



Nuovi Autoritarismi e Democrazie:
Diritto, Istituzioni, Società

Open Society, Academic Freedom and the Rule of Law: The Mission of Central European University (CEU) 1991-2021

*Carola Cerami **

Abstract

The defence of open society has been the main mission of the Central European University (CEU) since its creation in 1991. This article explores the history of the CEU, from the crucial years of the immediate post-Cold War until the present day. It is divided into two parts: the first part analyses the origins of the CEU, its aims and the concept of the open society as an academic mission; the second part focuses on the clash between the CEU and the Hungarian government, led by right-wing populist minister Viktor Orbán. The “CEU affair” has opened a debate about the nature of the relationship between academic freedom, open society and the rule of law in Hungary and in Europe. Reconstructing the history of the CEU offers the chance to explore the evolution of the open society ideal in Central and Eastern Europe, from the euphoria of the post-Cold War to the challenges of the 21st century.

Keywords: Open Society – Academic Freedom – Illiberal democracy – Central European University – European Union.

CONTENTS: 1. Introduction 2. The End of the Cold War and the Open Society Ideal: The Origins of the Central European University 3. The “CEU affair”, Hungary and the European Union 4. Conclusion.

*Adjunct Professor in “Public Diplomacy in the Digital Era”, University of Pavia, and Director of the International Center for Contemporary Turkish Studies (ICCT), Milano. The essay was submitted to double blind peer review. Member of the Editorial Team who oversaw the essay: Marco Morra.

1. Introduction

The sociologist Ralph Dahrendorf, in the collection of essays *La società riaperta*, reminds us that open societies are those that allow trial and error, change and evolution, namely complexity¹. An open society is a pluralist society that promotes and protects freedom of expression and human rights and allows the best expression of citizenship. It is a society in which everyone – regardless of race, nationality, gender or sexual orientation – can enjoy the benefits of freedom².

According to Dahrendorf, closed societies restrict mobility while open societies demand it. An open society promotes natural change; it is a mobile society in the broader sense of the word, embracing social, geographic and economic factors (social increase and decrease, geographic movements and migratory phenomena, and mobility of economic factors of production)³. Open society offers multiple choices, suggests open horizons and allows change and modernity. In the words of Dahrendorf, «the road to freedom is not a road from one system to another, but one that leads into the open space of infinite possible futures, some of which compete with each other. Their competition makes history»⁴.

An open society benefits from a variety of options: different types of media as well as plural political parties, opportunities for access and a full range of human rights⁵. Consequentially, the greatest threat to open society is dogma: the monopoly of one group, one ideology and one system. This involves, for instance, the intrusion of the State, a political party, a ruling class or a religion into the free expression of citizenship, the definition of social space or academic freedom⁶.

Defending open society and with it aspiring to the formation of “free minds, in a free society”, has been vital to the mission of the CEU (Central European University) since it was established in 1991⁷. The CEU is an English-language university, founded by American-Hungarian philanthropist George Soros, student of Karl Popper at the LSE (London School of Economics and Political Science) and an active supporter of the values of the open society, and by a group of visionary intellectuals – most of whom were prominent members of the anti-totalitarian democratic opposition (among them Ernest Gellner and Alfred Stepan)⁸. The overall idea of the CEU was to establish a higher education institution whose

¹ R. Dahrendorf, *La società riaperta. Dal crollo del muro alla guerra in Iraq*, Laterza, 2005 [or. ed.: *Der Wiederbeginn der Geschichte. Vom Fall der Mauer zum Krieg im Irak*, Verlag C.H. Beck, 2004].

² M. Ignatieff, *Introduction*, in M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society. New Adversaries and New Opportunities*, CEU Press, 2018, 8.

³ C. Cerami, *The Open Society and “British Soft Power” in Central/Eastern Europe at the End of the Cold War*, in *Journal of European Integration History*, No. 1, 2010, 69; R. Dahrendorf, *La società riaperta*, cit., 22-35.

⁴ R. Dahrendorf, *Reflections on the Revolution in Europe*, Times Book, 1990, 41

⁵ R. Dahrendorf, *After 1989. Morals, Revolution and Civil Society*, MacMillan Press, 1997, 16.

⁶ R. Dahrendorf, *Reflections on the Revolution in Europe*, cit., 28.

⁷ M. Ignatieff, *Introduction*, in M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society*, cit., 2.

⁸ *Ibidem*.

priorities were to foster research into the transition of post-communist societies to market economy and political liberalisation, to encourage an intense exchange of scholars and students between Eastern and Western Europe, and lastly to contribute to the long-term goal of creating an open society in Central and Eastern Europe. Since then, the CEU has consolidated its reputation as an international university, attracting talented students and graduates from all over Europe and the world. The CEU has become a significant think-tank in the very heart of Central Eastern Europe⁹.

Yet, despite indisputable academic merits, the CEU accredited in the United States and Hungary, based in Budapest, has been heavily attacked by the current Hungarian government, led by right-wing populist Prime Minister Victor Orbán. The legal battle culminated in 2017 with the entry into force in Hungary of the so-called “Lex CEU”, which made it impossible for the CEU to continue operating in the country. Starting from September 2019, the CEU was forced to relocate a large part of its activities to Vienna, outside Hungary. The core of the attack was the assertion that the CEU acts for political purposes. As rector and historian Michael Ignatieff wrote: «The claim is false, as the accrediting agencies who inspect our teaching or review our research have attested, but the attacks are inevitable, in a sense, since the university’s mission – to promote the values of a free society – is bound to create suspicion and criticism when governments encroach upon those values»¹⁰. Taking up Ignatieff’s words, the “CEU affair” constitutes a dark moment for academic freedom in Hungary and, more generally, in Europe¹¹.

In October 2020, the European Court of Justice ruled against the “Lex CEU”. In a judgment of 6 October 2020, the European Court of Justice agreed with the European Commission that Hungary breached WTO law, EU law and the Charter of Fundamental Rights of the European Union «relating to academic freedom, the freedom to found higher education institutions and the freedom to conduct a business»¹². The victory, however, came too late for the institution as it had already moved to Vienna¹³.

The “CEU affair” has opened a debate about the nature of the relationship between academic freedom, open society and the rule of law in Hungary and in Europe. As Jacques Rupnik recalls «countries that were considered as ‘success stories’ in the transition and consolidation of liberal democracy (Hungary and Poland) now challenge the institutions of the rule of law. Instead of building a ‘state

⁹ C. Cerami, *In difesa della “società aperta”: la Central European University (CEU)*, in *Mente Politica*, 28 August 2019, mentepolitica.it/articolo/in-difesa-della-a-oesociet-apertaa-la-central-european-university-ceu/1668.

¹⁰ M. Ignatieff, *Introduction*, in M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society*, cit., 2.

¹¹ S. Walker, “*Dark Day for Freedom*”: *Soros-affiliated university quits Hungary. Central European University is first major university to be pushed out of an EU country*, in *The Guardian*, 3 December 2018.

¹² *Commission v Hungary (Higher education) (C-66/18)*, 6 October 2020, curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf.

¹³ Central European University (CEU) is now accredited in Austria, Hungary, and the United States, with campuses in Vienna and Budapest.

of law' (*Rechtsstaat*), Hungarian Prime Minister Viktor Orbán is now calling for an 'illiberal state'»¹⁴. This "counter-revolution"¹⁵ is driven by the polarisation of domestic politics, the questioning of constitutionalism and the rule of law, the attack on the independence of the media and academic freedom, the politicisation of the administration. It is the return to closed borders, the sovereign state and transactional power politics: the result is the rejection of open society.

This article explores the history of the CEU, its founding mission and its achievements, from its foundation in 1991 up to the present day. It is divided into two parts: the first part analyses the origins of the CEU in the crucial years of the immediate post-Cold War, its aims and the concept of an open society as an academic mission; the second part focuses on the analysis of the clash between the CEU and the Hungarian government and the attack on academic freedom, democratic institutions and the idea of a free and pluralist society. The history of the CEU allows us to investigate the complex relationship between academic freedom, open society and the rule of law. This article offers a contribution to the debate focusing on the idea of open society and its values and on the importance of building a narrative on the defence of these values in 21st century Europe.

2. The End of the Cold War and the Open Society Ideal: The Origins of the Central European University

The concept of the open society was first introduced by Henri Bergson in 1932 when he published his book *Two Sources of Religion and Morality*. The concept gained visibility after the Second World War when Karl Popper wrote his book *The Open Society and its Enemies*, published in 1945¹⁶.

Historian Michael Ignatieff, in the introduction to the collective volume *Rethinking Open Society. New Adversaries and New Opportunities*, reminds us that it is through the writings and commitment of some thinkers such as Karl Popper, Hannah Arendt¹⁷, Raymond Aron¹⁸, Friedrich von Hayek¹⁹, George Orwell²⁰ and Isaiah Berlin²¹ that the concept of open society was defined, starting from the Second World War²². The open society is the product of that unique post-war moment when, after 1945, the challenges that liberal democracy would have to face against fascism and communism emerged. The concept gained visibility mainly

¹⁴ J. Rupnik, *After 1989: The Perennial Return of Central Europe Reflections on the Sources of the Illiberal Drift in Central Europe* in M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society*, cit., 258.

¹⁵ J. Zielonka, *Counter-Revolution. Liberal Europe in retreat*, Oxford University Press, 2018.

¹⁶ K. Popper, *The Open Society and Its Enemies*, Routledge Classics (new edition), 2002, [or. ed.: K. Popper, *The Open Society and Its Enemies*, Routledge, 1945].

¹⁷ H. Arendt, *The Origins of Totalitarianism*, Schocken, 1951.

¹⁸ R. Aron, *Opium of Intellectuals*, Calmann-Lévy, 1955.

¹⁹ F. von Hayek, *The Road to Serfdom*, London, 1944.

²⁰ G. Orwell, *Animal Farm: A Fairy Story*, Secker and Warburg, 1945; G. Orwell, *Nineteen Eighty-Four* (1984), Secker & Warburg, 1949.

²¹ I. Berlin, *Liberty*, Oxford University Press, 2002.

²² M. Ignatieff, *Introduction*, in M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society*, cit., 3.

thanks to Karl Popper. Popper wrote his authoritative book *The Open Society and Its Enemies* during the Second World War while he was in exile in New Zealand. At the time, he considered it his “war work”, that is his contribution to the war effort. The book attracted immediate attention after its publication in 1945²³. Popper, from his Chair in Logic and the Scientific Method at the London School of Economics, which he held from 1949 onwards, became the point of reference for a whole generation of scholars inspired by his view of the open society (among these were Ralf Dahrendorf, Ernest Gellner and George Soros). To Popper, education is a key part of the open society and in his view, all teaching on the university level should be training and encouragement in critical thinking.

The real triumph of Popper’s book came later. In the enthusiasm generated by the 1989 revolution, *The Open Society and Its Enemies* became essential reading throughout the post-communist world²⁴. After the fall of Communism in Central and Eastern European countries and the end of the Cold War, European prospects seemed promising. There arose a great need to build free and democratic institutions, and to reintroduce notions of freedom of thought and critical thinking in post-communist Europe.

In this regard, the historian Vladimir Tismaneanu recalls:

The upheaval in Eastern Europe represented a series of political revolutions that led to the decisive and irreversible transformation of the existing order. Instead of autocratic, one-party systems, the revolutions created emerging pluralist policies. They allowed the citizens of the former ideologically driven despotisms (closed societies) to recover their main human and civil rights and to engage in the building of open societies. Instead of centrally planned command economies, all these societies embarked on creating market economies. In their efforts to meet the triple challenge (creating political pluralism, market economy, and a public sphere, i.e., civil society) some succeeded better and faster than others²⁵.

In his essay *Reflection on the Revolution in Europe*, written in 1990, Ralf Dahrendorf tried to define the meaning of 1989 and the stakes of the transitions that were then beginning in the Eastern part of the continent. For Dahrendorf «the revolution of 1989 has changed Europe. It has changed the world; it marks a turning point as important as 1789 [...]. It was a change for the better because it was one for open societies»²⁶. As Jacques Rupnik points out, «for Dahrendorf, as for the sociologist Ernest Gellner, this was the deep meaning of 1989, which presented an opportunity for liberal democracy in Central and Eastern Europe»²⁷.

²³ R. Dahrendorf, *La società riaperta*, cit., 22.

²⁴ *Ibidem*.

²⁵ V. Tismaneanu, *The Revolutions of 1989: Causes, Meanings, Consequences*, in *Contemporary European History*, No. 3, 2009, 277.

²⁶ R. Dahrendorf, *Reflections on the Revolution in Europe*, cit., 178.

²⁷ J. Rupnik, *Explaining Eastern Europe: The Crisis of Liberalism*, in *Journal of Democracy*, No. 3, 2018, 24-38.

The changes produced by the events of 1989 were both very rapid and radical. In the end, they led to the delegitimization of an entire ruling class, the replacement of almost all its exponents and a constitutional transformation with far-reaching consequences.

During the 1980s and early 1990s, Western liberalism and anti-communist dissent found a common understanding in defence of the open society. Dissidents in Warsaw, Prague and Budapest launched a challenge to their communist regimes, using the Helsinki Final Act of 1975 to create non-governmental organisations for the defence of human rights, freedom of expression and the press, for the dismantling of the communist system and the creation of a pluralist society²⁸. Academics, journalists and philanthropists from other countries offered support, including George Soros, who used the concept of open society to provide his philanthropic support for the dissidents²⁹.

Popper's ideas inspired Soros to encourage critical thinking in education as a precondition for the creation of an active civil society. Soros described the importance of Popper's influence on his view of open society:

As a student after World War II, I adopted Popper's concept of Open Society with alacrity [...]. Popper's dichotomy between open and closed societies seemed to me profoundly important. Not only did it illuminate the fundamental flaw in totalitarian ideologies but it also threw light on some basic philosophical issues. It is his philosophy that guided me in establishing my network of Open Society Foundations³⁰.

Similar to Popper, Soros sought a key role for higher education in the transformation of the newly independent East Central European societies³¹. In a concept note that was circulated in April 1990, George Soros called for an educational initiative for Eastern Europe. He argued that:

The mere fact that a closed system has collapsed does not lead to the establishment of an open society [...]. The creation of a free and open system of social organization will require a tremendous effort, particularly in education. The countries of the region [...] must get to know better each other's cultures and they must digest the experiences of the last half-century. These tasks require greater cooperation among the existing universities of the region as well as the establishment of a new institution³².

²⁸ M. Ignatieff, *Introduction*, in M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society*, cit., 8.

²⁹ *Ibidem*.

³⁰ C. Cerami, *The Open Society and "British Soft Power" in Central/Eastern Europe at the End of the Cold War*, cit., 74; G. Soros, *Open Society. Reforming Global Capitalism*, Little Brown, 2000, xxi-xxii.

³¹ S. Roch, *Educating Skeptical but Passionate Citizens: The Open Society Ideal as a University Mission*, in M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society*, cit., 52.

³² G. Soros, *An Educational Initiative for Eastern Europe* (Open Society Archives, Budapest, 2 April 1990), taken from S. Roch, *Educating Skeptical but Passionate Citizens: The Open Society Ideal as a University Mission*, in M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society*, cit., 52.

The CEU was founded in 1991 as a graduate school in social sciences and humanities, with the express purpose of encouraging, through education, the democratic transition process in Central and Eastern Europe and Central Asia. CEU's mission as a university is to sustain the values of open society – freedom, justice, tolerance, democracy and respect for knowledge³³. The CEU, initially based in Prague, Warsaw and Budapest, consolidated a unified single campus in Budapest³⁴. George Soros was among the prominent founders and sponsors of the CEU and the first Chairman of the CEU Board. Alfred C. Stepan was the first Rector of the CEU in 1993; he was an American political scientist specialising in comparative politics. In 1994, the famous social anthropologist Ernest Gellner became the Director of the *Center for the Study of Nationalism* at the CEU in Prague and launched an innovative programme of studies on nationalism³⁵.

The Gellner Collection at the LSE Archive in London allows researchers to reconstruct the correspondence between Gellner, Soros and Stepan in the early 1990s³⁶. This exchange focused on the activities and evolution of the CEU. It reveals the important role of this group of scholars and thinkers in the struggle against totalitarianism and the opening up of closed societies³⁷.

On 30 October 1995, in a letter to George Soros, Gellner wrote:

We are studying Nationalism because it constitutes one of the major threats to the emergence of stable, liberal and prosperous societies in Eastern Europe. But another and equally important threat is the moral and intellectual vacuum left behind by the collapse of communism (which after all wasn't displaced by a rival, but simply collapsed, leaving a vacuum). The enquiry into philosophical and political issues at the Centre would really be guided by this consideration³⁸.

³³ M. Ignatieff, *Open Society and the Ordinary Virtues, Rethinking Open Society*, 18 September 2017, https://www.youtube.com/watch?v=7-5zT7_NvDY.

³⁴ In the first years of its existence, the CEU operated in three locations: some departments (Economics, European Studies, International Relations, Nationalism Studies, History of Art) were in the Prague office, directed by Jiri Musil. Other Departments (History, Medieval History, Political Sciences, Environmental Sciences, Legal Studies and Gender Studies) were located in Budapest, under the direction of the historian Istvan Rev. The sociology programme developed in Warsaw. See: G. Soros, *In Defense of Open Society*, Public Affairs, 2019, 99.

³⁵ E. Gellner, *Condition of Liberty: Civil Society and Its Rivals*, Hamish Hamilton Ltd., 1994.

³⁶ Gellner's correspondence for those years can be consulted in the Gellner Collection, which is held at the LSE Archive in London.

³⁷ C. Cerami, *The Open Society and "British Soft Power" in Central/Eastern Europe at the End of the Cold War*, cit., 74.

³⁸ Gellner to Soros, 30 October 1995, in LSE Archives, Gellner Collection, Box 54, Folder M 1913, File 6.

It is therefore evident that in those years the open society ideal played a crucial role by inspiring initiatives in favour of freedom of expression, the rule of law and the revival of civil society in Central and Eastern Europe³⁹.

The CEU is the result of that particular historical moment; its aim is to support the Central Eastern European countries, in cultural, academic and educational terms, in their complex transition towards the ideals of an open society. The origin of the CEU is therefore part of a specific and decisive moment in European history. In those years, a crucial factor that contributed to democratic consolidation in Central Europe was the accession process to the European Union and the adoption of the so-called “Copenhagen criteria”. These criteria adopted by the European Council at Copenhagen in 1993, stipulated that candidate countries had to prove their liberal democratic credentials before being admitted, in other words «demanded the introduction of a constitution of liberty in candidate countries»⁴⁰. The methods of evaluating the Copenhagen criteria led to the fact that the condition for joining the EU was, and still is, the possession of a democratic system and respect for human rights. Candidates also had to demonstrate that they could operate within the union’s common market, and reliably apply EU law⁴¹. The EU put great emphasis on the capacity of new member states to implement the EU legislation known as the “*acquis communautaire*”⁴². This process of “Europeanization”, motivated by the desire of Central and Eastern European countries to be part of “Europe”, helped stabilize democracy in post-communist countries⁴³ and has provided a major leverage to the development of institutions and practices of the rule of law⁴⁴.

Karl Popper himself visited the CEU at the Prague campus on 26 May 1994 and was awarded the first CEU Open Society Prize. Popper died only a few months later, on 17 September 1994. In the year following Popper’s death, Gellner launched the idea of a conference to be held at the CEU to celebrate the 50th anniversary of the publication of *The Open Society and Its Enemies*⁴⁵. Gellner’s main objective in organising the conference was to highlight the role played by Popper’s book, *The Open Society*, in inspiring initiatives, projects and the very idea of the CEU in the name of the open society. Gellner also intended to launch a debate on how an open

³⁹ C. Cerami, *The Open Society and “British Soft Power” in Central/Eastern Europe at the End of Cold War*, cit., 78.

⁴⁰ R. Dahrendorf, *Reflections on the Revolution in Europe*, cit., viii.

⁴¹ J.W. Mueller, *Eastern Europe Goes South. Disappearing Democracy in the EU’s Newest Members*, in *Foreign Affairs*, No. 2, 2014, 14.

⁴² J. Rupnik, *From the Revolutions of 1989 to Democracy Fatigue in Eastern Europe*, in J. Rupnik (Ed.), *1989 as a Political Event. Democracy, Europe and the New International System in the Age of Globalization*, Routledge, 2014, 67.

⁴³ R. Dahrendorf, *Reflections on the Revolution in Europe*, cit., viii.

⁴⁴ J. Rupnik, *From the Revolutions of 1989 to Democracy Fatigue in Eastern Europe*, cit., 67-68.

⁴⁵ The conference was held on 9 and 10 November 1995. Revised and reconsidered texts prepared in the light of the conference’s discussions were published in I. Jarvie, S. Pralong (Eds.), *Popper’s Open Society After 50 Years. The Continuing Relevance of Karl Popper*, Routledge, 2003.

society can be built, and on the complexity of the transition in post-Communist Europe⁴⁶.

The founding years of the CEU coincided with the outbreak of wars in Yugoslavia. The CEU offered scholarships to Yugoslav students to allow them to study, and for many it was the only way of accessing university education. Over the years, the CEU has strongly defended the principle of academic freedom⁴⁷. In 1995, all CEU activities were concentrated in Budapest.

As Michael Ignatieff wrote, in the 1990s the transition in Eastern Europe was strongly regulated and encouraged by the process of joining the European Union. The incentives were all aimed at creating the initial structure of the open society, the separation of powers, free media, a free civil society, constitutional guarantees of rights and the protection of minorities. As long as the incentives of the accession process were operational, countries seeking to join the EU followed the path to an open society. In Central and Eastern Europe, all three objectives of the triple transition – democracy, the market economy and entry into the European Union – were achieved in 2004⁴⁸.

The CEU's activity in Budapest lasted until 2004 without the need to change its status as a foreign private university. However, in April of the same year, the Governor of the State of New York⁴⁹ and the Hungarian government signed a joint declaration that confirmed the parties' joint agreement to support the CEU's goal of achieving Hungarian accreditation, while at the same time maintaining its status as an accredited American university. Following the 2004 joint declaration, a special law, namely Act LXI of 2004 on State Recognition of Közép-európai Egyetem, established Közép-európai Egyetem (KEE); literally translated, this means "Central European University". The dual identity of CEU/KEE enabled the University to comply with both Hungarian and U.S. laws and award both Hungarian and U.S.-accredited degrees⁵⁰. The aim was to achieve greater integration of the CEU in the Hungarian academic landscape, as well as to allow its integration into the European area after Hungary joined the EU on 1 May 2004⁵¹.

⁴⁶ C. Cerami, *The Open Society and "British Soft Power" in Central/Eastern Europe at the End of Cold War*, cit., 74.

⁴⁷ G. Soros, *In Defense of Open Society*, cit., 102.

⁴⁸ M. Ignatieff, *Introduction*, in M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society*, cit., 9.

⁴⁹ CEU is organized as an American-style institution with a charter from the Board of Regents of the University of the State of New York, for and on behalf of the New York State Education Department.

⁵⁰ ceu.edu/article/2017-03-28/ceu-responds-proposed-amendments-hungarian-higher-education-law.

⁵¹ S. Benvenuti, *La libertà accademica e la sua tutela nello spazio europeo. Riflessioni sulla vicenda della Central European University alla luce della sentenza CGUE Commissione c. Ungheria del 6 ottobre 2020 (C-66/18)*, in *Federalismi.it*, No. 4, 2021, 26.

3. *The “CEU affair”, Hungary and the European Union*

The years following the end of the Cold War were strongly characterised by two crucial processes in the international scenario of the end of the 20th century: globalisation and the technological/digital revolution. Economic and social relations were characterised by new dynamics that created unexplored prospects for growth and innovation, but which, at the same time, led to the emergence of economic, cultural and social gaps.

In Central and Eastern Europe, all three objectives of the triple transition (democracy, the market economy and entry into the European Union) were achieved at the beginning of the 21st century. However, they all entered a crisis over the course of the new century. Once the European accession process was completed, the EU gradually lost its ability to consolidate the institutions of the open society in the new member States. A regression of democracy in several countries has brought overtly anti-liberal political forces to power. The ongoing debate on the origins and meaning of this phenomenon is wide-ranging and multifaceted and goes beyond the aims of this essay.

It is important here to remember that the moment of triumph of the open society, which characterised the end of the Cold War and the years immediately following, started to show signs of crisis during the late 20th century, and the 21st century has led to a push in this direction. Some events have been significant and emblematic stages on this path. The attack on the Twin Towers and the Pentagon in New York on 11 September 2001, which was an expression of a new international terrorism, set in motion processes that have weakened the liberal order of democracy and the rule of law and in the international scenario have posed a threat to peace. After 11 September 2001, the global financial crisis that erupted in 2008 constituted a further obstacle to strengthening the idea of an open society. In Central-Eastern Europe, when the democratic transition began to stall in the 2008 economic crisis, the new insecurities created fertile ground for furthering the consolidation process of illiberal democracies⁵². The 2008 economic crisis undermined confidence in the economic sovereignty of states and their ability to fairly distribute the benefits of prosperity⁵³. These intersecting pressures – terrorism, rising inequality and job insecurity – have undermined the open society ideal. As Jacques Rupnik wrote, the main features of the illiberal turn can be summed up as follows: departure from the rule of law as the foundation of liberal democracy in the name of sovereignty of the people. The rise of nationalism and the hardening of identity politics corresponds to the shifting axes of legitimation from liberal technocratic to populist democracy. And finally, culture wars, a conservative revolution or rather a cultural “counter-

⁵² M. Ignatieff, *Rethinking Open Society*, michaelignatieff.ca/article/2018/rethinking-open-society/. The term “illiberal democracy” was first used by F. Zakaria, *The Rise of Illiberal Democracy*, in *Foreign Affairs*, No. 6, 1997.

⁵³ A. Tooze, *Crashed: How a Decade of Financial Crises Changed the World*, Penguin, 2019.

revolution” in Europe. The “culture wars” are the third part of the antiliberal turn in Central Europe⁵⁴.

This is the historical-political context in which the clash between the CEU and the populist right-wing Hungarian government led by Viktor Orbán, took place. The values promoted by the CEU were, and still are, in antithesis to the right-wing populist design promoted by the Hungarian Prime Minister Viktor Orbán. Tensions between the CEU and the Hungarian right date back to Viktor Orbán’s first government in 1998-2002. In 2010, Viktor Orbán and his right-wing party, Fidesz, returned to power, winning almost 53 percent of the national vote. The party invoked traditional nationalism to legitimise the populist idea that checks and balance were unnecessary⁵⁵. The Hungarian Prime Minister decided to radicalise his plan to transform Hungary from a liberal democracy into an “illiberal state”. Orbán began to carry out an all-out attack on the country’s independent civil society: from academia to the media, to NGOs, to cultural and educational institutions. The tactic has been and still is to de-legitimise NGOs, journalists, the media, independent cultural institutions and, more generally, all expressions of dissent. Behind these illiberal defamation campaigns, there is a deadly serious attack on democratic institutions and the idea of a free and pluralist society. Orbán’s historic speech on 26 July 2014, at Fidesz’ summer camp in Băile Tuşnad, reaffirmed his commitment to build an illiberal state in Hungary⁵⁶. Most importantly, he signalled which side his government had chosen in the new geopolitical and ideological struggle between Russia and the West. Orbán endorsed Putin’s model of populist leadership and an executive based on assertive nationalism⁵⁷.

Starting from 2015, it was the wave of migration that made the battle of the supporters of the open society ever more complex. As highlighted by Jan Zielonka in *Counter-Revolution. Liberal Europe in retreat*, migrants represent the essential product of a political world that has opened borders, protected minorities and shaped the economic interdependence of post 1989⁵⁸. Migrants have been at the centre of the political campaigns of the enemies of the open society. Orbán’s government has campaigned on an aggressive anti-immigration platform, building a fence along its southern border, putting a 25% tax on organisations which provide aid to refugees, and repeatedly claiming that “Christian Europe” is under threat from migration⁵⁹. The migration crisis has also led to a dichotomy between two

⁵⁴ J. Rupnik, *Explaining Eastern Europe: The Crisis of Liberalism*, in *Journal of Democracy*, No. 3, 2018, 24-38.

⁵⁵ J.W. Mueller, *Eastern Europe Goes South*, cit., 15-16.

⁵⁶ See the full text of Viktor Orbán’s speech at Băile Tuşnad (Tusnádfürdő) of July 26, 2014, available at budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/.

⁵⁷ V. Harms, *Open Society v. Illiberal State: Europe, Hungary and the “Lex CEU”*, in *Cultures of History Forum*, 12 September 2007, cultures-of-history.uni-jena.de/focus/lex-ceu/europe-hungary-and-the-lex-ceu.

⁵⁸ J. Zielonka, *Counter-Revolution. Liberal Europe in Retreat*, Oxford University Press, 2018, IX.

⁵⁹ S. Walker, “*Dark Day for Freedom*”, cit.

parts of Europe on the question of “European values”, with very different contents: on the one hand, humanitarian universalism, openness and multicultural society; on the other hand, the “European cultural identity”, the closing of borders and the defence of Christian-European civilization. As pointed out by Ivan Krastev and Stephen Holmes in *The Light that Failed: A Reckoning*, in Orbán's populist propaganda, Western Europe no longer represents the model of a culturally superior West that the citizens of Central Eastern Europe once admired and aspired to emulate. Unable to defend their borders against foreign “invaders”, the open societies of Western Europe now offer, according to Orbán, a substantially negative model, a living picture of the social, heterogeneous and multi-ethnic order that Europeans Central and Eastern Europe want to avoid⁶⁰.

There has been an increasing number of attacks on civil society, independent media and academic freedom in Hungary, threatening the future of democracy in the region. Viktor Orbán's government has dismantled Hungary's post-1989 democratic order and subdued the country's higher education system⁶¹. The attack on the CEU is part of a broader attempt to integrate academic institutions into Viktor Orbán's conception of “illiberal democracy”⁶². Over the years, the CEU has strongly defended the principle of academic freedom, open society and rule of law. The result was a concerted attack by Orbán, who used all his powers to dismantle the entire higher education system in Hungary and oust the CEU.

In 2017, the CEU came under attack by the Hungarian government substantially challenging its existence in Hungary through sudden and targeted legislative action. On 28 March 2017, the government tabled the amendment to the Higher Education Act known as “Lex CEU”. The draft law T/14686, amending some provisions of the Act CCIV of 2011 on Higher Education, was presented to the Hungarian Parliament. The main aim was to reform the licensing regime applicable to foreign higher education institutions⁶³. The CEU expressed its opposition to proposed amendments to Act CCIV of 2011 on National Higher Education⁶⁴.

In an article in the *New York Times* on 2 April 2017, entitled *Academic Freedom, under Threat in Europe*, Michael Ignatieff wrote:

Academic freedom is a cornerstone of democracy and a free society [...]. The latest threat to academic freedom is occurring in the heart of Europe. In Hungary, Prime Minister Viktor Orbán's government has introduced a bill in Parliament that would effectively abolish the freedom of the Central European University, a private American-Hungarian graduate institution [...]. The bill would forbid the university from issuing its American degree, require it to open a campus in the United States (it operates only in Budapest) and put it under the control of the Hungarian

⁶⁰ I. Krastev, S. Holmes, *The Light that Failed: A Reckoning*, Allen Lane, 2019, 51.

⁶¹ V. Harms, *Open Society v. Illiberal State: Europe, Hungary and the “Lex CEU”*, cit., 8-9.

⁶² *Walled Worlds: “Illiberal Democracy” and the CEU Affair*, in *Kritika: Explorations in Russian and Eurasian History*, No. 1, 2019, 1-6.

⁶³ S. Benvenuti, *La libertà accademica e la sua tutela nello spazio europeo*, cit., 22.

⁶⁴ ceu.edu/sites/default/files/attachment/basic_page/18010/summaryoflegislativechangesandimpact7.4.17.pdf.

government [...]. If the bill passes, it would mark the first time that a member of the European Union dared to legislate an attack on the academic freedom of a university. It would also mark the first time than an American ally, a member of NATO, openly attacked an American institution on its soil⁶⁵.

On 4 April 2017, the Hungarian Parliament accepted the modification of the Law on Higher Education⁶⁶ and rushed a bill that made it impossible for CEU to continue operating in the country⁶⁷. Lecturers and students from numerous universities, as well as many ordinary Hungarian citizens demonstrated several times to show their solidarity. On 9 April 2017, between 60,000 and 80,000 people protested on the streets of Budapest, calling on President János Áder to veto “Lex CEU”.

International writers, artists and academics protested against Hungary’s plans to close the CEU and wrote an open letter:

We are deeply concerned about the passing of the disgraceful law intended to shut the Central European University in Budapest. The law, intended for this one specific purpose, is the latest step taken by Hungarian prime minister Viktor Orbán to close out democratic institutions in the country, including press, media and NGOs. Please note we do not say opposition institutions since the CEU is in no way a political opponent of the government. It is simply an independent university⁶⁸.

On 10 April 2017, Hungarian President János Áder signed the amendments to Hungary’s National Higher Education Legislation. The so-called “Lex CEU” was ratified. The new law made it impossible for the CEU to maintain its dual legal status. Under the “Lex CEU”, CEU’s American entity should have opened a campus in the United States, which would then have had to negotiate a bilateral treaty with Hungary in order to operate in the latter⁶⁹. The words of the Rector of CEU at that time, Michael Ignatieff, were very harsh: «This is a dark day for freedom in Hungary, and it’s a dark day for academic freedom in Europe». Political scientist Cas Mudde reiterated that with the new law Hungary joined a growing group of authoritarian countries that (to all intents and purposes) have closed independent universities, including Belarus, Russia and Turkey⁷⁰.

The European Union decided to intervene. On 26 April 2017, the European Commission announced infringement proceedings against Hungary, claiming that the “Lex CEU” was incompatible both with «the commitments Hungary had

⁶⁵ [nytimes.com/2017/04/02/opinion/academic-freedom-under-threat-in-europe.html](https://www.nytimes.com/2017/04/02/opinion/academic-freedom-under-threat-in-europe.html).

⁶⁶ Nemzeti felsőoktatásról szóló 2011. évi CCIV. törvény módosításáról szóló 2017. évi XXV. törvény [Law No XXV of 2017, amending Law No CCIV of 2011 on national higher education, “the 2017 Law on higher education”].

⁶⁷ D. Rohac, *Hungary is turning into Russia. On the CEU, Orban mimics Putin*, in *Foreign Affairs*, 12 April 2017.

⁶⁸ D. Kean, *Authors protest against Hungary’s plans to close Central European University*, in *The Guardian*, 14 April 2017.

⁶⁹ D. Rohac, *Hungary is turning into Russia*, cit.

⁷⁰ C. Mudde, *The Central European University is the latest victim of the Trump era*, in *The Guardian*, 4 December 2018.

undertaken within the framework of the GATS and with the freedom of establishment, the free movement of services and the provisions of the Charter of Fundamental Rights relating to academic freedom, the freedom to found higher education institutions and the freedom to conduct a business»⁷¹.

On 7 December 2017, the European Commission referred Hungary to the European Court of Justice of the EU over the Higher Education Law, which could force the closure of the Central European University (CEU)⁷². Meanwhile, in December 2018, the CEU was forced to leave Budapest and announced that its new campus was to open in Vienna the following academic year.

Finally, on 6 October 2020, the European Union's highest court ruled that «the conditions introduced by Hungary to enable foreign higher education institutions to carry out their activities in its territory are incompatible with EU law»⁷³. More specifically, «in its judgment in *Commission v Hungary (Higher education)* (C-66/18), delivered on 6 October 2020, the Grand Chamber of the Court of Justice upheld the action for failure to fulfil obligations brought against Hungary by the European Commission. The Court held, first, that, by making the exercise, in Hungary, of teaching activities leading to a qualification by higher education institutions situated outside the European Economic Area (EEA) subject to the existence of an international treaty between Hungary and the third country in which the institution concerned has its seat, Hungary has failed to comply with the commitments in relation to national treatment given under the General Agreement on Trade in Services (GATS), concluded within the framework of the World Trade Organisation (WTO). That requirement is also contrary to the provisions of the Charter of Fundamental Rights of the European Union (“the Charter”) relating to academic freedom, the freedom to found higher education institutions and the freedom to conduct a business. Second, the Court held that, by making the exercise, in Hungary, of the activities of foreign higher education institutions, including institutions having their seat in another Member State of the EEA, subject to the condition that they offer higher education in the country in which they have their seat, Hungary has failed to comply with its national treatment commitments under the GATS and with its obligations in respect of the freedom of establishment, the free movement of services, and the abovementioned provisions of the Charter»⁷⁴.

The CEU affair highlights three main considerations: firstly, the importance of strengthening the legal protection of academic freedom across Europe; secondly, the dangerous attack on the idea of an open society, academic freedom and rule of

⁷¹ curia.europa.eu/juris/document/document.jsf?text=&docid=237114&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=42223912.

⁷² ec.europa.eu/commission/presscorner/detail/en/IP_17_5004.

⁷³ Judgment of the Court (Grand Chamber) of 6 October 2020, C-66/18 – *European Commission v Hungary (Enseignement supérieur)*, curia.europa.eu/juris/liste.jsf?num=C-66/18; curia.europa.eu/juris/document/document.jsf?text=&docid=232082&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2491993.

⁷⁴ curia.europa.eu/juris/document/document.jsf?text=&docid=237114&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=2487793.

law in 21st century Europe; lastly, the crucial role of European institutions, civil society and intellectuals in defending the founding values of the European Union.

4. Conclusion

The CEU affair has brought about a broad and needful debate about the nature of academic freedom and the necessity of standing up in its defence – in Hungary, in Europe and elsewhere. The CEU has launched several major academic initiatives to study the issue in its broadest terms⁷⁵. The response of the CEU was a renewed reflection on the concept of open society. The central question was: Why are the key values of the open society – freedom, justice, tolerance, democracy and respect for knowledge – under attack in Europe today, and more generally across the world? During 2017 and 2018, the university invited scholars from all over the world to join a series of conferences and debates on the subject. The first result of this work has been published in a collective volume entitled *Rethinking Open Society. New Adversaries and New Opportunities*, which has already been mentioned in this essay⁷⁶. The debate on this issue is extremely stimulating and topical and requires further investigation. I would like to recall some points that make the CEU affair emblematic of the relationship between academic freedom, open society and rule of law.

An open society is intrinsically complex and demanding: rather than offering easy, immediate simplifications, it requires complexity. Its ideals may seem demanding as it requires us to respect the dignity of others, to exercise the fullness of a sense of citizenship, and to make choices based on the search for doubt rather than on the obscurantism of dogma. As Dahrendorf wrote: «The open society does not promise an easy life. Indeed, human beings have a dangerous penchant for the coziness of a closed world. But if we want to move forward and improve ourselves and the conditions in which men and women live on this planet, we have got to accept the untidy, antagonistic, uncomfortable, but proud and encouraging prospect of open horizons»⁷⁷. The political scientist Jan Zielonka, starting from Dahrendorf's reflections, recalls that today, the attack by the enemies of open society targets liberal democratic constitutionalism, the liberal notion of open borders, but also feminism, multiculturalism, abortion, gay rights, environmentalism, cultural tolerance and religious neutrality⁷⁸. It is therefore necessary to make a renewed reflection on the concept of open society, taking into account the plurality, heterogeneity and hybridisation of a Europe shaped by globalisation, which can also embrace human progress, social equity and sustainable development⁷⁹.

This is a watershed moment, for Europe and for the world. The defence of the open society ideal in Europe is a battle of civilization; it concerns the very essence

⁷⁵ *Walled Worlds: "Illiberal Democracy" and the "CEU Affair"*, cit.

⁷⁶ M. Ignatieff, S. Roch (Eds.), *Rethinking Open Society*, cit.

⁷⁷ R. Dahrendorf, *Reflections on the Revolution in Europe*, cit., 28.

⁷⁸ J. Zielonka, *Counter-Revolution. Liberal Europe in Retreat*, cit., 30.

⁷⁹ *Ibidem*.

of European values, which must involve European institutions and leaders, civil society and intellectuals.

In this difficult historical moment, we need political leaders who can defend the values of the open society and face the challenges of modernity: innovation and evolution, knowledge and competence, but also solidarity and inclusion. The European Union and its rulers cannot afford uncertainties, ambiguities or comfortable silences in the face of dangerous and anachronistic attacks on these values. In this scenario, the European institutions play a decisive role in respecting and defending the founding values of the European project, without neglecting the presence of an informed and independent European civil society⁸⁰.

Civil society is a product of the natural progression of civilization, so it has a fundamental role in the relaunch of the open society ideal. Open society is a society endowed with a healthy and robust civil society, capable of expressing itself through the “creative chaos” of associations, religious institutions, artistic forms and educational institutions⁸¹.

Finally, another crucial point is the role of intellectuals and the need to support a new narrative in promoting the values of the open society. If it is true that in ordinary times intellectuals are just useful, but in troubled times they are necessary, intellectuals today have a fundamental role in relaunching the values of open society such as modernity, inclusiveness, change and plurality.

The CEU affair also expressed the importance of building a strong and vibrant academic community, capable of involving civil society.

The real challenge today in Europe is not only the complexity of the dilemmas associated with “squaring the circle” of wealth creation, social cohesion and political freedom⁸², but also the increasingly widespread perception of “irrelevance”⁸³. Over the last decade, many people have remained on the fringes of society, and this is a story of anomie, disintegration and fear. The enhancement of local communities⁸⁴, the participation in public and social spaces, the perception of being an active part in the construction of a political, cultural, economic, educational or social project, are fundamental aspects in relaunching the ideal of an open society in 21st century Europe. The CEU affair expresses the strength of an active academic community that has fought and continues to fight for the defence of academic freedom, open society and rule of law.

⁸⁰ C. Cerami, *In difesa della “società aperta”*: la Central European University (CEU), in *Mente Politica*, 28 August 2019, mentepolitica.it/articolo/in-difesa-della-a-oesociet-apertaa-la-central-european-university-ceu/1668.

⁸¹ R. Dahrendorf, *La società riaperta*, cit., 22-35.

⁸² R. Dahrendorf, *Economic Opportunity, Civil Society and Political Liberty*, in *Development and Change*, No 27, 1996.

⁸³ Y.N. Harari, *21 Lessons for the 21st Century*, Random House, 2018.

⁸⁴ In his latest book, Raghuram Rajan warns of the disadvantages of neglecting the crucial role of communities. See: R.G. Rajan, *The Third Pillar: How Markets and the State Leave the Community Behind*, Penguin, 2019.