholars include, among other things, open letters, meetings at EU institutions, reports for think tanks, strategic litigation, hosting events at universities, and social media presence through institutional accounts. Such actions fall outside of the core responsibilities of a scholar or lecturer at a university. At the same time, basically all European universities encourage social relevance and dissemination of scholarly research in the public debate.

In this context, it is relevant to engage with the recent controversial debates about scholactivism in constitutional law. The debates around academic engagement in society oscillate between the idea of neutrality of academic research and fully embracing academic research for a social cause. Some scholars have called for skepticism of academic research pursuing a normative social or political goal. They

22 "Communication from the Commission to the European Parliament and the Council, a New EU Framework to Strengthen the Rule of Law," COM (2014) 158, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0158:FIN:EN:PDF#:~:text=This%20Communication%20sets%20out%20a,European%20Parliament%20and%20the%20Council.

23 Dimitry Kochenov and Laurent Pech, "Better Late Than Never? On the European Commission's Rule of Law Framework and its First Activation," *Journal of Common Market Studies* 54, no. 5 (2016): 1062, https://doi.org/10.1111/jcms.12401.

24 "Communication from the Commission to the European Parliament and the Council," 18.

25 Kochenov and Pech, "Better Late Than Never?" 1062.

26 Charles R. Epp, *The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998), 18; Virginia Passalacqua, "Legal Mobilization via Preliminary Reference: Insights from the Case of Migrant Rights," *Common Market Law Review* 58, no. 3 (2021): 751–776, https://doi.org/10.54648/cola2021049.

27 Lisa Vanhala and Cecilie Hestbaek, "Framing Climate Change Loss and Damage in UNFCCC Negotiations," *Global Environmental Politics* 16, no. 4 (2016): 111–129, https://doi.org/10.1162/GLEP_a_00379.

highlight the performative role of legal research[28] and the close contacts between legal academia and policy-making circles.[29] They still highlight the need for theoretically-rooted research distinct from the work of policy professionals. They emphasize knowledge, rather than justice, as the main goal of legal research.[30] Other scholars have pushed back against the skepticism towards scholactivism, advocating the possibility of combining knowledge production with the quest for social justice. They claim that academics have epistemic agency and should not obfuscate their responsibility for it.[31] In the end, academic publications compete for acceptance on the basis of some shared perceptions of methodology and professional ethics.[32]

The veracity of the academic debate in the European academic context bears proof of the necessity for an increased attention to method and ethics in legal academia.

Cautionary Tale

The considerations above about the academic conceptual debates about illiberalism, legal mobilization, and scholactivism show that we should avoid binary understanding of ethical questions surrounding the scholarly engagement with illiberalism. Instead, we need to engage in often painstaking discussions about how this engagement should happen.

In the context of engagement of EU scholars with illiberalism in particular, I propose three factors that are relevant: (1) embeddedness of scholars in the affected communities, (2) illiberal backlash against the judiciary, and (3) the rhetorical effects of a legal framing of political and social problems.

Embeddedness in Affected Communities

Strategic litigants against illiberal reforms include individuals, NGOs, and law clinics. These individuals also include scholars, who might want to instigate cases to bring about broader political, legal, and social change. Recent cases brought by scholars include the challenge to the border controls reintroduced by several member states within EU area without internal border controls,[33] or access to documents requests appealed for the sake of transparency at EU institutions.[34] A group of activists and academics has also challenged the surveillance of the opposition by the Polish authorities using Pegasus spyware before the European Court of Human Rights.[35] A strong nexus of academic and civil-society efforts emerged around enforcing the rule of law in Hungary and Poland. Platforms such as the Good Lobby Profs were

28 Tarunabh Khaitan, "On Scholactivism in Constitutional Studies: Skeptical Thoughts," *International Journal of Constitutional Law* 20, no. 2 (2022): 547–556, https://doi.org/10.1093/icon/moac039.

29 Hans W. Micklttz, "On the Politics of Legal Methodology," *Maastricht Journal of European and Comparative Law* 21, no. 4 (2014): 589–595, https://doi.org/10.1177/1023263X1402100401.

30 Jan Komárek, "Scholarship Is about Knowledge, Not Justice," *International Journal of Constitutional Law* 20, no. 2 (April, 2022): 558–559: https://doi.org/10.1093/icon/moac043.

31 Alberto Alemanno, "Knowledge Comes with Responsibility: Why Academic Ivory Towerism Can't Be the Answer to Legal Scholactivism," *International Journal of Constitutional Law* 20, no. 2 (September, 2022): 560–561, https://doi.org/10.1093/icon/moac062.

32 Thomas Bustamante, "Reflecting on the Ethical Commitments of Our Role," *International Journal of Constitutional Law* 20, no. 2 (2022): 557–558, https://doi.org/10.1093/icon/moac042.

33 C-368/20 - Landespolizeidirektion Steiermark (2022), https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-368/20.

34 C-761/18 P - Leino-Sandberg v Parliament (2021), https://curia.europa.eu/juris/liste.jsf;jsessionid=093B4DF864A73F1EC5BAE62D9ACA7DCE?num=C-761/18&language=en.

35 ECtHR, App. nos. 72038/17 and 25237/18, *Pietrzak v. Poland*, pending.

created especially to bridge academic expertise with strategic litigation practitioners to promote the rule of law.[36]

In the context of the dual role of judges, as institutional actors and as actors instigating strategic litigation, the judges' associations and bar associations have also played an important role. The Polish judges seem to have been particularly well embedded in the transnational judicial networks that can trigger legal mobilization.[37] The transnational judicial associations have played a significant role in assisting in cases being brought in the name of individual judges. In the case filed August 28, 2022, several professional associations of judges act as applicants in a case meant to draw public attention to the approval of releasing funds from the EU's Recovery and Resilience Plan to Poland.[38]

The coalitions around resisting illiberal reforms did not grow equally across the EU. We can observe a certain center-periphery dynamic, as the civil society movements around the rule of law grew in Western Europe as a reaction to the democratic backsliding in Central and Eastern Europe. The European Commission, in its Rule of Law Reports, divides the stakeholders depending on which member state their submissions concern substantively. Since the first report issued in 2020, it has been clear that significant attention is devoted to Hungary (30 stakeholder submissions) and Poland (36 stakeholder submissions).[39]

To some extent, it can be viewed as natural that expertise regarding strategic litigation in EU law would be focused in Brussels, which is also the geographical center of EU politics. Some key actors in the EU rule of law crisis, such as the Good Lobby, the European Network of Councils for the Judiciary, and the European Commission are located within a two-kilometer radius around the Place du Luxembourg in Brussels. This concentration of expertise has effects on the goals and political campaigns pursued by a large part of the legal mobilization against illiberal reforms in EU law. Legal mobilization and strategic litigation should be framed jointly by civil society organizations and affected communities.[40] The actors involved in strategic litigation decide on the framing of the political movement and determine the goals of strategic litigation.[41] If the actors involved in strategic litigation are based closer to Brussels than Warsaw or Budapest, their goals will tend to revolve more around building the resilience of EU law and institutions than around promoting liberal reforms in Poland or Hungary. In the case that sociopolitical impact in the concerned member states is one of the goals of strategic litigation, the involvement and empowerment of local actors appears crucial.

Involvement of local communities in Hungary or Poland is often ensured through the proxy of local civil society. The author herself has been involved in projects of the

36 See description on the website of Good Lobby Profs, last modified April 26, 2024, https://www.thegoodlobby.eu/profs/.

37 Claudia-Y. Matthes, "Judges as Activists: How Polish Judges Mobilise to Defend the Rule of Law," *East European Politics* 28, no. 3 (2022): 468–487, https://doi.org/10.1080/21599165.2022.2092843.

38 CJEU, filed August 28, 2022, T-532/22, *Association of European Administrative Judges v. Council*, pending.

39 As compared to 20 stakeholder submissions for Germany and 24 contributions for France, see European Commission, "Summary of the targeted stakeholder consultation for the 2020 Rule of Law Report," last modified December 10, 2020, https://commission.europa.eu/system/files/2020-10/2020_rule_of_law_report_-_summary_of_the_stakeholder_consultation_en.pdf.

40 Open Society Justice Initiative, "Strategic Litigation Impacts: Torture in Custody," Report (2017), https://www.justiceinitiative.org/publications/strategic-litigation-impacts-torture-custody.

41 Lisa Vanhala and Cecilie Hestbaek, "Framing Climate Change Loss and Damage in UNFCCC Negotiations," *Global Environmental Politics* 16, no. 4 (2016): 111–129, https://doi.org/10.1162/GLEP_a_00379.

Rule of Law Impact Lab at Stanford Law School, which have been involving Polish civil society to frame the legal mobilization and consider strategic litigation. While civil society appears a relevant proxy for the affected communities in the case of democratic states, the scholar-activists should do their homework in the context of such engagements. Compared to international organizations or international NGOs, they have less experience and often also less knowledge of the local context.

Backlash against the Judiciary

When mobilizing against illiberal reforms beyond the state, we have to take into account that depoliticizing certain issues and turning them into legal questions to be solved by judges through the application of legal syllogisms can trigger illiberal backlash.

In many European countries, we are witnessing debates about judicial activism, juristocracy[42] or, in the Netherlands, *dikastocratie* (derived from *dikastes*, meaning "judge" in ancient Greek). Judges overstepping their mandate is framed as a threat to the ideals of a majoritarian democracy, advanced especially by populist arguments.[43] In Hungary, George Soros, among the founders of the Open Society Foundations, has been put on public billboards as part of campaigns warning the population against foreign influence in Hungarian politics. In the Netherlands, the Parliament decided in February 2023 to initiate an inquiry into the possibilities of limiting access to the courts for environmental NGOs brining climate-change litigation, such as Urgenda.[44] These examples illustrate how strategic litigation is perceived as a means of counter maneuvering actions taken by parliaments and executives representing the democratic majority.

International courts in particular have been subject to backlash from illiberal regimes. We have many examples internationally of illiberal backlash.[45] Backlash goes beyond pushing back against the contents of the judicial decisions in question: it challenges the authority of a court as an international institution is a more principled way.[46] Backlash implies a certain degree of resentment, wanting to reverse a social development.[47] It is often framed as a reactionary critique of what its opponents call progress.

In the EU context, there have been attempts at framing the defense of social progress in terms of rights. Due to a lack of common standards and enforcement mechanisms for liberal democracy and the rule of law in the EU, it seems often more practicable to measure countries by their own standards. The idea non-regression means is

42 Governance of the judges as defined by Hirschl in Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge, Mass.: Harvard University Press, 2009).

43 Marijke Malsch, "Hoezo dikastocratie? Weghalen taken bij rechter leidt tot afkalven rechtsbescherming burger," *Nederlands Juristenblad* 18 (2020): 1325–1327, https://www.inview.nl/document/id8505b6cff67f4c1aabea809bd995fb89/nederlands-juristenblad-hoezo-dikastocratie?ctx=WKNL_CSL_85&tab=tekst&cpid=WKNL-LTR-Nav2&cip=hybrid.

44 NOS Niews, "Kamer wil onderzoek: namens wie spreken milieuclubs bij de rechter?," Nederlandse Omroep Stichting Nieuws, last modified February 22, 2023, https://nos.nl/artikel/2464752-kamer-wil-onderzoek-namens-wie-spreken-milieuclubs-bij-de-rechter.

45 Nicole De Silva and Misha Plagis, "NGOs, International Courts, and State Backlash against Human Rights Accountability: Evidence from NGO Mobilization against Tanzania at the African Court on Human and Peoples' Rights," *Law & Society Review* 57, no. 1 (2023): 38, https://doi.org/10.1111/lasr.12639.

46 Mikael Rask Madsen, Pola Cebulak, and Micha Wiebusch, "Backlash against International Courts: Explaining the Forms and Patterns of Resistance to International Courts," *International Journal of Law in Context* 14, no. 2 (2018): 197–220, https://doi.org/10.1017/S1744552318000034.

47 Madsen, Cebulak, and Wiebusch, "Backlash against International Courts," 200.

that democracies should not go back on their own democratic standards, whether regarding individual rights or separation of powers. This approach seems to also recently be adopted by the CJEU itself with regard to judicial independence in the European Union. The EU does not have the competence to establish a common standard of judicial independence, but the Court can instead enforce the rule that a member state cannot "amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law."[48] In the academic context, the concepts of democratic backsliding[49] or democratic decay[50] propose a framing of protection of social progress.

Including strategies to mitigate backlash seems another important factor in academic legal mobilization for the rule of law. EU institutions, including the Court of Justice of the EU, should not be shielded from social and political criticism. At the same time, it is easy to call for a brave, principled stance from the safety of the ivory tower. International research shows that the mobilization of compliance constituencies (private actors, civil society, and academics) around an international court is crucial for building and maintaining judicial authority. In that light, it is important for academic activism for the rule of law to include bringing cases to the courts and following up on their implementation.

Rhetorical Effects of a Legal Framing of Political and Social Problems

There is a particular risk linked to pursuing legal and judicial routes to counter illiberal reforms. If we understand illiberalism as an ideological universe opposing the liberal scripts, then it argues that majoritarian solutions are better suited to obtain the public good.[51] It rejects the liberal idea of checks and balances, where expertise-based independent institutions decide, without a democratic legitimacy to back up their decision-making power. According to the illiberal scripts, what legal mobilization does is to put decisions about change in society in the hands of lawyers and judges, who do not have the legitimacy to make them. Legal mobilization against illiberal reforms runs the risk of playing into the hands of those illiberal scripts.

If we perceive the liberal system of checks and balances as meant to provide a discursive exchange between different perspectives, then the essential juxtaposition in a democratic community is that between the majority and the minority. The majoritarian view can be expressed in popular votes or via the people's representatives in the parliament. The role of constitutional lawyers and judges is then to guarantee respect for the rights of the minorities.[52] The views of the minorities, outvoted in a majoritarian democratic process, can be part of a deliberative process, when presented in a rational and inter-subjective way.[53] This predicament of the courts

48 CJEU, C-896/19, April 29, 2021, *Repubblika v. Il-Prim Ministru*, ECLI:EU:C:2021:311, para. 63.

49 Nancy Bermeo, "On Democratic Backsliding," *Journal of Democracy* 27, no. 1 (2016): 5–19, https://doi.org/10.1353/jod.2016.0012; Daniel Kelemen and Michael Blauberger, "Introducing the Debate: European Union Safeguards against Member States' Democratic Backsliding," *Journal of European Public Policy* 24, no. 3 (2017): 317–320, https://doi.org/10.1080/13501763.2016.1229356.

50 Tom Daly, "Democratic Decay: Conceptualising an Emerging Research Field," *The Hague Journal on the Rule of Law* 11 (2019): 9–36, https://doi.org/10.1007/s40803-019-00086-2.

51 Marlene Laruelle, "Illiberalism: A Conceptual Introduction," *East European Politics* 38, no. 2 (June 2022): 312, https://doi.org/10.1080/21599165.2022.2037079.

52 John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, Mass.: Harvard University Press, 1980), 136.

53 Jürgen Habermas, "Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy," trans. William Rehg (Cambridge, Mass.: MIT Press, 1998), 293 *et seq*.

having to guarantee democracy in an essentially non-democratic way has been referred to in the US scholarship as the "counter-majoritarian difficulty."[54]

The interaction with illiberal discourse is not necessarily dependent on the success of a particular campaign. As an example of backfiring legal mobilization, in April 2022 the CJEU judgement ruled that the Schengen Borders Code only allows for a reintroduction of border controls inside the Schengen Zone for a maximum period of six months. This meant that countries such as Austria, which had had border controls continuously since 2015, were in violation of EU law. Migration policy and controls over its own borders have, since the migration crisis, been linked to sovereigntist and illiberal narratives. While member states were not eager to implement the 2022 ruling, the Council of the EU proceeded to act on a long-dormant legislative procedure regarding the reforms of the Schengen Borders Code. It proposed to introduce practically unlimited exceptions for member states to reinstate border controls based on national security.[55] It might seem that the Court's judgement, obtained through strategic litigation, has fostered the political consensus for more national discretion to close borders within the EU and to limit the free movement of EU citizens.

Conclusions

The power dynamics surrounding the engagement of academics in legal mobilization for the rule of law using EU law are complex. In this paper, as a personal reflection, I focus on three aspects of this engagement, namely embeddedness of scholars in the affected communities, illiberal backlash against the judiciary, and the rhetorical effects of a legal framing of political and social problems.

The professional ethics of scholars studying illiberalism should not be understood as a constraint against engaging with these issues altogether, and should not prevent us from exiting the ivory tower of the university. Ethics is instead about a constant strive to live up to certain values, such as truth and objectivity. Objectivity relates to relaying different sides of a debate, without necessarily staying neutral with regard to the challenges that our society faces. The repeated self-reflection can serve as a helpful tool for maintaining professional ethics.

This paper has tried to highlight certain questions that we should be asking ourselves when doing research on law and democratic backsliding in the EU. We should be aware of our positionality with regard to objects of the activists, the affected communities, and colleagues within universities. We should choose our words with care to avoid the traps of simple binaries and social polarization. We should be careful with our words and their representation.

54 Kenneth D. Ward and Cecilia R. Castillo, *The Judiciary and American Democracy: Alexander Bickel, the Countermajoritarian Difficulty, and Contemporary Constitutional Theory* (Albany: SUNY Press, 2012), 150.

55 Pola Cebulak and Marta Morvillo, "Backtracking or Defending Free Movement within the Schengen Area? *NW v. Landespolizei Steiermark*," *Common Market Law Review* 60, no. 4 (2023): 1075–1100, https://doi.org/10.54648/cola2023075.

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Wrestling with Ethical Issues in Studying Illiberalism: Some Remarks from the U.S. Context

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Abstract

Knowledge production has always been intrinsically correlated to politics and power hierarchy. In the U.S. academic system, producing scholarship on highly polarizing topics such as illiberalism faces specific challenges. Classic ethical and epistemological issues are more difficult to address in a neoliberal framework that pushes for interaction with the policy world and for external fundraising. Moreover, both institutionalized and peer pressures on a normative definition of "liberalism" and its "enemies," which often does not allow for both conservative and leftist interpretations of liberalism, reduces the space for discussion and may push for some spirals of silence to take form. This paper reflects on these challenges on the basis of more than a decade spent at the George Washington University in Washington, D.C.

Keywords: Illiberalism, neoliberalism, spiral of silence, cancel culture, policy, funding, ethics

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The use of the term "illiberalism" has risen steadily over the last decade, both in the political and media landscape, as well as in the scholarly literature, to describe opponents of that which is purported to be "liberalism." For scholars working on highly politicized topics—or even just topics with a parallel life in the policy and media sphere—such as illiberalism, striking the right balance between academic knowledge production and interaction with the broader environment constitutes a significant challenge. In this paper, I reflect on this challenge on the basis of more than a decade spent at the George Washington University in Washington, D.C. Many of the remarks I make here are specific to the context of D.C., which features a uniquely intense degree of entanglement between academia, policy, and funding. They would not be perceived so acutely by those at other universities detached from the policy weight of the U.S. capital. However, even in this unique context, they effectively reflect the broad ethical challenges associated with working on politicized topics such as illiberalism in a neoliberal academic system.

University and Politics

In producing knowledge on illiberalism, scholarship must navigate American society's acute polarization, especially among its intellectual and political elites. Some U.S. state governors, such as Ron DeSantis in Florida, Brian Kemp in Georgia, and Glenn Youngkin in Virginia, have been explicit about the extent to which they want to interfere with educational curricula to set it "in order" with their ideological views.[1] These pressure campaigns are particularly apparent in the context of primary and secondary education, with huge fights currently underway to control school curricula, county school boards, and regulate the books available to pupils.[2] However, they have slowly gained prominence at higher education institutions as well. Some colleagues who work in conservative states have already begun to feel institutional pressures to "tune down" research considered to be too "progressive."

For universities based in Washington, D.C.—which is not a state but rather an administrative entity that is directly dependent on the federal government—for which interacting with federal institutions is part of their DNA, an equilibrium is difficult to find, as the White House and Congress alternate between Democratic and Republican control. Mainstream universities are largely dominated by progressive views and have few contacts with the conservative world—an issue in the context of a national tradition that values bipartisanship. How for instance should universities deal with the criticisms—often expressed by (extremely powerful) boards of trustees—that universities are too one-sided in favor of progressive views and lack well-established relationships with conservative foundations or public intellectuals?

Due to their religious origins, D.C.'s Georgetown and Catholic Universities (Georgetown was founded by Jesuits and still has powerful departments on religious affairs, and Catholic defines itself as "faithfully Catholic"[3]) feature some ideologically conservative departments and faculty, but George Washington University and American University are quite isolated from prominent conservative institutions and figures. The gap between the tradition of bipartisanship and the largely progressive student and faculty population makes finding a potential equilibrium between

1 Dana Goldstein, "For Republican Governors, Civics Is the Latest Education Battleground," *The New York Times*, November 30, 2023, https://www.nytimes.com/2023/11/30/us/republican-governors-civics-education.html.

2 Tim Walker, "The Culture War's Impact on Public Schools | NEA," *neaToday*, February 17, 2023, https://www.nea.org/nea-today/all-news-articles/culture-wars-impact-public-schools.

3 Catholic University, "Faithfully Catholic," The Catholic University of America, https://www.catholic.edu/about-us/faithfully-catholic/index.html.

the two political sides of American culture a *tour de force*—one that university administrations have thus far failed to achieve.

At the individual level, scholars face far more issues in this regard than their administration, including the ethical and epistemological issues of how to dialogue with their object of study. By using the adjectives "far-right," "populist," "fascist," "illiberal," "post-liberal," or "conservative," scholars indeed participate in building the image of the movements that they describe, either discrediting them by framing them as radical, violent, or fringe or embracing these movements' self-promoted branding as legitimate political forces. Is it the duty of scholarship to denounce the whitewashing of language and positioning? Alternatively, should scholars work from the point of view of actors themselves while recognizing the risk of euphemization?

Answers to these questions must be given in a broader setting in which threats of physical violence against scholars by far-right actors as well as emotional harm done through hate speech—especially on social media—have come to constitute a worrisomely rising trend.[4] Scholars must also make strategic research decisions in a context of a growing movement in favor of scholar-activism from the progressive side. It is indeed critical for scholars to reflect on their social responsibility and how the knowledge that they acquire and provide can benefit society more broadly, not just their peers and students.[5] Any scholarship on democracy and its challenges may have direct implications for how society frames debates and policy solutions. However, the right to not engage in activism and to refuse to take sides should also be respected.

Peer Pressures and the Risks of "Spirals of Silence"

Another element of this ambivalent landscape relates to peer pressure. Most U.S. campuses are dominated by liberal views (meaning progressive in American terminology; one would use "leftist" in a European context) among both faculty and students. This is the case even in conservative states, with liberal universities functionally segregated from the rest of the state. There are, of course, some major conservative universities (e.g., Liberty University, Regent University, Brigham Young University, Bob Jones University), and there are certainly examples of conservative colleges even in the most liberal states like Massachusetts and New York.

The difference between liberal and conservative universities is that the latter attract almost uniquely conservative faculty and students, so there is genuine ideological affinity with few dissonant voices. In contrast, the former mainly host progressives alongside a minority population of conservative faculty and students. In the case of such liberal universities, a "spiral of silence" pushes conservative voices to conceal their moral beliefs if they do not believe that their views are widely shared by their colleagues or the wider community to which they belong.[6]

This ideological pressure does not come only from peers—it is institutional. Over the last decade, all American universities and a large majority of colleges established DEI (Diversity, Equity, and Inclusion) departments, which perform the legitimate

4 See in the special issue Antonia Vaughan, "Success and Harm When Researching the Far Right: Researcher Safety as Epistemic Exclusion," *Journal of Illiberalism Studies* 4, no. 1 (2024): 65-74, https://doi.org/10.53483XCOY3570.

5[16] Adrienne L. Massanari, "Rethinking Research Ethics, Power, and the Risk of Visibility in the Era of the 'Alt-Right' Gaze," *Social Media + Society* 4 no. 2 (2018): 1-9, https://doi.org/10.1177/2056305118768302.

6 Norris, Pippa. "Cancel Culture: Myth or Reality?" *Political Studies* 71, no. 1 (February 1, 2023): 145–74. https://doi.org/10.1177/00323217211037023.

and necessary work of developing a culture of inclusion among students, faculty, and staff. While many DEI departments perform a great service in helping university stakeholders with inclusion issues, some have become relatively intrusive in the propagation of their goals, leading to them being perceived as requesting ideological allegiance from scholars.[7] However, the reverse is true in highly conservative states, where the last few years have seen a trend of DEI departments being defunded. This trend is particularly significant in states leading the illiberal fight—such as Florida, Georgia, and Virginia—in the name of fighting against "wokeness," "socialism," and "reverse racism."[8]

The extreme polarization of campuses themselves should also be highlighted here. Many cases of "cancel culture"—with students organizing protests and social media campaigns to damage the reputation of external speakers or professors considered too conservative, racist, misogynistic, homophobic, transphobic, etc.—have called the U.S.'s sacred principle of freedom of speech into question.[9] Often, university leadership tends to side with students because they are the ones who are most able to attract media attention and, therefore, those who pose the greatest risk to the institution's reputation, impacting fundraising efforts. However, in recent months, the dynamic has shifted from domestic societal questions to the foreign policy realm with the massive pro-Palestinian and anti-Israeli movement among the U.S. youth. In this complex case, university administrations have struggled to strike the right balance between freedom of speech, protection against hatred, and their own reputations and funding biases.

Today, writing on sensitive topics related to the transformation of our ideological world means navigating troubled waters. Scholars rarely make explicit their positionality of departure and tend to consider "liberalism" to be the obvious default model of our societies. This dynamic results in those leaning toward a more conservative reading of society seeing liberalism as going too far toward dismantling the social order and those inclined toward a more leftist view that illiberalism is the hidden child of liberalism's failures finding themselves in dissonance with the mainstream research line. However, they are often the only ones to make explicit their enunciation against the majority-driven trend of liberalism being treated as the obvious normative reference.[10]

All these multifaceted factors may translate into certain people engaging in self-censorship, thinking twice about the vocabulary and terminology that they use, refraining from excessive public visibility, or deciding not to work on certain topics that they consider too polarizing—the few works that we have on the existence of "leftist illiberalism" compared to the extensive body of work on "right-wing illiberalism" reveal faculties' ideological preference for progressive liberalism but also point to the existence of hidden spirals of silence.

7 On this topic, see the debate between The Chronicle of Higher Education. Randall Kennedy, "Mandatory DEI Statements Are Ideological Pledges of Allegiance," *The Chronicle of Higher Education,* April 3, 2024, https://www.chronicle.com/article/mandatory-dei-statements-are-ideological-pledges-of-allegiance and Stacy Hawkins, "DEI Statements Are Not About Ideology. They're About Accountability," *The Chronicle of Higher Education,* April 19, 2024, https://www.chronicle.com/article/dei-statements-are-not-about-ideology-theyre-about-accountability.

8 The Chronicle of Higher Education, "DEI Legislation Tracker," March 29, 2024. https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts.

9 Patrick M. Garry, "Threats to Academic Freedom in Higher Education," *Society* 60, no. 2 (April 1, 2023): 176–80, https://doi.org/10.1007/s12115-023-00821-4.

10 Raphael Morisset, "The Paradoxical Sources of Illiberalism: A Synoptic Approach to the Genealogies of Illiberalism," *Journal of Illiberalism Studies* 4, no. 2 (Summer 2024): forthcoming pagination.

The Policy/Academia Entanglement

Another central point of tension that scholars must grapple with is their relationship with the policy world, including decision-making entities (e.g., federal agencies), lobbying/consultancy firms, and think tanks, with which universities which claim a leading research and policy orientation must cooperate and compete. This cooperation/competition scheme is specific to the context of Washington, D.C., even if we find it to a lesser extent at the major government and international affairs schools in Boston, New York, Philadelphia, and California (i.e., Berkeley and Stanford). The presence of this scheme obviously depends on the research discipline, with political science, international affairs, and economics most connected to it, which is not the case for other social sciences and even less for the humanities.

In Washington, D.C., the entanglement between academia, think tanks, and decision-making circles is reinforced by everyday proximity and a critical human factor: people move from one realm to another. The "revolving doors" phenomenon, whereby public officials leave decision-making positions upon a change in government for jobs in think tanks, lobbying/consultancy firms, other private-sector actors, and academia, is well-known. It can be celebrated for facilitating fluidity between decision-making circles and knowledge production, but it is also highly problematic: it consolidates lobbying (for instance, one-third of government appointees to the Department of Health and Human Services later leave to take jobs in the private sector),[11] and it introduces political and funding biases into scholarship. Even among the most respected think tanks, such as the Brookings Institution and the Carnegie Endowment for International Peace, "revolving doors" (and its well-known formula: "lose an election, gain a think tank") have contributed to a blurring of the line between research and political lobbying.

Scholars working on policy-related issues thus find themselves in a situation in which they need to cooperate and compete with colleagues coming from the policy world who often stay at a given university for just a few years before returning to state service—and these colleagues have the advantage in terms of both funds and media outreach. In an academic world that increasingly sees value in media visibility, the competition coming from policy practitioners represents a significant challenge for scholars who want to stay out of media hype due to ethical concerns or potential risks.[12]

Producing academic knowledge in a heavily policy-oriented context like Washington, D.C. also entails significant "noise pollution" created by think tanks and the mainstream media, whose outreach capacities dominate the whole city and set the agenda, forcing scholars and university administrations to follow similar trends. This challenge was particularly evident during the Trump candidacy and presidency in 2016–2020. The media reports on Trump-related phenomena were so overinflated, polarized, and emotional that maintaining a scholarly line of analysis (for instance on the sociological factors behind his electoral success, on his links with Russia) was a tremendous challenge.

11 USC Schaeffer, "Study of 'Revolving Door' in Washington Shows One-Third of HHS Appointees Leave for Industry Jobs," September 5, 2023. https://healthpolicy.usc.edu/article/study-of-revolving-door-in-washington-shows-one-third-of-hhs-appointees-leave-for-industry-jobs/. See also Ella Nilsen, "Capitol Hill's Revolving Door, in One Chart," *Vox*, June 19, 2019. https://www.vox.com/2019/6/19/18683550/capitol-hill-revolving-door-in-one-chart.

12 In this issue, see Vaughan, "Success and Harm When Researching the Far Right."

The lack of reflection coming from think tanks and media organizations—largely dominated by mainstream centrist-liberal perspectives—has obscured the terminological debate. A supposed overlap between liberalism as a national political tradition, liberalism as societal progressivism, liberalism as economic neoliberalism, and liberalism as support for a U.S.-led international order was leading the analysis, with little room left for disentangling these distinct components. Addressing the fact that conservatism, populism, nationalism, and anti-elitism have long been key political traditions in the United States was difficult in such a partisan environment. Moreover, the fact that the mainstream media bears some responsibility for having made Trump such a popular figure—as they benefitted commercially from what has been called the "Trump bump" (the fact that selling negativity and sensationalism is commercially successful[13])—also obscured the discussion and its assumptions.

Fundraising's Impact on Scholarship

Another systemic component of knowledge production is fundraising. Many of the leading research universities in the United States, including the rich Ivy League universities, devote a lot of time, energy, and human resources to securing external funding. While this work is mostly done by specialized departments in charge of relations with foundations, private and corporate donors, and alumni, faculty are also pushed to engage in fundraising efforts for their own research and, sometimes, for their own salary.

The salary of many tenured faculty is only covered for nine months out of every year; the remaining three months need to be funded by internal competition or external funds. One specific category of professors—so-called research professors—function entirely on the euphemism of "soft money," meaning that they need to raise their own salary and that their job contract is linked to this ability to raise funds. In cities like Washington, D.C., the issue of mixing funding sources is more systemic: many fully-funded tenured professors pad their official university salary with funds received for working as consultants for federal agencies. Therefore, they work in two parallel positions and, even disregarding the obvious conflict of interest, they rarely publicly acknowledge how much the consultancy's research agenda influences or overlaps with the university-funded one.

The main foundations known for funding research on international affairs (e.g., Carnegie Corporation of New York, MacArthur Foundation) usually refrain from direct interference in the academic work that they fund and fully respect the intellectual autonomy of their grantees. However, this does not mean that they lack preferences in terms of the work that they want to support. They certainly have agendas, some of which bear a clear conservative outlook (e.g., Koch Brothers, John Templeton Foundation, Smith Richardson Foundation), though the majority boast a more neutral, mainstream liberal direction, and some are even imbued with progressivist advocacy (e.g., Open Society Foundations).

Here too, funding requests need to accommodate the broad ideological orientations of the foundations, forcing scholars to clearly identify how their research fits on the U.S. ideological spectrum. Naturally, scholars with conservative views will not apply to Open Society Foundations for funding, and scholars with progressive views will not apply to the Koch Brothers. Some will struggle to find an institutional umbrella

13 Sergei A. Samoilenko and Andrey Miroshnichenko, "Profiting From the 'Trump Bump': The Effects of Selling Negativity in the Media," In *Handbook of Research on Deception, Fake News, and Misinformation Online*, eds. Innocent E. Chiluwa and Sergei A. Samoilenko (IGI Global, 2019), 375–91, https://doi.org/10.4018/978-1-5225-8535-0.ch020.

under which to pursue funding at all: neo-Marxist schools of thought, for instance, are present at prominent liberal universities but generally do not fit any foundation's agenda. The neoliberal system may support research with socially progressive goals and even radical ones—but not anti-capitalist sentiments. This is plainly apparent when it comes to climate change and environmental policy: while anti-capitalist work constitutes a substantial segment of the academic literature on this subject, the perspective is almost entirely absent from foundation-supported research.

Another issue that impacts scholarship is the rapidity with which policy-oriented research themes go in and out of fashion. This quick turn-around in policy obsessions has two major impacts on scholarship. First, funding is highly contextual: a lot of money can be suddenly available for a specific topic for a short amount of time, but academics usually need time to develop a new research agenda and then apply for funding. By the time they have built knowledge, the topic may have already gone out of fashion and disappeared from the policy agenda. Therefore, scholars must learn to produce research both when their topic is in the policy spotlight—which usually translates to pressure from the university administration and its outreach department to serve as public experts, commenting every day on television and social media—and when their topic is no longer on the policy radar and goes back to being a mere obscure corner of knowledge production.

Second, the funding available for policy research is rarely ideologically neutral. For example, since the early 2010s, funds made available by federal agencies for knowledge production on illiberalism, far-right movements, disinformation, and conspiracy theories have rarely been intended to study them but rather to "counter" them. Therefore, scholars face the following dilemma: refuse to apply for potentially available funds or accept that they must transform their research to fit the funder's required angle and strategy. Such ethical dilemmas are significant, but they are almost never outwardly discussed. Is scholarship's role to assist state institutions in their policy goals? Do scholars believe their knowledge helps craft better policies and actions? What are scholars' responsibilities in supporting policy goals that may be ethically problematic?

Concluding Remarks

From this brief overview, it is clear that many assumptions on what it means to produce knowledge in the U.S. neoliberal academic context need to be questioned. Both ethical and epistemological issues regarding the definition of our object of research, our own positioning as scholars, as citizens, and even as activists, our mechanisms of producing and circulating knowledge, and the financial and political biases that may interact in these processes need to be explicitly discussed in and become a part of the academic literature itself. These questions are not new to our times or unique to Washington D.C., but the sensitivity of defining that which is "illiberal"—or any other political label—and identifying what "threats" it poses to "liberal democracy" effectively encapsulates the intrinsic overlap between politics and knowledge production.

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Research on Conservative Islam in Europe: Navigating Ethical Considerations

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Abstract

This contribution discusses the ethical dilemmas inherent in researching marginalized communities, particularly in contexts where security approaches predominate. Focusing on a project involving white male converts to Islam who express critiques of liberal norms and institutions, this paper explores why such research is necessary despite the risk of amplifying illiberal voices. It also addresses the methodological challenges of conducting such research, considering the safety and well-being of different actors: the researcher, their respondents, and those who may be adversely affected by the exclusivist rhetoric of an illiberal community.

Keywords: conversion to Islam, conservative Muslims, Islamic critique of liberalism, research ethics

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Academic research on conservative and ultraconservative groups raises numerous ethical concerns, many of which are rooted in the broader challenges of studying marginalized and securitized communities. These challenges encompass issues such as power imbalances between researchers and participants, as well as the risk of objectifying the groups in focus.[1] In addition, there are specific ethical dilemmas related to researching the right end of the political spectrum.

These latter dilemmas can be categorized into two main groups. First, there is the question of "why" we undertake this research—why focus on individuals, organizations, and associations that often promote exclusive and hierarchical societies when there is a potential risk of our academic work inadvertently legitimizing and popularizing these viewpoints? Second, there is the question of "how" to conduct this research ethically—assuming that such a study is necessary, how can it be carried out without causing harm to participants or the researcher, while ensuring maximal fairness and impartiality throughout the process?

Ethical considerations surrounding research into illiberal groups have recently attracted much attention in academic scholarship.[2] The trend reflects the heightened visibility of these groups and the (not always proportional) rise in research projects devoted to them.[3] In this essay, I seek to contribute to these ongoing discussions by drawing on my experience working with a religious minority within the contemporary political right. The minority status, as I hope to show, brings additional challenges in identifying who needs protection and from whom—the deliberation required for calibrating one's ethical compass.

Identifying as Muslim and as a Conservative

My research focuses on individuals who had in the past or continue to maintain connections of varying nature with European right-wing parties, (ultra)nationalist groups, and conservative religious groups. These individuals are predominantly white men who are likely to be viewed as representing the majority population in a given region. Their political views diverge but contain pronounced elements of nativism, ethnocentrism, and/or cultural conservatism on issues of gender, family, and LGBTQ+ rights. Unlike "ordinary" European right-wing and illiberal movements that assume the incompatibility of Islam with European culture and the European value system, the members of this loosely connected network have publicly demonstrated their support for Islam, often after a religious conversion.

1 E.g., Fida Sanjakdar et al., *Re-searching Margins: Ethics, Social Justice, and Education* (Abingdon: Routledge, 2022), https://doi.org/10.4324/9780429346286; Laura Parson, "Considering Positionality: The Ethics of Conducting Research with Marginalized Groups," in *Research Methods for Social Justice and Equity in Education*, ed. Kamden K. Strunk and Leslie A. Locke (Cham: Palgrave Macmillan, 2019), 15–32, https://doi.org/10.1007/978-3-030-05900-2; and Nadia von Benzon and Lorraine van Blerk, "Research Relationships and Responsibilities: 'Doing' Research with 'Vulnerable' Participants," *Social & Cultural Geography* 18, no. 7 (2017): 895–90, https://doi.org/10.1080/14649365.2017.1346199.

2 Illiberalism pertains not only to the far right but also to the far-left actors, though the latter receive considerably less attention. For the definition of illiberalism, see Marlene Laruelle, "Illiberalism: A Conceptual Introduction," *East European Politics* 38, no. 2 (2022): 303–27, https://doi.org/10.1080/21599165.2022.2037079. For scholarship on the research ethics, see Emanuele Toscano, ed., *Researching Far-Right Movements: Ethics, Methodologies, and Qualitative Inquiries* (Abingdon: Routledge, 2019); Stephen D. Ashe et al., eds., *Researching the Far Right: Theory, Method and Practice* (Abingdon: Routledge, 2020); and Adrienne L. Massanari, "Rethinking Research Ethics, Power, and the Risk of Visibility in the Era of the 'Alt-Right' Gaze," *Social Media + Society* 4, no. 2 (2018), https://doi.org/10.1177/2056305118768302.

3 What Aurelien Mondon and Aaron Winter refer to as "bandwagonism" in their chapter "From Demonization to Normalization: Reflecting on Research," in *Researching the Far Right*, ed. Stephen Ashe et al., 370–82.

The group in question constitutes a minority within the broader and multifaceted community of European converts to Islam, due to their active political self-positioning on the right of the spectrum.[4] They also represent a minority within the European right, due to their distinctive, that is, Muslim, religious identity. These two identities—religious and political—are often categorized in the mainstream discourse as challenging or even incompatible with liberal-democratic norms. Reinforcing each other, these identities lead to a "double" ostracization of the group. In practical terms, this implies that research informants from this group are likely to encounter disproportionately high scrutiny from security services, particularly in Europe.

In academic research, this double ostracization has resulted in the practically exclusive dominance of the security studies approach toward this group. The trend has been intensifying after the post-9/11 securitization of Islam in general and the phenomenon of foreign fighter-converts in *jihadi* groups in particular, which has contributed to an already pejorative media portrayal of Muslims, especially converts.[5] While there are documented cases of European converts to Islam assuming leadership roles within extremist organizations like the Caucasus Emirate in Russia or Islamic State in Iraq and Syria, where their brutal actions were filmed and even used to promote these organizations on the internet, generalizing this particular image to encompass all converts is clearly impossible.[6] When combined with research methodologies that rely solely on publicly available data, media overrepresentation of *jihadist* Muslims inevitably introduces bias into the depiction of highly diverse convert communities.[7]

A problem with the security studies approach, as discussed by Cobain Tetrault, among others, lies in the preexisting popular consensus, "such as in the form of activists' public social media posts, speeches, websites and/or institutional or government narratives, reports and policy" about the violent character of individuals in question.[8] In other words, if the research by default presupposes the violent nature of white, male converts to Islam, the public image that these individuals maintain—which is boosted by the (social) media, that is, openly available data—is likely to reinforce this perception. This is despite the fact that the performative acts, such as social media posts, and the actual views and deeds of individuals within the right and

4 On the European community of converts, see, among others, Kate Zebiri, *British Muslim Converts: Choosing Alternative Lives* (Oxford: Oneworld, 2008), https://doi.org/10.1093/jis/etp070; Esra Özyürek, *Being German, Becoming Muslim: Race, Religion, and Conversion in the New Europe* (Princeton, NJ: Princeton University Press, 2014); Juliette Galonnier, "Choosing Faith and Facing Race: Converting to Islam in France and the United States" (PhD diss., Northwestern University and Science Po, 2017), https://explore.openaire.eu/search/publication?pid=10.21985%2Fn2hq3j; and Karin van Nieuwkerk, *Moving In and Out of Islam* (Austin: University of Texas Press, 2018).

5 David Herbert and Janna Hansen, "'You Are No Longer My Flesh and Blood': Social Media and the Negotiation of a Hostile Media Frame by Danish Converts to Islam," *Nordic Journal of Religion and Society* 31, no. 1 (May 2018): 4–21, https://doi.org/10.18261/issn.1890-7008-2018-01-01; Thomas Sealy, "Making the 'Other' from 'Us': The Representation of British Converts to Islam in Mainstream British Newspapers," *Journal of Muslim Minority Affairs* 37, no. 2 (2017): 196–210, https://doi.org/10.1080/13602004.2017.1339500; and Gulnaz Sibgatullina, "Translation and the Construction of Conversion Narratives: Language Strategies of Russian Converts to Islam," in *The Routledge Handbook of Translation and Religion* (Abingdon: Routledge, 2022), 348–63.

6 For the Caucasus Emirate case, see Danis Garaev, "Jihad as Passionarity: Said Buriatskii and Lev Gumilev," *Islam and Christian–Muslim Relations*, 28, no. 2 (2017), 203–18, https://doi.org/10.1080/09596410.2017.1288460. For the ISIS case, see Marion van San, "Lost Souls Searching for Answers? Belgian and Dutch Converts Joining the Islamic State," *Perspectives on Terrorism* 9, no. 5 (October 2015): 47–56, https://www.jstor.org/stable/26297433.

7 Justin Everett Cobain Tetrault, "Thinking Beyond Extremism: A Critique of Counterterrorism Research on Right-Wing Nationalist and Far-Right Social Movements," *The British Journal of Criminology* 62, no. 2 (March 2022): 435, https://doi.org/10.1093/bjc/azab062.

8 Tetrault, "Thinking Beyond Extremism": 435.

far-right organizations can vary significantly.[9] Moreover, security-focused studies often fail to capture the full range of various groups, their motivations and dynamics, and especially developments that emerge in reaction to changing social conditions.[10]

In my research, I focus on the last point and analyze the *evolution* of conservative ideas expressed by Europeans through their affiliation with Islam. Like any socially engaged individuals, my research interlocutors continuously accumulate new experiences, are exposed to novel ideas, and adapt to the changing contexts around them. Some had already been actively involved in public debates for many years and experienced marginalization due to their prior or ongoing associations with far-right groups or certain political views they had articulated or supported, especially at the inception of their political activism. Conversely, others found greater acceptance in mainstream discourse precisely because of their religious conversion. Over the years, these individuals have been actively involved in generating intellectual content and organizing grassroots mobilization initiatives. The main driving force behind my research project has been the analysis of convictions, principles, and ideologies held by these converts. In my case, as in many other studies involving politically marginalized groups, this entailed direct engagement with the individuals and a thorough examination of their work.[11]

In the subsequent sections of this essay, I will delve into four crucial facets central to my research project, which are closely linked to the broader discourse on the ethics of researching the political (far-)right. The first two aspects pertain to the "why" question, focusing on the researcher's personal motivations and the contemporary challenges associated with investigating conservative Islam in Europe. The other two aspects address the "how" question and revolve around ensuring the security of respondents during data collection and the responsible presentation of data while upholding the researcher's ethical obligations. In deriving these general conclusions drawn from my personal experience, I recognize that they do not apply to everyone and that there may be variations depending on the researcher's background, perspective, and research focus.

The Researcher's Personal Motivation

Research on far-right movements and actors is often motivated by a collective, shared desire to comprehend the ongoing processes within our societies and to gain insight into groups whose views may differ from our own. This motivation arises from a combination of intellectual curiosity and practical necessity to uphold the systems that we value and cherish. However, when discussing the reasons for scholarly engagement with the (far-)right, there has been little emphasis on the individual motivations of researchers. It is important to recognize that delving into the core of groups we oppose can be an inherently personal journey, as it directly addresses our individual concerns and anxieties about the future of the societies to which we belong.

My positionality as a researcher—particularly within this project—has been strongly

9 Colin Jerolmack and Shamus Khan, "Talk Is Cheap: Ethnography and the Attitudinal Fallacy," *Sociological Methods & Research* 43 (May 2014): 178–209, https://doi.org/10.1177/0049124114523396.

10 Kathleen Blee, "Ethnographies of the Far Right," *Journal of Contemporary Ethnography* 36 (April 2007): 119–28, https://doi.org/10.1177/0891241606298815; and Hilary Pilkington, "Field Observer: Simples," in *Researching Far-Right Movements: Ethics, Methodologies, and Qualitative Inquiries*, ed. Emanuele Toscano (Abingdon: Routledge, 2019), 23–40.

11 For another study, see Agnieszka Pasieka, "The Banal Transnationalism of the Far Right," *Dissent*, Spring 2020, https://www.dissentmagazine.org/online_articles/the-banal-transnationalism-of-the-far-right.

influenced by the set of identities related to my gender, ethnicity, and religious background. The interplay of these identities is prone to creating various kinds of discrimination and privilege conditions, and my individual experiences have played an important role in the way I have approached the project and my research interlocutors, as well as how they have perceived and interacted with me. Some of the methodological issues were connected to the well-discussed issue of a female researcher operating within male-dominated spaces, such as difficulties getting access and gendered perceptions of the researcher within the community.[12] Even the Muslim identity, which might seem like the most obvious shared identity, was often dividing rather than creating a basis for rapport. Our experiences of being and becoming Muslim, in fact, have been vastly different.[13] As someone born into a Muslim family, my relationship with Islam has been shaped by family traditions and a sense of minority identity in Russia, leading to a generally apolitical or quietist perspective on religion. In contrast, my research interlocutors had converted to Islam as adults and viewed it as an active and often political choice.

My interlocutors and I often hold opposing views on significant social and political issues. As a researcher from an ethnic-minority background, I occasionally find their ideas, even if they were expressed in the past and are not prominent in their current discourses, to be personally "triggering"; that is, these ideas can evoke feelings of fear and anger. As scholars, we are taught to acknowledge and scrutinize how emotions can impact our analysis and decision-making. However, we rarely explore how conducting research involving groups that elicit strong emotions in us can sometimes serve as a mechanism for addressing and processing these very emotions. This project, for instance, has provided me with new insights into my experiences of fear and anger generated by practices of exclusion.[14] This is because similar emotions (though more often anger than fear) have been present among my research interlocutors. Although the practices of exclusion targeting representatives of ethnic-minority and -majority communities obviously differ substantially, there was nevertheless an instance of shared experience, and exploring boundaries between where experience was indeed shared and where it diverged provided fruitful material for reflection.

It is noteworthy that several accounts that discuss the emotional aspect of researching groups that tend to be unfriendly or even hostile toward females, LGBTQ+ individuals, or people of color are written from a gendered or minority perspective.[15] These works critically reflect on the emotions involved in such encounters and

12 Saija Katila and Susan Meriläinen, "A Serious Researcher or Just Another Nice Girl?: Doing Gender in a Male-Dominated Scientific Community," *Gender, Work & Organization* 6, no. 3 (July 1999): 163–73, https://doi.org/10.1111/1468-0432.00079; and Bernadeth Laurelyn Pante, "Female Researchers in a Masculine Space: Managing Discomforts and Negotiating Positionalities," *Philippine Sociological Review* 62 (2014): 65–88, https://philippinesociology.com/recent_issues/volume-62-2014/.

13 For a comparable account, see Neila Miled, "Muslim Researcher Researching Muslim Youth: Reflexive Notes on Critical Ethnography, Positionality and Representation," *Ethnography and Education* 14, no. 1 (2019): 1–15, https://doi.org/10.1080/17457823.2017.1387063.

14 Unlike fear, anger has the capacity to propel us toward an unknown object rather than away from it. Acquiring a more detailed understanding of the "other" side can potentially assist in developing an informed activist stance. Such a stance, ideally, would direct the struggle for change not so much at groups, often imagined as cohesive communities, but at particular individuals and, even better, at institutions and systems that underlie existing hierarchies (cf. Myisha Cherry, *The Case for Rage: Why Anger Is Essential to Anti-Racist Struggle* [Oxford: Oxford University Press, 2021]).

15 Kathleen M. Blee, *Understanding Racist Activism: Theory, Methods, and Research* (Abingdon: Routledge, 2017), https://doi.org/10.4324/9781315461533; Agnieszka Pasieka, "Anthropology of the Far Right: What If We Like the 'Unlikeable' Others?" *Anthropology Today* 35, no. 1 (2019): 3–6, https://doi.org/10.1111/1467-8322.12480; and Vidhya Ramalingam, "Overcoming Racialisation in the Field: Practising Ethnography on the Far Right as a Researcher of Colour," in *Researching the Far Right*, ed. Stephen Ashe et al., 254–69.

emphasize the possibility of extending empathy even toward persons whose beliefs may be "unlovable" to us.[16] It is as if personal experiences of researchers—who have been objectified by society because of their gender, skin color, or sexuality—become a compelling motivation for advocating against any kind of exoticization, essentialization, and marginalization, even of those whom we may have preferred to see marginalized.

Showing empathy toward a particular group does not imply justifying their actions. Similarly, comprehending the social circumstances that have led to specific perspectives does not absolve individuals of accountability for their decisions and behaviors. Ultimately, the individuals in question maintain agency and responsibility for their actions. As Agnieszka Pasieka has emphasized in her account of working among the far-right, a distinction should be made between critique and judgment.[17] Although emotions are an inherent part of any debate on subjects that are important to us, even if such a debate draws only on rational critique, empathy toward the opponents and understanding the root causes of their standpoints create opportunities to go beyond the friend-foe rationale, while also enabling us to comprehend the sources of our own anxieties.

The first response to the question "Why conduct research on the (far-)right?" has delved into the emotions often prevalent in the coverage of these groups. It emphasized how such research can offer insights into understanding both "our" and "their" emotions (though, as I tried to show, such rigid binary divisions often prove inadequate). The subsequent section will give another response to the "why" question and reflect on knowledge production by exploring the need to address gaps in how we understand the phenomenon of conservative Islam in Europe.

A Need (Not) to Be Seen

Engaging with conservative Muslim communities not only presents personal challenges but also positions the researcher within the broader discourse on "Islam in Europe." This debate has been intricate and riddled with controversies since at least the 1990s, when several European governments began expressing concerns about the integration and assimilation of predominantly migrant Muslim communities. On the one hand, Europe currently grapples with a prevailing Islamophobic sentiment and institutionalized discrimination against individuals of Muslim heritage. Islamic practices and identities continue to bear a stigma, and their expressions are often subject to control. On the other hand, there is a Europe-wide concern about the inflow of migrants from Muslim-majority countries, radicalization among Muslim youth, and the global reach of jihadist networks. The highly charged debate about the compatibility of Islam and Europeanness—the latter often understood in terms of liberalism, democracy, and secularism—creates a situation in which criticism of either is likely to be perceived as an attack, either on the minority group facing persistent discrimination or on the democratic institutions already under significant strain.

16 The account of Vidhya Ramalingam, a woman of color, who conducted fieldwork among the Swedish far right, is a powerful illustration of that (Ramalingam, "Overcoming Racialisation in the Field," 258). For the discussion on the difference between empathy and sympathy toward respondents whose values we do not share, see Koen Damhuis and Léonie de Jonge, "Going Nativist: How to Interview the Radical Right?" *International Journal of Qualitative Methods* 21, https://doi.org/10.1177/16094069221077761; and Piotr Kocyba, Magdalena Muszel, and Corinna Trogisch, "Empathy and Mutuality in Qualitative Research: Reflections from Three Different Research Fields," *Ethnologia Polona* 43 (2022): 21–41, https://doi.org/10.23858/ethp.2022.43.3018.

17 Pasieka, "Anthropology of the Far Right," 6.

To answer the "why" question posed at the beginning of this essay, I believe that research on conservative converts to Islam is necessary in order to create a legitimate space for conservative Muslim identity. Being unable to distinguish between ultraconservative, moderately conservative, centrist, liberal, and far-left Muslims deprives us of instruments to engage with different groups and layers of society in the political sense. Over the last two decades, the European conservative landscape has changed dramatically: if previously it was dominated by Christian democratic parties, the newcomers on the right do not have a strong religious identity, though they may continue to draw on "Christian values" and the legacy of the "Judeo-Christian civilization."[18] At the same time, it is increasingly common for religious communities—Muslim, Christian, and Jewish—to join forces to advocate for center-right conservative causes.[19] In the political arena, however, Muslim communities continue to be traditionally recognized by the left parties, often because of the migration aspect, or, as in the Netherlands, by populist and far-right parties that seek to capitalize on the Muslim youth that challenges the exclusivity of existing center-right and right-wing parties.[20]

At the same time, Muslims spanning the political spectrum, whether on the left or the right, have been actively involved in critiquing European liberal-democratic institutions. Analyzing the experiences of European Muslims, a consistent body of research demonstrates how the existing liberal systems of governance and representation tend to marginalize non-Christian religious expression.[21] It is crucial to note that this does not inherently brand liberalism as anti-Islamic, but its historical ties to colonialism and Orientalist scholarship require a meticulous examination of embedded biases. The critiques of Western democracy and economic neoliberalism articulated by my Muslim interlocutors tend to be in line with the decolonial arguments against the Europe-centered liberal hegemony and have validity in many aspects. They and I tend to differ in our perspectives on potential solutions to address these issues. However, categorizing their arguments solely as "anti-liberal" or "anti-democratic" would be both inaccurate and potentially harmful, because silencing this kind of arguments disregards the value of extensive critique of Western colonial modernity and the role of liberal thought in justifying it, developed from a Muslim perspective.

That being said, I acknowledge that the adoption or, as some would argue, appropriation of the Muslim identity by converts from privileged backgrounds may result not in a change but in a strengthening of the existing power hierarchies.

18 To give just few references to some of the critical analyses of the phenomenon: Rogers Brubaker, "Between Nationalism and Civilizationism: The European Populist Moment in Comparative Perspective," *Ethnic and Racial Studies* 40, no. 8 (2017), 1191–226, https://doi.org/10.1080/01419870.2017.1294700; Nicholas Morieson, *Religion and the Populist Radical Right: Secular Christianism and Populism in Western Europe* (Wilmington, DE: Vernon Press, 2021); and Nadia Marzouki, Duncan McDonnell, and Olivier Roy, *Saving the People: How Populists Hijack Religion* (Oxford: Oxford University Press, 2016).

19 Clifford Bob, "The Global Right Wing and Theories of Transnational Advocacy," *The International Spectator* 48, no. 4 (2013): 71–85, https://doi.org/10.1080/03932729.2013.847685; and Julia Mourao Permoser and Kristina Stoeckl, "Reframing Human Rights: The Global Network of Moral Conservative Homeschooling Activists," *Global Networks* 21, no. 4 (October 2021): 681–702, https://doi.org/10.1111/glob.12299.

20 Soehayla Halouchi and Saskia Loomans, "Hoe Baudet's campagne gericht lijkt op jonge moslims en waarom die werkt," *NOS*, March 19, 2023, https://nos.nl/artikel/2468047-hoe-baudets-campagne-gericht-lijkt-op-jonge-moslims-en-waarom-die-werkt.

21 To name just a few: José Casanova, *Public Religions in the Modern World* (Princeton, NJ: Princeton University Press, 1994); Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Redwood City, CA: Stanford University Press, 2003); Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton, NJ: Princeton University Press, 2015); and A. Sophie Lauwers, "Religion, Secularity, Culture? Investigating Christian Privilege in Western Europe," *Ethnicities* 23, no. 3 (June 2022), https://doi.org/10.1177/14687968221106185.

In particular, white, male converts are able to elevate their voices above those of naturalized or European-born Muslims.[22] Using a minority identity to advocate for exclusive ideas that ultimately benefit the majority can potentially undermine the struggles experienced by individuals facing more profound forms of discrimination. Yet, even this kind of discussion would contribute to a more nuanced approach to the communities of converts and Muslims than is currently achieved by the dominance of the security studies lens.

Finally, confining religion exclusively to ethnic backgrounds and analyzing Islam only as a religion of minorities risks overlooking the emerging trend in which Islam is dissociated from specific territories, historical communities, and contexts.[23] Presently, Islam has transformed into a form of protest identity that transcends cultural and ethnic boundaries, becoming inclusive even of non-Muslims. While the interplay between far-right communities and Muslims may still appear counterintuitive and unfamiliar, growing evidence suggests otherwise.[24] Gaining an understanding of this interplay equally necessitates in-depth research within the communities and discussions about their respective ideologies in order to register larger processes of cultural change.

The Right to Be Forgotten/Forgiven

The following two sections will address the "how" aspects of conducting research within conservative Muslim communities: how to make sure that the research does not bring harm to communities, even if these are communities whom we oppose. While ethical concerns related to data collection and the representation of marginalized groups are complex and extensive, these sections will narrow the scope to two specific issues: the ethics of omitting information and the potential for reciprocity with research interlocutors.

My research interlocutors often possess higher education, including academic backgrounds; they closely follow my research and have the potential to engage with my work, whether through comments or critiques in online spaces. We may share some social circles, both online and offline, and have established reputations within those circles. This creates a situation where the distance between me as a researcher and my informants is minimal, and the research process, especially the dissemination of research findings, affects both sides. In simple terms: both parties have the means to influence or potentially harm each other.

The challenge associated with the marginalized position of my interlocutors lies in the specific intersection of religious identity and political views that can serve as grounds for persecution. In a context where Islam is seen as a security issue, the data and findings derived from my study have the inadvertent potential to harm participants by attracting negative attention from the public or media and could even incentivize increased control from state institutions. While various standard measures, including informed consent, anonymization techniques, and secure storage of interview data, have been implemented to minimize these risks, there is always an underlying concern that any kind of data, when stored and organized, can be used against the group. This dilemma raises a fundamental question about a

22 Gulnaz Sibgatullina and Tahir Abbas, "Political Conversion to Islam among the European Right," *Journal of Illiberalism Studies* 1, no. 2 (2021): 1–17, https://doi.org/10.53483/VCIS3529.

23 Olivier Roy, *Globalized Islam: The Search for a New Ummah* (New York: Columbia University Press, 2004) and *Holy Ignorance: When Religion and Culture Part Ways* (New York: Oxford University Press, 2013).

24 Gulnaz Sibgatullina, 'Illiberalism and Islam', in Marlene Laruelle (ed.), The Oxford Handbook of Illiberalism (online edn, Oxford Academic, 20 Nov. 2023), https://doi.org/10.1093/oxfordhb/9780197639108.013.14.

researcher's responsibilities. On the one hand, there is a responsibility toward the researched communities not to cause harm, while on the other hand, there is an ethical obligation within the realm of academic research not to inadvertently amplify or empower illiberal voices.

As researchers, we possess a level of control over how we structure and categorize our data. In the course of my research project, which covers multiple decades in the history of a particular movement, my original plan was to create a network map that would connect individuals featured in the study, utilizing publicly available information. However, as the project progressed, I encountered a significant number of individuals who had disengaged from political activism, shifted their ideological stances, or simply chosen to move on with their lives, distancing themselves from the public discourse. This discovery led me to realize that constructing and publicly sharing a network map of connections would oversimplify the complex reality I was encountering. Many of these individuals have expressed regret about their past involvement in political activism and, in some cases, have altered their support for certain ideas. Others have asked that I refrain from discussing their past in my work, allowing their historical life events, which are now buried in the depths of search engine results, to remain undisturbed. In response to this, I have established an ad hoc rule that guides the inclusion of names. Names are included only for those individuals who are currently actively engaged in advocating for conservative causes and/or with whom I have personally engaged in consented conversation, to ensure that publicly available data aligns with their present reality.

In navigating ethical dilemmas concerning the storage and sharing of information that might potentially expose participants' involvement in illegal activities, I find myself aligning with colleagues who suggest that researchers should assume a guest status within the research field.[25] This status carries implications for confidentiality. Adopting such a status means not only refraining from actively seeking knowledge of offenses to avoid breaching confidentiality but also involves establishing personal boundaries—preferably agreed upon with an ethics committee—to determine which types of offenses should be reported and which should not.

The pressure to "valorize" our research results places researchers in a precarious position within a media landscape that often prioritizes sensationalism. This dilemma forces us to navigate between the responsibility to avoid perpetuating oversimplified perspectives regarding converts and Muslim communities, ideally even challenging these perspectives, and the obligation not to justify the actions of the subjects we study. In response to this, I have adopted a strategy that involves refraining from labeling data in a manner that could lead to overly simplistic conclusions. I also avoid presenting and discussing my research in brief media comments, blogs, or short interviews; instead, I seek opportunities for more in-depth discussions where the complexities and nuances of the central issues in this project can be thoroughly explored. However, I recognize that in my efforts to avoid causing harm to my informants, with whom I have established personal connections throughout the research process, I may have inadvertently neglected addressing the well-being of victims. The victims are those who were harmed by the institutional structures of the movement or by the discourses of its members, and who—because of the lack of extensive contact—have remained a blind spot in my research project.

25 Adrianna Surmiak, "Should We Maintain or Break Confidentiality? The Choices Made by Social Researchers in the Context of Law Violation and Harm," *Journal of Academic Ethics* 18 (September 2020): 229–47, https://doi.org/10.1007/s10805-019-09336-2; and Emily Finch, "Issues of Confidentiality in Research into Criminal Activity: The Legal and Ethical Dilemma," *Mountbatten Journal of Legal Studies* 5, no. 1/2 (2001): 34–50.

(Un)expected Consequences

The final issue concerns the public presentation of research results. Despite the adherence to ethical guidelines in a research project, researchers working on controversial topics can never ensure absolute protection against potential backlash, both within the academic realm and among the communities they study.[26] If not critical enough, a researcher risks being accused "by association" of maintaining illiberal views or of "covering up" for illiberal groups. This can result in emotional distress, exclusion from research communities, and even a loss of career opportunities.[27] If "too" critical, a researcher, especially after publication of their findings, will likely be ostracized by the communities they studied, facing reprisals from community members and having to sever connections with informants.

The latter kind of experience can also be deeply traumatic for the researcher. At best, they might find themselves compelled to break personal connections that they had invested significant time and energy into building—connections that may have even held personal value to them. At worst, the researcher may become a target of bullying and harassment in response to their research outcomes. Falling out with a research group can carry repercussions not only for the researcher's own future access but also for colleagues who may wish to conduct research in the same community in the future. If we assume that repeated access, whether by the original researcher or their colleagues, is essential for the reasons discussed earlier, the question arises: How can one mitigate the risks of falling out, if that is possible at all?

For research interlocutors, the accuracy of information presented about them in research results is of utmost importance. Each individual has their own unique reasons for engaging with a researcher. Some seek to rectify their public image and contribute to challenging mainstream narratives by adding nuance to their accounts. Others share their personal stories in a quest to be heard and understood. Those who have withdrawn from public discussions for years may genuinely want to help gather reliable information.

One approach to maintaining a fair and ethical stance toward research participants, without compromising the researcher's integrity, involves sharing segments of the research findings with them. The concept of reciprocity and giving back to the communities we study is a well-established principle in the fields of ethical ethnography and anthropology. Nevertheless, these standards have seen limited application in the context of research involving conservative and far-right communities. For instance, researchers might consider sharing interview quotations and cross-checking provided information with the respondents. This not only improves the accuracy of the study's findings but also fosters a sense of shared ownership and responsibility regarding the research outcomes among the participants. Involving participants not only during the initial data collection stage but also at later points in the research process can reduce the risk of a negative surprise upon publication and, consequently, mitigate potential undesired consequences.[28]

26 E.g., Caroline Brettell, *When They Read What We Write: The Politics of Ethnography* (Westport, CT: Bergin and Garvey, 1993); and Sarah Riccardi-Swartz, "Fieldwork and Fallout with the Far-Right," *American Ethnologist*, June 18, 2020, https://americanethnologist.org/online-content/essays/fieldwork-and-fallout-with-the-far-right/.

27 Emanuele Toscano and Daniele Di Nunzio, "The Dark Side of the Field: Doing Research on CasaPound in Italy," in *Researching Far-Right Movements*, ed. Emanuele Toscano (Abingdon: Routledge, 2019), 100–101; see also Emanuele Toscano, "Conclusions: Doing Research on Far-Right Movements," in *Researching Far-Right Movements*: 144.

28 Richard McNeil-Willson, "The Murky World of 'Extremism' Research," *The New Ethnographer*, April 15, 2020, https://thenewethnographer.com/the-new-ethnographer/the-murky-world-of-extremism-research.

Indeed, there is a valid concern associated with this approach of involving research participants in the review of research findings, as researchers may unintentionally or intentionally become conduits for the perspectives of their interlocutors, endorsing specific actions or viewpoints. However, adopting an ethical approach to protect the well-being of participants does not have to mean relinquishing to them control over the narrative. To strike a balance, tactics can be implemented to distinguish between factual aspects of the narrative that can be verified and discussed with the research respondents, and the researcher's analysis. Such a differentiation helps ensure that the researcher can still maintain both accuracy and independence when discussing research findings with interlocutors.

Conclusion

This essay has sought to demonstrate the necessity of conducting research into conservative Muslim communities, given the persistent relevance of the "Muslim Question" in Europe. Such research can help transcend the limitations of security studies frameworks, which often overlook the diversity and evolution of Muslim communities, especially those that do not neatly fit into the categories of extremism or liberalism, majority or minority. Convert communities, for instance, serve as a prime example of such complex cases.

Ethnography-inspired research is essential to comprehending the motivations of groups that advocate for illiberal, exclusivist ideas. Knowledge about those who hold views opposing ours paves the way for addressing and productively redirecting the emotions of fear and anger that frequently dominate public discourse surrounding such groups. Furthermore, within the context of Muslim communities in Europe, ethnographic research has the potential to provide a more intricate map of political orientations. It can shed light on emerging alliances between various religious groups and connections between Muslim and non-Muslim communities on the right side of the political spectrum.

Nonetheless, this ethnographic work naturally leads to the development of personal relationships between the researcher and the informants. Like all personal relationships, these connections are inherently messy. This "scholar-informant solidarity in ethnography" is both "morally volatile" and "epistemologically vital."[29] And there are no easy solutions to mitigate the moral and ethical challenges that arise. A fundamental issue is about who deserves protection. On the one hand, there is an imperative to protect those whom we study, even if we might dislike them, and to prevent their further marginalization by the state and public media. On the other hand, we must protect those who might become victims of exclusivist narratives promoted by some members of this community. Practically any research that strives to maintain a balance between the two imperatives risks criticism for not being "enough"—either not critical enough or not protective enough.

Ultimately, the choices that the researcher makes in conducting, presenting, and discussing their project are inherently personal, in the sense the researcher's positionality will influence the research process in a unique way: their access to the field, types of information shared, and lenses through which it will be analyzed. Such research on controversial topics becomes personal also because acceptance of certain research methods by the interlocutors, the academic community, and the broader

29 Benjamin R. Teitelbaum, "Collaborating with the Radical Right: Scholar-Informant Solidarity and the Case for an Immoral Anthropology," *Current Anthropology* 60, no. 3 (June 2019): 415, https://doi.org/10.1086/703199.

public will be influenced by who the researcher is, including factors such as their gender, race, religion, ethnicity, and existing public capital.

Although personalized and endorsing case-by-case solutions, the academic debate on ethical issues related to research on conservative, illiberal, and far-right communities remains highly relevant, especially given the increasing prevalence of such research. The debate offers a valuable platform for exchanging ideas and scrutinizing research practices, ultimately contributing to developing new standards and norms. However, academic knowledge production has never been apolitical. Discussions surrounding the morality of certain research practices when dealing with opposing groups are inherently linked to the reinforcement or challenging of power hierarchies, both within academia and in relation to society at large. Therefore, it is crucial to continue engaging in these debates while also being mindful of the broader implications that stigmatizing or normalizing certain research topics or practices may have.[30]

30 This publication is part of the project that has received funding from the European Union's Horizon 2020 research and innovation program under the Marie Skłodowska-Curie grant agreement No. 892075.

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Success and Harm When Researching the Far Right: Researcher Safety as Epistemic Exclusion

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Abstract

Harm experienced while researching the far right can be encountered through, or sparked by, core academic activities which reduce the distance between the researcher and potentially hostile actors. Currently, advice to manage such risks is directed towards the individual, made responsible by a neoliberal industry and lack of institutional knowledge. However, the ability of researchers to implement such advice is stymied by success metrics that reward visibility and productivity, producing a contradiction between success and safety—satisfying one risks jeopardizing the other. The contradiction is not evenly experienced, with those at the sharp end of the far right disproportionately vulnerable to such harm and thus subject to such "choices."

Drawing on a set of 21 interviews with researchers of the far right and manosphere, this article argues that the current approach to researcher safety has epistemological implications by affecting the type of research that can take place and who can contribute to the production of knowledge (safely, that is). These findings indicate that we must understand these challenges as representative of a broader "epistemic exclusion" that "unwarrantedly hinders one's ability … to participate in knowledge production."

Keywords: ethics, researcher safety, social media

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Academic use of the digital public sphere takes advantage of a range of opportunities to engage in and disseminate research, develop a network, and accrue academic capital. It was welcomed as a space with few barriers to access, where junior scholars can circumvent traditional hierarchies.[1] These practices are crucial for the core goal of academia (knowledge production), but also for researchers to meet the demands of institutions to market their research in "the current neoliberal academic marketplace."[2] However, it is a sphere that carries risk, particularly for those at the sharp end of the far right, with identity mediating the frequency and severity of harm. For researchers of the far right, it may involve direct engagement with hostile actors or being present and visible in the same spaces as the people espousing and defending the structurally violent politics they research.

While harm is not inevitable, the potential risks require some mitigation. However, these mitigations largely happen at the individual level due to a lack of engagement from other stakeholders.[3] Pearson et al. note that the risk of harm can disincentivize researchers from publicizing research or engaging in research in the first place.[4] The risk "means scholars must be thoughtful as to how they will engage (if at all) before, during, and after the research process. This stands in stark contrast to the ways researchers are trained to think about promoting work to their intellectual communities and the public."[5] Visibility in the public sphere is an important factor as it increases the likelihood of coming to the attention of hostile actors.

With the digital public sphere increasingly important for the creation and dissemination of knowledge, we must consider the implications of mandating engagement with a risky environment where harm is experienced unevenly. This article theorizes current approaches to researcher safety by researchers of the far right and manosphere to be an issue of "epistemic exclusion," since it materially impacts who can safely produce and disseminate knowledge. First, this paper discusses the current literature on researcher safety, the risk landscape, and risk mitigations. Next, it considers how the neoliberal environment of academia[6] influences dissemination priorities and success metrics. Finally, it applies "epistemic exclusion" to understand how the management of safety and success affects who can contribute to knowledge production.

Current efforts to improve researcher safety and tackle existing challenges are laudable and urgent. They are the necessary first step toward improving the research environment and safeguarding those entering a field that carries inherent risk. To complement and extend these efforts, this article points to a critical element that requires more attention: the impact of the current approach to researcher safety on the creation of knowledge and who can contribute to that process, a core goal of academia. In particular, it seeks to problematize the increasing necessity of visibility associated with knowledge production and engagement in light of the risks posed by hostile actors and lack of support.

1 Chiara Carrozza, "Re-Conceptualizing Social Research in the 'Digital Era': Issues of Scholarships, Methods, and Epistemologies," *Análise Social* LIII, no. 228 (2018): 652–671, https://doi.org/10.31447/as00032573.2018228.05.

2 Emma Kavanagh and Lorraine Brown, "Towards a Research Agenda for Examining Online Gender-Based Violence against Women Academics," *Journal of Further and Higher Education* 44, no. 10 (2019): 1379–1387, https://doi.org/10.1080/0309877X.2019.1688267.

3 Elizabeth Pearson, Joe Whittaker, Till Baaken, Sarah Zeiger, Farangiz Atamuradova, and Maura Conway, "Online Extremism and Terrorism Researchers' Security, Safety, and Resilience: Findings from the Field," *Vox-Pol*, 2023, https://www.voxpol.eu/download/report/Online-Extremism-and-Terrorism-Researchers-Security-Safety-Resilience.pdf.

4 Pearson et al., "Online Extremism and Terrorism Researchers."

5 Adrienne Massanari, "Rethinking Research Ethics, Power, and the Risk of Visibility in the Era of the 'Alt-Right' Gaze," *Social Media + Society* 4, no. 2 (2018): 1–9, https://doi.org/10.1177/2056305118768302.

6 Mark Olssen and Michael A. Peters, "Neoliberalism, Higher Education and the Knowledge Economy: From the Free Market to Knowledge Capitalism," *Journal of Education Policy* 20, no. 3 (2005): 313–345, https://doi.org/10.1080/02680930500108718; Fabian Cannizzio, "Tactical Evaluations: Everyday Neoliberalism in Academia," *Journal of Sociology* 54, no. 1 (2018): 77–91, https://doi.org/10.1177/1440783318759094.

The Data

The ideas discussed in this article are drawn from interviews done with 21 researchers of the far right and manosphere: 19 of the researchers were junior, doing PhDs or on insecure contracts; 16 are women and five are men; and some participants mentioned identities they felt relevant, including being Jewish or bisexual. These interviews were interested in discussing how researchers viewed and practiced researcher safety within the academic environment, touching on institutions, professional pressures, their research, and experiences of harm. The interviews lasted between 30 and 105 minutes, and were semi-structured in nature, following avenues of interest introduced by the interviewee.[7]

Through the interviews, it became clear that the management of researcher safety has epistemological implications. Many of the researchers spoke of difficulties, fears, or risks associated with core academic practices including publications and public scholarship. The researchers who followed the guidance on researcher safety most closely were also the ones who felt most unable to contribute to scholarship without sacrificing some element of safety. They were also the most likely to express a desire to leave academia if they could not be safe. In this article I consider the implications of the current approach to researcher safety and academic success specifically for how knowledge is produced, and who can participate in these practices. A separate article considers interviewees' experiences with institutional risk management (through institutional ethics) in more depth; a report delves into the barriers to researcher safety, arguing that individual management is ineffective and that safety pivots on knowledge and engagement (what is known and what can be done). The focus of this article and ideas within emerged from the conversations with the interviewees and reflections on the scholars' situation within the industry. In these discussions, it was striking how many of the steps that scholars took to preserve their safety directly impacted their engagement with the mechanisms of knowledge production and how these impacts were felt unevenly.

Safety When Researching the Far Right

The field has benefitted from a recent burgeoning literature on the risks involved in researching the far right and how to mitigate them. This literature conceptualizes researchers as a potentially vulnerable party, with risk present in all stages of research.[8] Efforts have been directed towards surveying the field and increasing the amount of knowledge available, working to equip stakeholders with the skills necessary to mitigate risks as far as possible. Awareness is a key issue, since this research has found that researchers, supervisors, and institutions are often unaware of the full range of risks prior to engaging in research.[9] This presents a missed opportunity to mitigate the harms where possible.

Pearson et al. have conceptualized the harms as internal and external: internal is defined as the "psychological or emotional issues" associated with the consumption of content, while external is defined as "that caused by a third party, including experiences such as cyber-hate, networked harassment, hostile emails, doxxing, and direct messages involving death threats or sexual abuse."[10] Interviewees found internal harms difficult to describe, but reported feeling deeply affected by content, feeling a compulsion to keep researching beyond reasonable hours, and depression. Interviewee A14 illustrated the impact of a long period of analysis, mentioning that they "kind of started seeing ghosts everywhere." Interviewees shared experiences of online harassment, including severe insults, rape and death threats, and sexual

7 Herbert J. Rubin and Irene S. Rubin, *Qualitative Interviewing: The Art of Hearing Data* (Los Angeles: Sage, 2016).

8 Pearson, "Online Extremism and Terrorism Researchers."

9 Pearson.

10 Pearson.

harassment. One interviewee reported a hostile actor seeking to intimidate them by turning up to a public talk; more reported harassment via complaints to their institution. The impact of these harms can be substantial, with researchers reporting significant emotional and temporal cost.[11] Researcher vulnerability to harm varies depending on the methodology, topic, participants, and most significantly the positionality of the researcher. Positionality is critical as "certain identity markers" live at the sharp end of the far right and are more vulnerable to both internal and external harm.[12] These researchers are not just vulnerable to vicarious trauma but could also arguably experience direct trauma, since it is not "just hateful rhetoric but direct attacks on their humanity"[13]—they are already "participants."[14]

Guidance on how to mitigate risks acknowledges the lack of institutional engagement with risk mitigation, and thus focuses recommendations on the individual.[15] Much of this guidance is drawn from personal experience of harm or personal practices. With visibility an important factor for external harm, increasing the likelihood the researcher comes to the attention of hostile actors, advice tends towards obscurity and withdrawal from public spheres. Additionally, a greater engagement with the internet means that more information is available which can then be leveraged. Internal harm relates to exposure to content, with recommendations pivoting on moderating consumption and implementing healthy working practices.[16] Engaging with mental health support is recommended, as is a supportive working environment.

This literature acknowledges several barriers to safe research on the far right. As noted, institutions receive significant criticism for their absence as meaningful stakeholders, with few being aware or engaged with the issue.[17] Scholars have called on institutions to recognize the risks associated with core practices and offer more support and training for those entering the field.[18] Pearson et al. raise particular concern for isolated individuals who may not have formed broader networks prior to engaging in research,[19] thus lacking access to experienced peers who may have gained knowledge through experience.

However, although interviewees felt the need to take steps to be safe (largely involving obscurity), they operate within an academic environment that prioritizes and rewards visibility and engagement with the public sphere. As a result, scholars are required to, or rewarded for, participating in behaviors they are simultaneously taught to avoid.

11 George Veletsianos, Shandell Houlden, Jaigris Hodson, and Chandell Gosse, "Women Scholars' Experiences with Online Harassment and Abuse: Self-Protection, Resistance, Acceptance, and Self-Blame," *New Media & Society* 20, no. 12 (2018): 4689–4708, https://doi.org/10.1177/1461444818781324; Pearson, "Online Extremism and Terrorism Researchers".

12 Maura Conway, "Online Extremism and Terrorism Research Ethics: Researcher Safety, Informed Consent, and the Need for Tailored Guidelines," *Ethics and Terrorism* (2021): 147–160, https://doi.org/10.4324/9781003222873-12.

13 Hannah Allam, "In the Mostly White World of Extremism Research, New Voices Emerge," *Washington Post*, 2022, https://www.washingtonpost.com/national-security/2022/06/25/extremism-researchers-diversity/.

14 Conway, "Online Extremism and Terrorism".

15 Alice E. Marwick and Robyn Caplan, "Drinking Male Tears: Language, the Manosphere, and Networked Harassment," *Feminist Media Studies* 18, no. 4 (2018): 543–559, https://doi.org/10.1080/14680777.2018.1450568; Pearson, "Online Extremism and Terrorism Researchers."

16 Miron Lakomy and Maciej Bożek, "Understanding the Trauma-Related Effects of Terrorist Propaganda on Researchers," Global Network on Extremism and Technology (GNET), May 2023, https://doi.org/10.18742/pub01-119; Emma Williamson, Alison Gregory, Hilary Abrahams, Nadia Aghtaie, Sarah-Jane Walker, and Marianne Hester, "Secondary Trauma: Emotional Safety in Sensitive Research," *Journal of Academic Ethics* 18, no. 1 (2020): 55–70, https://doi.org/10.1007/s10805-019-09348-y.

17 Ashley Mattheis and Ashton Kingdon, "Does the Institution Have a Plan for That? Researcher Safety and the Ethics of Institutional Responsibility," in *Researching Cybercrimes: Methodologies, Ethics, and Critical Approaches*, ed. Anita Lavorgna and Thomas J. Holt, 1st ed. (London: Springer International Publishing, 2021), pp.457–472; Pearson, "Online Extremism and Terrorism Researchers."

18 Pearson.

19 Pearson.

Knowledge Production and Academic Capitalism[20]

Researchers of the far right and manosphere work within an academic environment that has its own set of behavioral requirements, particularly in relation to the core goal: knowledge production. The dissemination of research is central to knowledge production as "no new discovery, brilliant insight, or original interpretation has any significance until it is made available to others."[21] It is the mechanism through which ideas and findings can be exchanged and evaluated with peers and "has gained cultural and political influence as the guarantor of reliable knowledge."[22] Moreover, these activities do not just report knowledge, but are "actively *constitutive* of that knowledge" (emphasis in original).[23] While more traditional mechanisms such as journal articles retain their importance, the digital public sphere is an increasingly important space through which researchers can disseminate and meet the range of success metrics. Alongside the familiar "publish or perish," D'Alessandro et al. have detailed a new requirement to "promote or perish," with engagement with academic social networking sites (ASNS) a key tool.[24]

Olssen and Peters note that "the ascendancy of neoliberalism" has had a marked impact on how higher education operates and what is valued[25]—what Slaughter and Leslie have termed "the regime of academic capitalism."[26] An environment of competition follows through to "market-like" behaviors such as the need to compete for funding from external sources who determine who or what gets funded.[27] In the academic environment, the value of knowledge has moved away from being a public good towards being a commodity,[28] with governments evaluating the "return on investment" and relative value of research.[29] Dynamics of competition are used to generate "productivity, accountability and control," with evaluation metrics (also valuing engagement and impact) used to imagine the "ideal worker."[30] Productivity is measured through the "principle" of publish or perish as "recruitment, promotion, and tenure appear to be decided primarily based on the number of articles published

20 Drawing on the work of Sheila Slaughter, Larry L. Leslie, and Gary Rhoades, this article understands academic capitalism to be the behaviors or mechanisms through which "public and nonprofit institutions increasingly engage in market and marketlike activities" such as part-time faculty, commercialization, competition, and the encouragement of entrepreneurialism. This theorization considers how academia is connected to the "new economy" wherein "knowledge is a raw material to be converted to products, processes, or services." It is particularly helpful to understand the broader institutional and economic structures and behaviors that may shape individual actions. Sheila Slaughter and Gary Rhoades, *Academic Capitalism and the New Economy: Markets, State, and Higher Education* (Baltimore: Johns Hopkins University Press, 2011), 15; Sheila Slaughter and Larry L. Leslie, "Expanding and Elaborating the Concept of Academic Capitalism," *Organization* 8, no. 2 (2001): 154–161, https://doi.org/10.1177/1350508401082003; Sheila Slaughter and Larry L. Leslie, *Academic Capitalism: Politics, Policies, and the Entrepreneurial University* (Baltimore: Johns Hopkins University Press, 1997).

21 Ken Hyland, *Academic Publishing: Issues and Challenges in the Construction of Knowledge* (Oxford: Oxford University Press, 2015).

22 Hyland, *Academic Publishing*, 2.

23 Hyland, *Academic Publishing*, 3

24 Steven D'Alessandro, Morgan Miles, Francisco J. Martínez-López, Rafael Anaya-Sánchez, Irene Esteban-Millat, and Harold Torrez-Meruvia, "Promote or Perish? A Brief Note on Academic Social Networking Sites and Academic Reputation," *Journal of Marketing Management* 36, nos. 5–6 (2019): 405–411, https://doi.org/10.1080/0267257x.2019.1697104.

25 Mark Olssen and Michael A. Peters, "Neoliberalism, Higher Education and the Knowledge Economy: From the Free Market to Knowledge Capitalism," *Journal of Education Policy* 20, no. 3 (2005): 313–345, https://doi.org/10.1080/02680930500108718.

26 Slaughter and Leslie, "Expanding and Elaborating," 2001.

27 Slaughter and Leslie, "Expanding and Elaborating."

28 Slaughter and Leslie.

29 Andrew Gunn and Michael Mintrom, "Measuring Research Impact in Australia," *Australian Universities' Review* 60, no. 1 (2018): 9–15.

30 Olssen and Peters "Neoliberalism, Higher Education and the Knowledge Economy" 2005; Rodrigo Rosa, "The Trouble with 'Work–Life Balance' in Neoliberal Academia: A Systematic and Critical Review," *Journal of Gender Studies* 31, no. 1 (2021): 55–73, https://doi.org/10.1080/09589236.2021.1933926.

in a fairly select group of peer-reviewed journals, based on their relative impact, selectivity, and relevance to … rankings."[31] Engagement and impact are variously defined by funders (and occasionally merged), but generally refer to dissemination to the academic sphere and wider society and demonstrable changes to stakeholder actions.[32]

With connection to academic and non-academic communities necessary, the digital public sphere was initially welcomed as a space through which barriers of access could be reduced or removed. Social networking sites were important spaces to "de-institutionalize information" as "critically engaged scholarship has embraced digital platforms to communicate, diffuse, and archive."[33] Beyond access to peers, developing a public presence can help get research in front of policymakers and other stakeholders, helping meet grant requirements or demonstrate impact.[34] Tressie McMillan Cottom has situated this practice within the broader importance of "academic capitalism" which "promotes engaged academics as an empirical measure of a university's reputational currency."[35] The impact of social engagement can be numerically assessed through tools such as "alt-metrics," with these sites increasingly viewed "as a proxy indicator of an academic's reputation," including for retention and promotion.[36] Scholars have used the network of social media sites as a tool of "professional branding," helping "accrue academic capital" by constructing their "scholarly identity."[37]

The academic and digital environments are not experienced uniformly by academics, nor are success metrics. Marginalized researchers face an "academic climate [experienced] as inhospitable, discriminatory, and plagued with bias."[38] This climate impacts on the experiences and well-being of scholars and affects "the nature and trajectory of their scholarship."[39] Wijesingha and Ramos found that "the significance of being racialized had a consistent and direct effect on being tenured and promoted."[40] Traditional routes of dissemination can gatekeep access to the production of knowledge with stringent requirements producing exclusionary mechanisms, particularly affecting scholars in the Global South.[41] While the online sphere is so important for knowledge production, it is experienced as more hostile to women and marginalized researchers, often targeting their identity and expertise, to the extent that abuse is "normal part of online experience."[42]

31 Mark De Rond and Alan N. Miller, "Publish or Perish," *Journal of Management Inquiry* 14, no. 4 (2005): 322, https://doi.org/10.1177/1056492605276850.

32 Gunn and Mintrom, "Measuring Research Impact in Australia."

33 Tressie McMillan Cottom, "Who Do You Think You Are?" *Ada: A Journal of Gender, New Media, and Technology*, no. 7 (2015), https://adanew-media.org/2015/04/issue7-mcmillancottom/.

34 D'Alessandro et al., "Promote or Perish?"

35 Cottom, "Who Do You Think You Are?"

36 D'Alessandro et al. "Promote or Perish?"

37 Sugimoto, Cassidy R., Sam Work, Vincent Larivière, and Stefanie Haustein, "Scholarly Use of Social Media and Altmetrics: A Review of the Literature," *Journal of the Association for Information Science and Technology* 68, no. 9 (2017): 2037–2062, https://doi.org/10.1002/asi.23833.

38 Settles et al., "Epistemic Exclusion."

39 Settles et al.

40 Rochelle Wijesingha and Howard Ramos, "Human Capital or Cultural Taxation: What Accounts for Differences in Tenure and Promotion of Racialized and Female Faculty?" *Canadian Journal of Higher Education* 47, no. 3 (2017): 54–75, https://doi.org/10.47678/cjhe.v47i3.187902.

41 A. Suresh Canagarajah, " 'Nondiscursive' Requirements in Academic Publishing, Material Resources of Periphery Scholars, and the Politics of Knowledge Production," *Written Communication* 13, no. 4 (1996): 435–472, https://doi.org/10.1177/0741088396013004001.

42 Marwick and Caplan, "Drinking Male Tears"; Veletsianos et al., "Women Scholars' Experiences with Online Harassment and Abuse"; Cottom, "Who Do You Think You Are?"; Kavanagh, "Towards a Research Agenda."

The Tension between Success and Safety: Epistemic Exclusion in Researcher Safety

To contribute to academic knowledge production, researchers must engage in the various dissemination and impact activities. Visibility and productivity are necessary to meet success metrics and develop the academic capital to successfully compete in the market conditions. However, while public engagement bolsters the academic reputation of both the researcher and the institution, it also creates a target for harassment and hostility—in part by producing more information than would otherwise be available. Moreover, such requirements contradict the behaviors recommended to be safe: obscurity and the moderated consumption of content. Researchers must limit their engagement with the public sphere to be safe, but must increase their engagement to be successful. They must limit their exposure to violent content to be safe, but must increase their exposure to be productive. The contradictory recommendations produce an antagonism where success comes at the expense of safety or vice versa, with a cost to the researcher no matter the choice made. However, considering that these metrics are a necessary component to staying in academia and participating in knowledge production, framing behaviors as choices overlooks the ramifications of the dynamic on the researcher and academia more broadly.

Firstly, the digital public sphere is not just a space occupied by peers, policymakers, and civil society, but also those advocating the politics being researched. While researchers aim, and are encouraged to, disseminate work to the greatest extent, context collapse may result in "different social environments unintentionally and unexpectedly … crashing into each other."[43] Although researchers may be intending to disseminate findings to peers and stakeholders, they may instead speak to adherents, which radically changes the potential risks associated. Two interviewees mentioned seeing academic articles circulated within groups, and a third (A6) shared that "even just by being more active, I would worry that I would draw the ire of people that I study potentially." Similar dynamics have been observed with journal articles and pieces of public scholarship. With the potential for retributive action, engagement with the public sphere carries risk. A13 shared that "I don't talk about the specifics of my research usually [for safety reasons], which is problematic because as academics we need to promote our research." They went on to share: "I do have concerns about being able to promote my work for professional reasons and balancing out personal safety. I haven't found the secret sauce yet for that." As such, although the digital public sphere has been considered a boon for facilitating public engagement, for researchers of the far right it reduces the barriers between them and their potential research subjects or the hostile audience.

Critically, the antagonism does not affect researchers equally. As noted, both the digital public sphere and academia are more hostile to marginalized researchers, particularly when the identities are visible or discussed[44]. Similarly, the risks of researching the far right and manosphere increase with proximity to the topic, again affecting those at the sharp end of the far right. This is recognized by scholars. As A5 states: "I thought, you know, in terms of everything that incels despise is probably, it's probably me." The antagonism becomes more fraught for researchers at the sharp end of the far right who are more vulnerable to harm and must meet harsher success metrics. A Jewish researcher, conscious of their public identity, stated that "I feel like because I'm having to be a bit more cautious and a bit more anonymous than I would want to then I'm not going to have the same exposure and career opportunities as other people" (A7). Other researchers expressed feeling "the need" to do "community engaged and like public intellectual work, which comes with an

43 J.L. Davis and N. Jurgenson, "Context Collapse: Theorizing Context Collusions and Collisions," *Information, Communication & Society* 17, no. 4 (2014): 476–485, https://doi.org/10.1080/1369118x.2014.888458.

44 See Sara Ahmed's *On Being Included: Racism and Diversity in Institutional Life* (Durham, NC: Duke University Press, 2012) for a discussion of the gap between institutions' proclaimed approaches to diversity and the lived experiences of marginalized researchers.

increased risk" (A13)—a necessity for many interviewees who engaged with this topic with the intention of making a difference.

As a means of managing risk, participants discussed how concerns about safety materially impacted the topics researched, the methods used, the way that research was conceptualized, and how findings were disseminated. Participants mentioned avoiding studying topics because of the potential risk associated. Similarly, a doctoral student interviewed by Pearson et al. chose to not research incels because "we don't know what the consequences might be."[45] Other participants explained that they did not consider interviews and in-person attendance at protests an option because of the possible risks and lack of institutional support. Conversely, some interviewees engaged in interviews with far-right actors knowing that there was a level of risk, but felt that there were few alternatives available to collect the data they needed. These direct relationships can exacerbate the risks of public engagement by creating a ready-made hostile audience, particularly when the output is critical. Two participants changed the outputs of their research because of harassment—one avoiding non-academic dissemination, as well as the publicizing of academic outputs, and the other changing the phrasing of output based on previous experiences. Participants generally perceived engagement with the public sphere to carry more risk than academic spaces, because the research is more likely to come to the attention of hostile actors. However, two participants explicitly expressed concerns around journal publications, especially with the push towards open access. While it is a laudable aim to increase accessibility, it also removes some of the barriers that almost create a level of protection.

With the antagonism affecting researchers' abilities (or ability to choose) to contribute to knowledge production unevenly, theorizations of "epistemic exclusion" are useful to illuminate the various ramifications of the dynamic. Epistemic exclusion is concerned with "key intersections of knowledge and power,"[46] and has been defined as phenomena that "unwarrantedly hinders one's ability … to participate in knowledge production,"[47] hermeneutical marginalization more specifically referring to social groups that have "less than a fair crack at contributing to the shared pool of concepts and interpretive tropes that we use to make generally shareable sense of our social experiences."[48] The choice of whether or not to participate is an *epistemic* concern because it involves locations of knowledge production and dissemination; it functions as *exclusionary* because such decisions disproportionately affect marginalized scholars.

The antagonism makes knowledge production and distribution exclusionary in part through its invisibility. Without highlighting how safety and success can require contradictory behaviors they seem equally achievable, rendering the factors that mediate access unseen and unacknowledged. While marginalized researchers of risky subjects must make decisions that compromise their success or their safety, they are ultimately evaluated on the same playing field as more privileged colleagues who do not experience the same dynamic. This disincentivizes engagement with safe behavior unless the researcher is resigned to the consequences of 'failing,' as decision-makers do not make decisions in the context of the topic and methodology. As a result, for researchers who wish to be safe, knowledge dissemination is challenged; for researchers that wish to be successful, harm is likely. Without an explicit consideration of how success and safety are more possible for some than others, necessary adjustments to support marginalized researchers cannot be made.

45 Pearson, "Online Extremism and Terrorism Researchers."

46 Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007).

47 Kristie Dotson, "Conceptualizing Epistemic Oppression," *Social Epistemology* 28, no. 2 (2014): 115–138, https://doi.org/10.1080/02691728.2013.782585; Settles et al., "Epistemic Exclusion."

48 Fricker, "Epistemic Injustice and the Preservation of Ignorance."

The narrow range of activities that enable a researcher to meet success metrics (many of which require visibility) complicates their ability to contribute to knowledge production if they prioritize safety. As a result, those who are more vulnerable to harm cannot meet the success metrics in another way, because these are the options available. Adrienne Massanari detailed a few alternatives such as the ability to anonymize publications or publish as a collective.[49] However, with the current system rewarding professional branding and the accrual of academic capital, these options would again require some kind of loss to the individual. Massanari acknowledges that such changes would "challenge the entire editorial process" and "standards of evaluation" for hiring and promotion.[50] It would arguably also require adaptations to how grants are reviewed, with many often having a section devoted to impact and/or engagement. The restrictive routes to meeting these requirements raise questions as to how researchers can be funded to research safely.

Discussion and Concluding Thoughts

Researchers experience the academic and digital spheres unevenly, with implications for their ability to meet success metrics that value visibility and productivity. In detailing how risk management interacts with core academic practices, this article seeks to highlight the presence of an antagonism between success and safety and its ramifications for *who* can contribute to knowledge production and *how* they can do it. Literature and my participants offer some suggestions, indicating that this issue particularly affects women and marginalized researchers, and engagement with the digital public sphere.[51] With this dynamic particularly affecting the ability of researchers to participate in knowledge production, the theorization of "epistemic exclusion" is a potentially valuable lens through which we can understand how safety directly impacts the core goals of academia.

Working within an environment where the far right is resurgent brings urgency to these considerations. Far-right politicians and parties saw success in Italy and the Netherlands (among others) and are emboldened online, making critical scholarship all the more necessary, and engagement with knowledge production and public scholarship as an early-career researcher potentially more fraught. One interviewee was particularly concerned about speaking out about their national context because a far-right politician was active in the same public spaces. As a recipient of government funding, and universities occasionally respondent to pressure, gaining such attention—or even the threat of it—could be detrimental to their capacity to contribute and their career. Contributing to knowledge production in this environment needs more effective support as it has disproportionate and uneven impacts. Interviewees who expressed an interest in leaving academia tended to be those who were more concerned about safety; those who were conscious of the visibility of their engagement felt less safe.

Detailing these experiences helps us understand how "structural forces and systems can undermine the production and interpretation of academic knowledge produced by marginalized individuals."[52] Considering safety and success in unison is critical as "without such discussions, it may be difficult to see where 'neutral' metrics of quality actually introduce systematic bias into the evaluation process."[53] As highlighted by Pearson et al., "as long as the risks are most keenly felt by those with less status and less security—whether job security or security from hostile actors—inequalities in

49 Massanari, *Rethinking Research Ethics*.

50 Massanari, 5.

51 Pearson et al., "Online Extremism and Terrorism Researchers," 2023; Massanari, "Rethinking Research Ethics," 2018.

52 Settles et al., "Epistemic Exclusion."

53 Settles et al.

academia can be exacerbated in a vicious cycle."[54] The end result is "what [Eric] Ward calls 'a self-replicating system of Whiteness.' "[55]

Beyond the ability of researchers to progress, scholars of color researching the far right highlight some further urgent considerations for how safety and identity impact epistemology, such as how "it's not just a question of justice and representation, but also one of national security. They argue that the narrower the perspective, the narrower the view of the threat."[56] These scholars also pointed to terminology that obscures "the specific anti-Blackness of some attacks" as well as overlooking the significance of the resurgence of the far right as consequences of their contributions being rendered invisible.[57] Working towards a system where safety *and* success are both achievable thus has implications for both who can contribute to the production of knowledge, and the knowledge that is produced.

54 Pearson et al., "Online Extremism and Terrorism Researchers."

55 Allam, "In the Mostly White World."

56 Allam.

57 Allam.

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The Right to (Not) Appear: A Conversation on Institutional Obligations and Ethics of Care in Researching Illiberalism

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Abstract

As other papers in this special issue highlight, researchers of far-right movements have always been faced with the need to carefully balance visibility and invisibility to protect both their academic and personal selves. In this conversation, we share our experiences of what happens when preoccupations with dissemination and impact occlude the need for the right of research and researchers not to appear. This right touches upon a series of ethical questions and obligations that extend beyond simply our formal legal obligations to funding agencies and employers. As scholars arguing for a situated and participatory ethics have argued, ethical obligations must always be attuned to the affective entanglements that impact (in every sense of the word) both research subjects and researchers themselves, and that unfold often in unexpected fashion. How, then, can we reconcile such situated ethics and an ethic and culture of care with institutional obligations, and the requisites of an academic career? The conversation forum presented here draws on multiple exchanges the four authors had over the course of 2023 to 2024, edited for continuity and clarity.

Keywords: visibility, outreach, neoliberalism, intimidation, gender, ethics

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LBi: The initial impetus for this conversation piece came from a feeling of discomfort with the expectations placed upon us by our funders and our university in making our research visible. The project that brought us together into this conversation is a multi-country EU-funded doctoral training network: Larissa and Marija are doctoral researchers on the project, Sarah and Luiza are two of the supervisors; I (Luiza) also act as the institutional representative for the University of Amsterdam. The project brings together 11 universities across Europe and beyond, along with a series of non-academic partners. This background is relevant as it shapes the expectations and obligations the four authors of this piece have had to negotiate with the European Commission as the network's funding body, but also with the wider academic community of the network that must deliver certain outcomes and research milestones. It is important to emphasize that our comments here should in no way be taken as a critique of the network, or of our project colleagues. The microcosm of the network is simply the context in which these challenges have manifested themselves, and where all four of us, albeit in different ways, have had to face them.

The expectations we have had to negotiate are, by now, part and parcel of all large, funded research. While the network has been very conscientious in abiding by European Commission and national ethics approval requirements, and has been careful to specify protections not just for the intellectual property rights of the researchers, but also the right to object to the dissemination of their individual or joint findings (a standard legal provision in EU grant agreements), these contractual rights of researchers clash in practice with the Commission's requirements to showcase in ongoing fashion the demonstrable impact of the research, confirming the completion of the project's necessary deliverables and milestones. It is increasingly difficult to negotiate such tensions: we hope that the reflections presented here can help initiate a discussion not just on the dangers of forced visibility for researchers engaging with illiberal actors, but also open a conversation on the possibilities of doing potentially perilous research *differently*. When researching perilous actors, the speed of delivery and speed of appearance required by funders' obligations can be a peril in and of itself, compromising not just the research process but also researchers themselves.

There is by now an extensive literature critiquing the ways in which research is increasingly produced for institutional audit purposes, with priority given to fast outputs that are quantifiable and visible, that which Öhman has characterized as the move from "content to counting."[1] We would like to argue here, rather, for the sort of "slow scholarship" described by Mountz et alia,[2] grounded in an ethics and culture of care—care for the subjects and objects of our research, but also for us as researchers, individually and collectively. In doing so, we are inspired by our own experiences as four female researchers working on the far right and on migration and border governance, and by the work of feminist scholars on participatory ethics and cultures of care in research.

1Annelie Bränström Öhman, "Leaks and Leftovers: Reflections on the Practice and Politics of Style in Feminist Academic Writing," in *Emergent Writing Methodologies in Feminist Studies*, ed. Mona Livholts (New York: Routledge, 2012): 27–40.

2 Alison Mountz, Anne Bonds, Becky Mansfield, Jenna Lloyd, Jennifer Hyndman, Margaret Walton-Roberts, Ranu Basu, Risa Whitson, Roberta Hawkins, Trina Hamilton, and Winfred Curran, "For Slow Scholarship: A Feminist Politics of Resistance through Collective Action in the Neoliberal University," *ACME: An International Journal for Critical Geographies*, 14 no. 4 (2015): 1235–1259, https://acme-journal.org/index.php/acme/article/view/1058.

Visibility, First, and above All

LBo: My work looks into the ways in which far-right parties contest liberal democracy and transnationally disseminate ideological alternatives to it. It aims to uncover party-political drivers of democratic erosion through the study of the propagation of illiberal ideas. The research project is founded on the belief that understanding the nature of democratic backsliding is crucial to counter it. With increasing numbers of citizens living in illiberal regimes, it is important to disseminate my research to the broadest audience possible. Nevertheless, my relationship with visibility is a complicated and manifold one.

One of my main concerns with being visible is that researchers can also be harmed when studying hostile actors, such as far-right parties and activists. Studies have highlighted that universities are increasingly under "surveillance" from the far right,[3] with female, queer or nonwhite scholars being especially vulnerable to various forms of online intimidation, harassment, and abuse.[4] These risks increase significantly when scholars in the field have a public profile, for example by engaging with the media, or being active on social media. Hence, a tension exists between outreach and the need to protect oneself against emotional and physical harm. This tension is exacerbated, on the one hand, by the fact that visibility is required by funders and increasingly important for professional success, and on the other hand, by the fact that female academics have been invisible for centuries and are often still less visible than their male counterparts in the public arena.[5] In this regard, visibility also becomes the realization of the right to appear.

Striking a balance between the importance of being visible, while also protecting myself as a researcher is only possible when I have full control about the information that is being published about myself and my research, including when it is published, and by which means it is disseminated. This allows me to monitor and probably even remove content that is available online and protect my personal self and my accounts against unwanted attention. So far, this type of control has not been fully granted to me in our European Commission-funded network. Since the beginning of my PhD project, the requirement of visibility—institutionalized in the form of a series of deliverables to be produced during my research—curtails this autonomy. Most of the deliverables are supposed to increase the outward impact of our research through visibility; these include academic publications, but also blogpost entries, a podcast, a video-recorded interview, and maintaining a publicly accessible profile with rich information about the individual fellows and the group activities. Especially the latter are extensively documented and showcased on both social media and the project's website. In various instances, it felt like the project was speaking on my behalf, with information being disseminated without prior consent. This concerned preliminary research results, with a summary of the main findings and figures of my first paper being shared on Twitter/X, but also personal information, such as a biometric profile picture (highly problematic, as it concerns sensitive information

3 Adrienne L. Massanari, "Rethinking Research Ethics, Power, and the Risk of Visibility in the Era of the 'Alt-Right' Gaze," *Social Media + Society*, 4, no. 2 (2018): 1–9. https://doi.org/10.1177/2056305118768302.

4 Iris B. Segers, Tamta Gelashvili, and Audrey Gagnon, "Intersectionality and Care Ethics in Researching the Far Right," *Feminist Media Studies*, (online first 2023), https://doi.org/10.1080/14680777.2023.2280884; Antonia C. Vaughan, "Success as Antithetical to Safety: Researching the Far Right in an Academic Context," Paper presented at AoIR 2022: The 23rd Annual Conference of the Association of Internet Researchers, Dublin, Ireland: AoIR, https://doi.org/10.5210/spir.v2022i0.13099.

5 Hans Jonker, Florian Vanlee, and Walter Ysebaert, "Societal Impact of University Research in the Written Press: Media Attention in the Context of SIUR and the Open Science Agenda among Social Scientists in Flanders, Belgium," *Scientometrics*, 127 (2022): 7289–7306, https://doi.org/10.1007/s11192-022-04374-x.

that I would not want to be available online). Such unwanted exposure becomes even more problematic when researching far-right parties, as it increases the risks of harm associated with this object of study. Within the project, these risks are not taken into consideration when determining which deliverables should be produced by the fellows. The deliverables themselves constitute contractual obligations with the European Commission, based on a one-size-fits-all approach to a diversity of research topics, with little room for flexibility.

In addition to my concerns regarding safety and sensitivity, I am generally skeptical towards dissemination activities that precede the actual empirical research. The focus on visibility and impact sometimes feels as if it is prioritizing the creation of deliverables over our development as autonomous researchers. Rather than encouraging a critical reflection on how to make our research accessible after generating meaningful output, we are asked to produce deliverables and cultivate an image of high productivity, even prior to the research. This contradicts my understanding of societally impactful research; it feels like a box-ticking exercise that produces output for its own purpose.

To provide an example, one deliverable involves a video-recorded interview, discussing our research and its impact. The first recording occurred just five months into the PhD program within the context of media training, before many of us have started our actual data collection. While the training itself might be beneficial, its primary aim was to produce a video for public dissemination, enhancing the visibility of our research. We had the option to decide whether this particular video would be uploaded, yet we were actively encouraged to publish it. This really made me wonder about the priorities of such training activities, particularly as the production of visible output and its dissemination preceded the actual research.

MP: As you rightly pointed out, visibility is not inherently undesirable, and I, too, recognize its benefits as an early-career researcher. However, to fully appreciate the positive sides of visibility, a reflexive approach is required that also acknowledges its potential risks. In my opinion, the most fundamental flaw in the approach to visibility within the training network stems from its neglect of the diverse nature of our individual research projects. In my research, I focus on actors working within the border security industry, a domain where essential information is not publicly accessible, and decisions are often made in informal and secretive settings. Issues of limited access to information and actors in the border security industry contribute to limited academic freedom on a topic that has substantial societal implications. I am concerned about the European Commission's requirement to make our research question and plan publicly available on the network website before conducting our research, and how this may affect my work. Given that my research takes a critical stance on border and immigration policies, I worry that being compelled to publicize this online could potentially jeopardize access to the actors I aim to study. They may be discouraged from interacting with me after finding information about the nature of my research online. Consequently, I find myself navigating a delicate balance, fulfilling the program's visibility requirements while addressing my concerns about how visibility may impact the feasibility of completing my research project.

Consent for Whom?

MP: As you nicely highlighted, Larissa, while adopting a standardized visibility approach certainly permits the European Commission to audit projects, and to assess if they meet certain impact metrics, it can also create risks for researchers.

This brings me to the critical issue of informed consent. In academic research, informed consent is paramount, as it upholds ethical standards, respects individual autonomy, and ensures that participants willingly contribute to studies with a clear understanding of potential implications. Unfortunately, these principles are not consistently upheld in relation to researchers themselves. In the precarious and competitive terrain of academia, it can be difficult for researchers to assert their rights and maintain their autonomy, especially for those early in their careers. Many, me included, feel pressured to conform to established norms rather than challenge the status quo, fearing it could hinder career advancement. This struggle becomes even more complex when it comes to researcher visibility, as there's often confusion about what rights researchers have. While GDPR [General Data Protection Regulation] regulations offer strict guidelines for research participants in university settings, similar considerations are not applied to researchers themselves. Within this context of unclear rights, coupled with the fact that visibility is considered a mandatory deliverable tied to the completion of our PhD, the question naturally arises: can informed consent by PhD researchers truly be provided in such a situation—particularly, when we lack precise knowledge of what we are consenting to (i.e., how our information will be made visible) and the potential implications this may have?

Although the program has obtained consent to use our information through various informed-consent forms we have been required to sign, it is important to highlight that opting out or refusing to sign these consent forms was not possible. This lack of agency in declining to consent to our information being used, or determining how our information is made visible by the program, raises significant ethical concerns, even if they may not necessarily manifest as legal ones for the university. To navigate this perplexity, Sara Ahmed's 2017 work on feminist theory proves insightful.[6] Ahmed's work delves into the issues of agency within institutional structures, emphasizing the performative nature of consent and stressing the importance of considering the institutional context that both shapes and limits agency. She argues that true consent cannot exist without agency, thereby questioning the very possibility of consent when agency is constrained.

Considering Sarah Ahmed's analysis, an uncomfortable reality is brought to light: our visibility within the project lies largely beyond our control, and our agency in addressing concerns or negotiating changes receives little consideration from the institutions involved. This is despite, or perhaps because of, the fact that they have our formal informed consent. I attribute the initial breach of our agency within the program to the lack of transparency regarding the obligatory visibility conditions prior to its commencement. This situation led us to enter the program without awareness that we would be compelled to confront the risks associated with being forcibly made visible by the program. Having this information before the program's start might have prompted us to explore alternative PhD opportunities offering greater autonomy in terms of public exposure. Subsequent to the program's commencement, our control over how the program has chosen to publicize us and our research has also been severely limited, further curtailing our agency in navigating the associated risks. In other words, our agency has been confined to handling the risks posed by mandatory visibility only *after* we have been made visible. As such, a crucial aspect of managing visibility effectively cannot only involve obtaining signed consent, but also respecting a researcher's agency to decline visibility, asserting, as we have put it, "the right to not appear."

6 Sara Ahmed, *Living a Feminist Life* (Durham, NC: Duke University Press, 2017).

Another crucial point to emphasize is that the discourse on researcher visibility and consent extends beyond our individual cases. It encompasses not only the microcosm of our particular training network, but also extends into academic institutions and funding agencies on a broader scale. There is a compelling need for academia to grapple more comprehensively with the profound implications of visibility, acknowledging not just touted benefits (such as impact), which are frequently emphasized, but also the intricate challenges and risks it poses to individual researchers. To mitigate these risks, an approach to visibility that prioritizes both the consent and agency of researchers is indispensable, especially for those immersed in sensitive and higher-risk research. Such researchers face distinctive challenges that necessitate institutional flexibility and adaptability concerning what can be expected to be in the public domain and how [or] by whom it is placed there. From my perspective, this accentuates the urgency of revisiting the project's visibility approach, aligning it with feminist principles that give precedence to the safety, agency, and autonomy of both researchers and research subjects,[7] the reason (if not already obvious) being that decisions on how researchers are made to appear have consequences that affect them significantly more than they affect the program or institution.

LBo: I think the points you raised are really important, and I would like to address two of them. First, it strikes me how much Sara Ahmed's critique of performative consent resonates with our project. We were asked to give consent once, at the very beginning, but the question was subsequently never revisited. This shows that its primary purpose is legal protection and box-ticking, rather than ensuring genuine consent. The latter would require at least an informal request on a regular basis to renew the approval of our information being used. Secondly, I fully agree with your claim regarding competitiveness and precariousness in academia preventing consent. In the absence of true choice due to structural pressures, full consent cannot be guaranteed. When scarce professional opportunities are tied to productivity and efficiency, which is usually related to visibility, the choice to not appear goes along with a considerable professional disadvantage. This also leads me to another point I would raise, concerning the need for visibility within an increasingly neoliberal academia. Certainly, making research visible and accessible, both through publications and through teaching, lies in the nature of academic activity, as we are hoping to produce knowledge and evidence that is useful not only for the academic community, but also valuable for society. However, the importance of impact and visibility has dramatically increased, predominantly assessed through quantitative metrics such as academic citations or a piece's reception on social media, in blog posts, or newspaper articles. Holistic and qualitative approaches tailored to individual research are often overlooked in favor of these metrics.[8] On top of the need to cater to such metrics in an insecure work environment, we are encouraged by our institutions to function as public intellectuals,[9] which disregards the sensitivity of some projects, as previously emphasized in this conversation. Impact and visibility are also increasingly important to attract third-party funding that plays a crucial role in modern academia, well illustrated by the rise of the impact agenda in the UK following the Research Excellence Framework from 2014.[10]

7 bell hooks, *Feminism Is for Everybody: Passionate Politics* (London: Pluto Press, 2000).

8 Thorsten Gruber, "Academic Sell-Out: How an Obsession with Metrics and Rankings is Damaging Academia," *Journal of Marketing for Higher Education* 24, no. 2 (2014): 165–177, https://doi.org/10.1080/08841241.2014.970248.

9 Massanari, "Rethinking Research Ethics, Power, and the Risk of Visibility in the Era of the 'Alt-Right' Gaze," 7.

10 Emma Sophie Sutton, "The Increasing Significance of Impact within the Research Excellence Framework (REF)," *Radiography* 26, no. 2 (2020): 17–19, https://doi.org/10.1016/j.radi.2020.02.004.

Taking this into account, our concrete experiences are not a singular example of poor conduct of one institution or granting agency, but manifestations of the structural conditions of doing research within neoliberal academia, where visibility becomes mandatory. It seems to be the considerable pressure put on institutions receiving third-party funding that leads to infringements in autonomy and personal agency. The requirement to generate impactful research is institutionalized by contractual obligation to the funder, where research output is treated as a business product that is supposed to react to market dynamics and create new demands. Visibility then becomes some sort of sales metrics that indicates how well a researcher sells their product on the academic and policy market. As a consequence of this, the contribution to academic knowledge production and acquisition of certain skills seem to only play a subordinate role compared to the fulfillment of certain impact metrics. This binds resources and shifts the focus away from doing innovative and high-quality research and towards the promotion of us and our "research products," turning the academic into a "salesperson."[11] It further incentivizes unethical behavior by individual researchers, both regarding their research and towards their colleagues and students.

A good example of the focus on impact and visibility in our project is the nature of the training we receive and how the deliverables to the European Commission are structured. While we were trained in giving interviews and interacting with the media at a very early stage of the PhD, our contractual obligations do not formally involve teaching, even though this would be a very valuable experience to many of us. Most deliverables center on the production of visible and quantifiable output and the abundance of those obligations next to our doctoral projects also makes it difficult to find time for additional activities.

MP: As you pointed out, within the current university environment, where competition and efficiency are ingrained in the neoliberal ethos, and universities are constantly vying for prestige and funding, the emphasis on visibility is quite understandable. What is more ambiguous is whether this uncompromising focus on visibility is desirable, and if so, for whom? To put it another way: who actually benefits from this paradigm? Like you, I worry that the essence of academic pursuit risks being overshadowed by a pursuit of external validation (i.e., the will of funders). It concerns me that in an attempt by universities to appease funding bodies, quantifiable metrics related to visibility are taking precedence over knowledge-based pursuits. This has had a number of consequences, both personal and collective, that you have already touched on, and I will continue to discuss.

From the start, the European Commission's training schema has specified visibility as a crucial aspect of securing a job in academia or in the policy realm, framing the network's deliverables not just as requirements of the funding, but also as something which is ultimately for our own benefit. Consequently, we have been urged to maintain public profiles on platforms like LinkedIn and Twitter/X and engage with the network's activities through social media. This is in addition to the obligatory visibility deliverables that as you have mentioned, include writing three blog posts per year, participating in a video interview which will be uploaded on the website, producing a podcast, and updating our website profiles with details of our work. However, while these requirements are portrayed as essential for future career prospects, several other factors undermine this goal. Firstly, the program's three-year duration,[12] which imposes a superhuman timeframe to complete our thesis,

11 Gruber, "Academic Sell-Out."

12 The current funding rules for all European Commission-funded PhDs specify a three-year completion window.

is impossible. The pressure to produce quality work within such constraints raises doubts about quality, which might consequently impede our chances of securing employment. Secondly, as you have already said, PhD fellows in the program are discouraged from engaging in teaching roles—a skill that in many universities is considered crucial for getting a job. Therefore, while the visibility requirements are portrayed as essential for future career prospects, I can't shake the feeling that their main purpose is to serve as a form of publicity work for the European Commission, our project's funder. This leads me to question whether my research which explicitly critiques the Commission's border and migration policies is being leveraged by the same institution to present an image of openness to critique, without genuine intent to implement changes. Navigating this contradiction and the concern of being instrumentalized by the funding institution, which demands I be put on show (for my own benefit) poses a constant ethical challenge.

On a broader level, my concern is that the existing forced visibility structure molds not only researchers to align with funder expectations, but also research agendas. As we have already discussed, forced visibility carries risks for researchers, who often find themselves adapting rather than questioning and challenging conditions set by their institution. The current paternalistic and inflexible stance on visibility set by the European Commission not only poses risks to researchers, but also places them in an ethical dilemma, feeling compelled to either adhere to external visibility expectations placed on them (and so exposing themselves to risks) or withdraw from researching certain critical subjects that require a more nuanced approach to visibility. As a result, forced visibility may inadvertently shape research agendas by creating conditions that deter researchers from engaging with certain controversial or politically sensitive topics. The reliance on third-party funding and the emphasis on impact could also influence future research priorities, as critical projects deemed to have little perceived or measurable impact may no longer qualify for funding.

These questions cause me to wonder if, just as early-career researchers cautiously navigate the academic landscape and refrain from challenging the conditions set by their employers (i.e., universities), do universities also hesitate to challenge the demands or directives of external funders, fearing the loss of financial backing? And more importantly, if this is the case, what collective action can we take to address it?

Building a Culture of Care and a Situated (and Evolving) Ethics

SdL: When it comes to collective action, senior scholars that do not find themselves in precarious positions should lead the way. They have [a] duty of care vis-a-vis the researchers (e.g., PhD researchers, postdocs, research assistants) they supervise that has both an individual and an institutional dimension. Key elements of such a duty of care have been outlined by Massanari.[13] She has pointed out that those in privileged positions have an obligation to support researchers, especially those belonging to vulnerable and marginalized groups, publicly and privately, and to set up resources, such as research networks and mentoring schemes, to help them navigate the risks of being visible. They also have an obligation to advocate for institutional reform, making university management aware of the challenges faced by researchers, when engaging in outreach and informing them of best practices to support them. Such reforms can be practical in nature, such as educating management about the risks involved in automatically publishing professional contact details of academic staff on university websites, the necessity of hiring security officers, and having an emergency contact number for staff. However, they also include instigating more

13 Massanari, "Rethinking Research Ethics, Power, and the Risk of Visibility in the Era of the 'Alt-Right' Gaze."

fundamental debates about the responsibilities of universities vis-à-vis their staff when they are being targeted in the public sphere, and the need for them to stand behind and in front of them, especially in times of growing polarization, increasing support for populism and nativism, and the emergence of science skepticism. These developments have made universities more vulnerable to attacks from hostile opponents that not only seek to silence individual scholars—their long-term objective is to weaken the academic community and to curtail academic freedom, amongst others, by putting pressure on universities through accusations, often echoed by the media, of so-called wokeness.

Luckily, some institutions are adjusted to the changing environment. When I experienced a sustained period of intimidation and harassment by the Dutch far right in 2021, the support that I particularly appreciated included the assistance from the Communications Department of the University of Amsterdam, which assisted with monitoring social media; and its Legal Department, which advised on filing police reports and sending cease-and-desist letters. Moreover, moral support of the higher-ups was indispensable, not only to endure the attacks, but also to return to the public debate once they had subsided. More recently, the establishment of *Wetenschap Veilig*, or Safe Science,[14] by the Universities of the Netherlands, the Dutch Research Council, and the Royal Netherlands Academy of Arts and Sciences has been a milestone in acknowledging and remedying the visibility challenges faced by researchers. It consists of [an] extensive support system for scholars working in the Netherlands, providing scientists, managers, and employers not only with practical tips, but also with a reliable and secure system of reporting incidents. Knowing that my PhD students can rely on these facilities if I am accidentally unavailable is an important assurance when encouraging them to engage in outreach.

However, the first line of care for the well-being of my PhD students when engaging in outreach remains my responsibility. Through their experiences in this Commission-funded training network, I have become more aware of the importance of discussing outreach and visibility with them prior to the start of their research. It is something that should already be addressed in job interviews, both in terms of expectations and in terms of taking stock of what information is already out there that could make the prospective PhD research vulnerable. Moreover, it is important to adopt practices that are already common outside of academia, such as in the think tank world, including debriefings after interventions in the public debate to assess what PhD researchers have experienced and how this has affected them, and making professional psychological support available in the case of incidents that might have long-term impact.

LBi: The question of the responsibility of senior scholars in building a research culture of care is crucial—most obviously because we have the capacity to do so, as academics with permanent positions (and often also in positions of institutional responsibility as heads of departments or research institutes). And yet we are often the worst enforcers of the research auditing and accounting systems, encouraging our junior colleagues to "make their research count." As the Faculty of Humanities' nominated confidential advisor for academic integrity over the past couple of years, I can confirm that the number of complaints from junior scholars regarding the push to showcase their work by supervisors has been significant. In most cases, the encouragement to "make the work count" is well-meaning—or driven by the expectations of European or national funding bodies to which supervisors are themselves also bound. This does not excuse the behavior, since those in more secure

14 WetenschapVeilig (website), https://www.wetenschapveilig.nl/en/.

positions should be the ones speaking up against these obligations. Obligations that become particularly fraught when researchers engage with topics that can pose risks–and here we see another problematic dynamic, because research on "hot" topics such as migration and the far-right is seen by universities as especially worthy of highlighting in assessment reports for research centers and departments as a marker of doing societally relevant work. In all of this, the researchers themselves are often forgotten, and their concerns minimized.

Just as the impact and visibility of our work become reduced by funders and institutions to a necessary and quantifiable measure, so too ethical and safety concerns become simply a box-ticking enterprise, to be taken care of at the start of a project, simply to ensure compliance. As Hammett, Jackson, and Bramley have argued, in such an optic, "research ethics remains perfunctory, formulaic, and procedural," with ethics "reduced to a bureaucratic hurdle, a singular moment of approval that overlooks the dynamic, messy, and complex realities of the research journey"[15] In fact, as they and others have suggested, questions of ethics (including questions of researcher safety) become reduced "to a risk management exercise … [rather than] adequately address[ing] the ethics needs of qualitative researchers." As they argue, quoting Tolich and Fitzgerald, this produces "a dangerous disconnect" between [the] box-ticking process of the ethics approval process, and "the everyday, messy realities of the research process, wherein ethics are a negotiation and dialogue, with and between participants"—participants that may, at a certain point, also pose a danger to the researcher.[16] As Larissa and Marija have highlighted in their comments, the pressure to make their work "appear" prior even to the conduct of their empirical research is one glaring aspect of such a disconnect and of funding agencies' prioritization of counting over content.

Part of building the sort of "research culture of care" that feminist scholars have long called for is recognizing the embedded and shifting realities of our research journeys.[17] It means understanding that the ethical and safety challenges of our research cannot be summed up in a single moment of box-ticking, in an initial contractual specification, but, rather, require ongoing engagement and conversations. A research culture of care also requires an appreciation of the spaces and temporalities of our work that spill over the limited boxes of consent forms and ethics approval processes: understanding that our research cannot always be translated to immediately visible outputs, but also understanding that the personal impacts of our work may extend well beyond the institutional webpage.

15 David Hammett, Lucy Jackson, and Ryan Bramley, "Beyond 'Do No Harm'? On the Need for a Dynamic Approach to Research Ethics," *Area* 54 (2022): 582–590, https://doi.org/10.1111/area.12795.

16 Martin Tolich and Maureen H. Fitzgerald. "If Ethics Committees Were Designed for Ethnography," *Journal of Empirical Research on Human Research Ethics* 1, no. 2 (2006): 73, https://doi.org/10.1525/jer.2006.1.2.71.

17 Mountz et al., "For Slow Scholarship."

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