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The Modern University, Ltd.[*]

Tom Frost, University of Sussex

Today, the university in the United Kingdom (UK) appears to be being led far from its educational, egalitarian roots. It appears to be a corporate beast, increasingly marketised, commodified and commercialised. In recent years, many words have been written on this matter.[1] In this article, I wish to consider how these perceived changes could affect a cherished notion for academics – academic freedom. I connect the marketisation of UK higher education to the (comparatively) recent economic changes in the structure of capitalism, and the rise of neoliberal economic theory.

This article contends that the modern shift to commercialisation and bureaucratisation in the university is not a new trend. Going back several hundred years' State and market control in rationalising learning has been constant. The university should be seen as the precursor to the modern corporation, rather than its antithesis. The historically marketised elements of the university have simply been accentuated in modernity. Changes in the nature of capitalism have led to a change in the structure of corporations, which now operate in a system of competition rather than exchange. The effects of this change have made their mark in higher education. In this system, the work of the academic, and the widely touted idea of 'academic freedom', serves the ends of the university as a corporation.

Academic freedom is a term with a very nebulous and catholic meaning. It has often been synonymous with an idea of a university as a space for learning, inquiry and critical discussion. However, I do not take this view. Much of our discourse surrounding the university centres on an idealised view of academic freedom. Countering discourse which reads academic freedom as an expansive, empowering notion, I follow Stanley Fish in taking a deflationary reading of the term. Fish reads academic freedom as nothing more than the freedom to do one's job.

I advance several arguments in support of this position. I first introduce the idea of academic freedom, and its legal position in relation to the UK academy. I then introduce Fish's

[*] I would like to thank the careful and detailed readings made, and comments offered, by Jo Bridgeman, John Child, Colin Murray, Amir Paz-Fuchs and Aoife O' Donoghue. This paper was originally presented at the Critical Legal Conference 2012 in Stockholm, Sweden. I am very gratefully for the feedback received from the conference participants. Any remaining errors or mistakes remain my own.

[1] See, for example, Mike Molesworth, Richard Scullion and Elizabeth Nixon (eds.), *The Marketisation of Higher Education and the Student as Consumer* (London: Routledge, 2011),

definition of academic freedom as freedom to academicise, contending that this view is one which would have great import in UK higher education. Next, I turn to the recent funding reforms to UK universities, including the introduction of £9,000 annual fees for UK undergraduates, and place them in their historical context in relation to state involvement in higher education over the past century. I place them within a broader history of governmental intervention in universities. I contend that the resistance to perceived marketisation and administrative meddling in academic matters is misplaced. The institution's history illustrates that the university is the model for corporations, not vice versa.

In support of this view, I draw upon the writing of Maurizio Lazzarato, and his idea of 'immaterial labour'. Engaging with Lazzarato's thought, I argue that today, within a neoliberal economic system, Fish's deflationary account of academic freedom is one which is both realistic, and will enable scholars within the university to better challenge the commercialisation they oppose. Academic freedom must be understood as nothing more than the freedom to do one's job as a good corporate worker. In such a view, it can help offer us an alternative to the status quo, which can end up as an exploitative and paradigmatic form of immaterial labour.

What this indicates is that far from being the hotbed of revolt and revolution, the university is an embodiment of what many academics in their politics aim to overthrow. I conclude that it is only by understanding the intrinsically corporate nature of the university that it is possible to better the university.

I. Academic Freedom

In 1988, tenure was removed from academics at UK universities, through the Education Reform Act.[2] The 1988 Act introduced a vast new machinery designed to make universities more accountable for the public money which they received.[3] It created the role of University Commissioners, who were given the power to remove academic staff from their positions. Tenure was understood as protection from dismissal in the absence of good cause. Unlike tenure in the United States of America (USA), it could not be usurped by universities closing

[2] Education Reform Act 1988 c 40, ss. 203-204.
[3] Conrad Russell, *Academic Freedom* (London and New York: Routledge, 1993), p.7.

down whole departments to effect dismissals.[4] Despite this limitation, section 202 (2) (a) makes it clear that Commissioners should:

> [E]nsure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions.[5]

This section, introduced as an amendment to the original Bill, built upon the provisions of the Education (No. 2) Act 1986 which placed a duty on higher education establishments to secure freedom of speech "within the law" for their members.[6] These statutes reflect the general position within the UK, which is that academic freedom is not an absolute value, but rather something that has to be taken into account by a variety of decision-makers.[7] This important place for academic freedom is also reflected in the Charter of Fundamental Rights of the European Union, which declares that academic freedom is to be "respected",[8] but the Charter does not go further and define the term. Despite the protections in EU law, the protection of academic freedom in UK law is feeble.[9] Stanley Fish is doubtless correct in claiming that academic freedom is "rhetorically strong but legally weak".[10]

In the USA courts, including the Supreme Court, have been more forward in dealing with issues, and the definitions, of academic freedom and the boundaries and limits of the term. Justice Frankfurter in *Sweezy v New Hampshire* saw that there were four essential freedoms in the university: the freedoms to determine who may teach, what may be taught, how it shall be taught, and who shall be taught.[11] More recently, potentially limiting the term, in *Garcetti v Ceballos* the Supreme Court ruled by a 5-4 majority that the First Amendment did not apply to statements made as part of an employee's job duties.[12] The ambiguity surrounding how this

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[4] Barbara A. Lee and Mark Davies, "No More "Business as Usual" in Higher Education: Implications for U.S. and U.K. Faculty," *The Journal of College and University Law* 40 (2014): pp.499-542, 504.
[5] Education Reform Act 1988, s 202 (2)(a).
[6] Education (No. 2) Act 1986 c 61, s 43.
[7] See also Higher Education Act 2004 s.32 (2).
[8] Charter of Fundamental Rights of the European Union, Article 13 (2000/C 364/01) (18 December 2000).
[9] Dennis Farrington and David Palfreyman, *The Law of Higher Education* (Oxford: Oxford University Press, 2006), pp.371-385.
[10] Stanley Fish, *Versions of Academic Freedoms: From Professionalism to Revolution* (Chicago: University of Chicago Press, 2014), p.x.
[11] *Sweezy v New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter J).
[12] *Garcetti v Ceballos* 547 U.S. 410 (2006).

case applies to universities and academic freedom has led to lower courts using *Garcetti* to uphold the dismissals of faculty who claimed that they were exercising protected speech.[13]

Despite these judicial interventions and attempts at defining and placing limits on this nebulous 'freedom', what Michel Foucault declared about sex in the modern world is equally true of academic freedom. This is namely that we have not consigned academic freedom to a shadow existence, but rather we have spoken of it *ad infinitum*¸ whilst exploiting it as *the* secret.[14] In so doing, we fail to reveal its core with precision. It is for this reason that a plethora of views of what academic freedom is, and what it allows, has proliferated. These views range from viewing academic freedom as a claim to a universal ideal,[15] to decrying the lack of collegial public defence of this universal ideal,[16] to a view that it is no more than freedom for professionals to do their jobs and *just* their jobs.[17] These divergent views have led to a muddy and inchoate view of what academic freedom means.[18]

In particular, attention can be drawn to the nature of the term itself: academic *freedom*. But freedom to do what? And whose freedom?[19] Why should academics enjoy exemptions and privileges not enjoyed by other citizens?[20] Academic freedom comes from a medieval tradition which pre-dates current meanings of the word 'freedom'.[21] Universities can ultimately (albeit in a fractured manner) trace their existence back to ecclesiastical origins, and are rooted in an intellectual tradition created to defend the autonomy of the Church.[22] The privileges of academics, which now pass under the name of academic freedom, were originally ecclesiastical and guaranteed by the Pope.[23]

Separate from this tradition, what Williams has called an 'idea discourse' has grown up around the university and academic freedom.[24] The history of the *idea* of the university is different from the history of the actual institution. It is wrong to think that the university ever

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[13] See *Renken v Gregory* 541 F.3d 769 (7th Cir 2008).
[14] Michel Foucault, *History of Sexuality, volume 1* (London: Penguin Books, 1979), p.35.
[15] Terrence Karran, "Academic Freedom: In Justification of a Universal Ideal," *Studies in Higher Education* 34 (2009): pp. 263-268.
[16] Neil W Hamilton, "Buttressing the neglected traditional of academic freedom," *William Mitchell Law Review* 22 (1996): pp.549-571.
[17] Stanley Fish, *Versions of Academic Freedoms: From Professionalism to Revolution* (Chicago: University of Chicago Press, 2014), p.10.
[18] James K Miller, "Book Review," *Canadian Historical Review* 70 (1989): pp.117-118, 117.
[19] Anthony Arblaster, *Academic Freedom* (Harmondsworth: Penguin Education, 1974), p.10.
[20] Fish, *Versions of Academic Freedoms*, p.1; Frederick Schauer, "Is There a Right to Academic Freedom," *University of Colorado Law Review* 77 (2006): pp.907-927, 913.
[21] Russell, *Academic Freedom*, p.1.
[22] Russell, *Academic Freedom*, p.1.
[23] Russell, *Academic Freedom*, p.2.
[24] Jeffrey J Williams, "History as a Challenge to the Idea of the University," *JAC: A Journal of Rhetoric, Culture, & Politics* 25 (2005): pp.55-74, 55-56.

had a discrete idea grounding it. The university has never existed in a pure state from which it veered off course. Idea discourse treats the history of the university as a history of ideas (or Ideas) rather than a history of institutions.[25] It takes the perspective and represents the interests of those who issue it, defining the university through their eyes.[26]

This can be seen in a wide variety of thinkers who have written on the university. Jacques Derrida's 'idea of the university' conceives of the university as something that should be without condition, and have the humanities at its heart.[27] Cardinal Newman wrote of the idea of the university in the nineteenth century, referring to a community of thinkers, engaged in a free sphere of thinking, not for any specific end, but rather, as an end in itself.[28] Thomas Jefferson wrote that the purpose of a university was a civic one, and the students at such a school of learning would form the statesmen, legislators and judges of the future.[29] Writing in 1970, E P Thompson placed emphasis upon subversion in order to resurrect a better idea of a university, arguing that it should be transformed "into a centre of free discussion and action, tolerating and even encouraging "subversive" thought and activity, for a dynamic renewal of the whole society".[30]

All of these individuals have different and varied 'expectations' of what the university should be.[31] How we view the university as an institution directly impacts upon the freedoms which are exercised by its members. Stanley Fish, in engaging with the question of what academics should do as part of their profession, draws versions of academic freedom into five separate schools, each of which has a differing perspective on the university and the role of academic freedom within it. Fish contends that this taxonomy broadly represents the spectrum of views and interpretations on the subject, from the most deflationary to the most radical.[32] The examples Fish cite have been criticised as containing a lack of specificity, a concern for the academic freedom of staff and not students and a defensive proclamation of the rights of academics.[33] However, whilst there are disadvantages in any taxonomical approach, Fish's

[25] Williams, "History as a Challenge," p.57.
[26] Williams, "History as a Challenge," p.58.
[27] Jacques Derrida, "The future of the profession or the university without condition (thanks to the "Humanities", what could take place tomorrow)," in: Tom Cohen (ed.), *Jacques Derrida and the Humanities: A Critical Reader* (Cambridge: Cambridge University Press, 2002), pp.24-57.
[28] John Henry Newman, *The Idea of a University*, Frank M Turner (ed.) (New Haven: Yale University Press, 1996).
[29] Thomas Jefferson, "Report of the Commissioners for the University of Virginia, 1818," in: Thomas Jefferson, *Writings* (New York: Library of America, 1984), pp.457-476, 459-460.
[30] E P Thompson, *Warwick University Ltd: Industry, Management and the Universities* (Nottingham: Spokesman Books, 2013), p.166.
[31] Williams, "History as a Challenge," p.58.
[32] Fish, *Versions of Academic Freedoms*, p.1.
[33] Ronald Barnett, *The idea of higher education* (Buckingham: Open University Press, 1990), p.134.

study allows an insight into the spectrum of views which exist surrounding exactly what academics are allowed to do. In particular, his own approach to the field has the potential to be very valuable in the face of current marketisation in UK higher education.

The two most extreme schools in Fish's taxonomy he reads as not being in line with the university's aims to disseminate knowledge through teaching and research, nicely illustrating how our expectations of the university's role impacts upon what freedoms its members can exercise.[34] The most extreme Fish terms the 'academic freedom as revolution' school. This school sees education demanding positive political action (rather than pedagogic action) on the part of those who practice it. When the university's obligations clash with social justice, social justice always triumphs. The University therefore becomes a vehicle for social change, with academic freedom the driving force. The impacts both the research undertaken by the academic, and the teaching they carry out. In Henry Giroux's words, teaching comes with responsibilities including fighting for:

> An inclusive and radical democracy by recognising that education [is] … about providing the conditions for assuming the responsibilities we have as citizens to expose human misery and to eliminate the conditions that produce it.[35]

Next, the 'academic freedom as critique' school sees critique of the dominant ideology and power structures as the academic's vocation. Characterised by scholars such as Judith Butler, this school sees dissent not as confirming to accepted professional norms, but as taking aim at those norms that are already accepted.[36] In this way, academic freedom becomes another engine (albeit more indirect) of social progress. For Derrida, this university claims an unconditional freedom to question and to assert, and the right to say publicly all that is required by research, knowledge and thought concerning the truth.[37] It is the university, for Derrida, which professes the truth. He thinks a university that is self-determining and self-thinking, with the humanities at its centre. Without being granted the freedom to critique the dominant forms of power operating in society, academia will only serve those interests, rather than challenge them.

The third school Fish denotes as 'academic exceptionalism or uncommon beings'. This school sees academics as intellectually and morally uncommon, over and above the population

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[34] Fish, *Versions of Academic Freedoms*, p.13.
[35] Henry A Giroux, *Against the Terror of Neoliberalism: Politics Beyond the Age of Greed* (Boulder, CO: University of British Columbia Press, 2008), p.128.
[36] Judith Butler, "Israel/Palestine and the Paradoxes of Academic Freedom," *Radical Philosophy* 135 (2006): pp.8-17; Judith Butler, "Critique, Dissent, Disciplinarity," *Critical Inquiry* 35 (2009): pp.773-795.
[37] Derrida, "The future of the profession or the university without condition," p.24.

at large. As such, they require and deserve special privileges which the general public would not receive, namely academic freedom. This is reflected in the thought of Roger Brown, who has argued that academics have an 'intellectual curiosity' which needs to be protected from unnecessary interference and control.[38] It is clear that Fish does not think that academics have such a role. Bill Readings saw this pragmatism as glorying in the university's lack of external reference.[39] In contrast, Readings saw education as a radical form of dialogue,[40] with academics holding a special role in teaching, which belongs to "justice rather than truth".[41]

The fourth school Fish terms 'for the common good'. This school sees the academic task as distinctive. The task of advancing knowledge involves following the evidence wherever it leads, and as such the academic requires complete and unlimited freedom to pursue inquiry and publish its results. This school connects academic freedom to democracy, and the democratic values of free and open inquiry.[42] This can be seen in Arthur Lovejoy's 1937 definition of academic freedom as:

> [T]he freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions … without interference … unless his methods are found by qualified bodies of his own profession to be clearly incompetent or contrary to professional ethics.[43]

This common good school is also reflected in what can be read as a foundational document for academic freedom in the USA, the American Association of University Professors' (AAUP) 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*.[44] The Declaration makes clear that the academic's responsibility is to the wider public to whom the institution itself is morally amenable. Nevertheless, this right to academic freedom comes with a correlative duty – it can be asserted only by those who carry out their work "in the temper of the scientific inquirer" and should not be used for uncritical partisanship.[45] The common good

[38] Roger Brown, "The governance of the new universities: Do we need to think again?" *Perspectives* 5 (2001): pp.42-47.
[39] Bill Readings, *The University in Ruins* (Cambridge, MA: Harvard University Press, 1996), p.107.
[40] Readings, *The University in Ruins*, p.154.
[41] Readings, *The University in Ruins*, p.161; Maurice Blanchot, *The Unavowable Community*, Pierre Joris (tr.) (Barrytown, NY: Station Hill Press, 1988).
[42] Fish, *Versions of Academic Freedoms*, p.11.
[43] Arthur O Lovejoy, "Academic Freedom", in *Encyclopaedia of the Social Sciences* (London: Macmillan Publishers, 1930), p.384.
[44] "1915 Declaration of Principles on Academic Freedom and Academic Tenure" In: *American Association of University Professors, Policy Documents & Reports* (Baltimore, MD: Johns Hopkins University Press, 2008), p.298; Fish, *Versions of Academic Freedoms*, p.11.
[45] "1915 Declaration," p.298.

school has famous adherents. Ronald Dworkin argued that academic freedom insulated scholars from the university administrators, and prevented them being dictated to about what will be taught.[46] Such a view has crossed the Atlantic. Anthony Arblaster argued that academic freedom must involve openness in education, engaging with a diversity of views, encouraging flexibility and experimentation, with students having a major share in the process.[47]

The final school represents Fish's own deflationary view of higher education. Academic freedom becomes equivalent simply with the university's mission to impart knowledge.[48] Fish argues that the university's mission is to produce and disseminate academic knowledge and to train those who take up this task in the future.[49] This knowledge is produced through disinterested academic inquiry. Academic morality for Fish does not rest upon a normative basis, or an ideal, but is merely being conscientious in the pursuit of truth.[50] Fish's conception of academic freedom can be summarised as a direction for academics to "just do your job".[51] Academic freedom is freedom to *academicise*, a necessary condition for academics to carry out the university's mission of producing and disseminating knowledge.[52] Academicising involves introducing students to bodies of knowledge and the tradition of inquiry, and equipping students with analytical skills, enabling them to engage with those traditions in their thinking.[53]

In this reading, academic freedom has corresponding duties,[54] and Fish is sharply critical of academics that see academic freedom as freedom from the "everyday obligations of the workplace".[55] There is no room in this vision for politicising actions in academia, and no room to include wider societal values within teaching, except in introducing them in ways that are appropriate to the academic enterprise. Politics must be treated as a topic of interrogation, not proselytising, in teaching;[56] proper academic debate involves discussions surrounding curriculum development, research direction and teaching materials.[57]

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[46] Ronald Dworkin, "We need a new interpretation of academic freedom," In: Louis Menand (ed.), *The future of academic freedom* (Chicago, University of Chicago Press, 1996), pp.181-198, 183.
[47] Arblaster, *Academic Freedom*, pp.13-14.
[48] Fish, *Versions of Academic Freedoms*, p.9.
[49] Stanley Fish, *Save the World on Your Own Time* (New York: Columbia University Press, 2008), p.99.
[50] Fish, *Save the World on Your Own Time*, p.102.
[51] Fish, *Save the World on Your Own Time*, pp. 16, 153, 178.
[52] Fish, *Save the World on Your Own Time*, p.82.
[53] Fish, *Save the World on Your Own Time*, pp.12-13.
[54] Russell, *Academic Freedom*, p.41.
[55] Fish, *Save the World on Your Own Time*, p.113.
[56] Fish, *Save the World on Your Own Time*, p.30; Fish, *Versions of Academic Freedom*, pp.34-35.
[57] Fish, *Save the World on Your Own Time*, p.20.

This is a minimalist view to the freedom within the academy, to be sure. To treat academic practice as just being a job abandons lofty pretences of acting for the common good or seeking wider political change in society. Fish is quite clear that universities should therefore not strive to reach beyond the students they are seeking to teach into the wider community as civic institutions. These are political goals, and in following them universities "are guilty both of practicing without a license and of defaulting on our professional responsibilities".[58] Yet these political goals which Fish sees as inappropriate for the academic mission also include requiring

research having to show social or economic benefits and impacts, which ends up instrumentalising the academic process. Instead, Fish indicates that academics are part of a profession, like doctors and lawyers, which has its own internal practices. This justification for academic practice is entirely internal to the academy, which can only do this if it is left to regulate itself, within the limits of that profession. This does not mean that the academic process is impartial and completely neutral. Rather, the profession would regulate itself, having in mind the goals and limits of the university's mission.

Unlike doctors and lawyers however, academics do not have the same types of professional bodies regulating their practice, representing their views and lobbying for change.[59] As Lee and Davies argue, a view which I am inclined to agree with, it may be time for academics to take the step in the twenty-first century that doctors and lawyers took in the nineteenth and twentieth centuries, and institute a professional body and code of practice to regulate ethics and standards.[60] Such a move will help ensure that academics can still 'academicise' in the future. This deflationary account of academic freedom, properly defended, would have great import in UK higher education. This is not least because the changes in the twenty-first and the twentieth century to higher education, and the longer history of the university, illustrate that academic freedom, and the university, has never been a revolutionary force in this country.

II. Higher Education in the UK after the Browne Report

The higher education landscape in the UK has been marked in recent years by a debate over how universities are to be funded, and how they are to best contribute to the country's

[58] Fish, *Save the World on Your Own Time*, p.67.
[59] Lee and Davies, "No More "Business as Usual"," pp.540-542.
[60] Lee and Davies, "No More "Business as Usual"," p.542.

economy.[61] However, whilst such debates may appear novel and not in step with the history of the university, the opposite is the case. There has, since the end of the Second World War, been an almost constant discussion (albeit at varying levels of volume) about how universities can contribute to the national good, understood in economic terms.

The background to the recent discussions has been a rapid expansion in the higher education sector. In the mid 1980's there were fewer than 60 universities, and participation rates were around six per cent. Fast forward twenty years and 140 universities and university colleges provide undergraduate degree programmes, and 42 per cent of all 18 year-olds enter higher education.[62] This does not take into account the fact that the higher education system quadrupled in size between 1946 and 1980.[63] This expansion of the universities can be read as the natural culmination of the educational revolution which led to free public elementary schools in the 1870's and free public secondary schools in 1944.[64] The progress of this educational revolution was allied with the development of a liberal democratic society. Universities became a key element of the economic profile of the UK throughout the twentieth century. Illustrative of this, Winston Churchill saw egalitarianism in education as necessary to establish:

> [A] state of society where the advantages and privileges which hitherto have been enjoyed only by the few, shall be far more widely shared by the men and youth of the nation as a whole.[65]

British universities were of diverse origins and types, formed in different ways, but converged over time towards a single model.[66] The modern university system was shaped in the nineteenth century, with the establishment of the "redbrick" institutions, serving local communities, and the removal of religious tests for entrance.[67] The civic universities established from 1825 were built on commercial and industrial wealth and the demands of a rapidly growing economy and the commitment to culture, science, the arts and philanthropy of the elite communities in those cities. These universities were established by government who recognised the economic and

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[61] See, for example, Stefan Collini, *What are Universities For?* (London: Penguin Books, 2012).
[62] Nick Foskett, "Markets, government, funding and the marketization of UK higher education," In: *The Marketisation of Higher Education*, pp.25-38, 25.
[63] Peter Scott, *The Crisis of the University* (London & Sydney: Croom Helm, 1984), p.57.
[64] Scott, *The Crisis of the University*, p.124.
[65] The Taylor Report, *A New Partnership for Our Schools: Report of the Committee of Enquiry appointed jointly by the Secretary of State for Education and Science and the Secretary of State for Wales under the chairmanship of Mr Tom Taylor CBE*, (London: HMSO, 1977), p.158.
[66] Robert Anderson, *British Universities Past and Present* (London, Continuum, 2006).
[67] Universities Tests Act 1871 c 26 (34 & 35 Vict).

social importance of those institutions, and underwritten by endowment and privilege.[68] From 1889, universities in England and Wales were given annual grants from the State. In order to qualify for these, and for the royal charters which gave rights to confer degrees, common standards had to be observed.[69] By the start of World War One, all universities except for Oxford and Cambridge relied on the state for up to one third of their funding, in a domesticated market environment.[70]

In 1919, the University Grants Committee (UGC) was created to distribute state grants whilst respecting the autonomy of universities, and promoting the importance of teaching and research in a university.[71] We can see at an early stage the importance of 'autonomy', or academic freedom, for the university's mission of educating the future wealth creators of the society. The UGC was underwritten by government, allowing for a growth in the number of universities through the creation of new institutions.

However, this was very much an elite business. In 1950 only 3.4% of the population entered higher education.[72] In a post-war expansion, university education was made a pillar of the welfare state, and demand for universities outstripped supply. Following the Robbins Report of 1963, new campus-based universities were founded,[73] and maintenance grants were introduced for students in 1962.[74] The Robbins expansion was driven by a belief that all young persons qualified by ability should have the opportunity to enter higher education.[75] This led to an effective nationalisation and central control of universities, enabling students to attend universities well away from where they grew up.[76] University education was seen as a public good accessible to all citizens on equal terms.[77]

By the 1970's, and the start of the collapse of the post-war political settlement, successive UK governments needed to grow higher education to produce larger numbers of

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[68] Foskett, "Markets, government, funding and the marketization of UK higher education," p.27.
[69] Robert Anderson, "British universities past, present and future: convergence and divergence," in Louis Coiffait (ed.), *Blue skies: new thinking about the future of higher education* (London, Pearson, 2011), pp.57-60, 57.
[70] Anderson, "British universities past, present and future," p.57.
[71] Michael Shattock and Robert Berdahl, "The British University Grants Committee 1919-83: Changing Relationships with Government and the Universities," *Higher Education* 13 (1984): pp.471-499.
[72] National Committee of Inquiry into Higher Education, *Report 6: Widening participation in higher education for students from lower socio-economic groups and students with disabilities* (1997), available at https://bei.leeds.ac.uk/Partners/NCIHE/.
[73] Committee on Higher Education, *Higher Education,* Cmnd 2154, 1962-63.
[74] Anderson Report on *Grants to Students,* Cmnd 1051, 1959/60; Education Act 1962 c 12 (10 & 11 Eliz 2).
[75] Committee on Higher Education, *Higher Education*, p.49.
[76] House of Commons Library, *Student grants, loans and tuition fees*, Research Paper No 97/119 (13 November 1997).
[77] Anderson, "British universities past, present and future," p.58.

better educated graduates to ensure that the UK economy would be competitive in global markets.[78] This was bolstered by creating universities from former polytechnics, which transferred them from local authority control into independent corporations.[79] The concept of the 'market' thus began to seriously enter the lexicon as an effective mechanism to manage the education sector. Crucial here is the idea that markets are driven by consumer choice, and choice means competition between providers. Market mechanisms would enhance choice, and competition would drive down unit costs, enabling the education sector as a whole to grow without a proportional increase in public expenditure.[80] This is the ideology underpinning reforms in UK higher education over the past thirty years.

The current university funding regime in the UK is governed by the implications of the *Independent Review of Higher Education Funding and Student Finance*, the 'Browne Report', published in 2010.[81] The current model is a 'quasi-market', which directly involves the government in many areas, as the judgment was made that a completely free open market in higher education was too great a risk.[82] The Browne Report concluded that everyone who had the potential should have the opportunity to benefit from higher education, which would have the indirect impact of benefitting the British economy.[83] However, in balancing this noble aim, and invoking the language of sustainability, the Report recommended raising tuition fees, with students receiving a loan from the Government to cover fees, and an additional loan to cover cost of living, which would be repaid when the student was earning a sufficient amount after graduating.[84] As a result, the cap on tuition fees was raised to £9,000 in 2010.[85]

Coupled with the rise in fees, universities were not exempted from the cuts in public expenditure carried out by the UK Government (in line with similar moves worldwide in the face of the 2008 financial crisis). The central funds available for higher education have been

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[78] Foskett, "Markets, government, funding and the marketization of UK higher education," p.29.
[79] Further and Higher Education Act 1992 c 13.
[80] Foskett, "Markets, government, funding and the marketization of UK higher education," p.29.
[81] Browne Report, 2010 *"Securing a Sustainable Future for Higher Education: An Independent Review of Higher Education Funding and Student Finance."* Independent Review of Higher Education Funding and Student Finance London. Available at: http://www.independent.gov.uk/browne-report, 21 August 2011.
[82] Foskett, "Markets, government, funding and the marketization of UK higher education," p.30.
[83] *R (on the application of Hurley and Moore) v Secretary of State for Business, Innovation & Skills* [2012] EWHC 201 (Admin) [19] (Elias LJ).
[84] *Hurley* [20]-[21].
[85] Higher Education (Basic Amount) Regulations 2010 (SI 2010/3021); Higher Education (Higher Amount) Regulations 2010 (SI 2010/3020). This is not UK-wide. Institutions in Northern Ireland can charge home student fees of up to £3,685 per year, and Scottish students studying in Scotland have their cost of fees covered by a subsidy from the Student Awards Agency for Scotland. Welsh students pay £3,685 per year for tuition in the UK, as the rest is covered by the Welsh Assembly.

markedly cut by over 50%, which amounts to a more than £4bn annual reduction in funding.[86] The reduction in public money is made up for through a government loan which is paid to universities via its students. The student, rather than the State, is therefore responsible for the cost of their education. When the higher fees regime was challenged in court, it was made clear that setting up a system where individuals would have to take on a debt in order to pursue the study of a degree neither prevents nor restricts the right of education, guaranteed under European human rights laws.[87] The High Court could not have been clearer: the fact that some persons would be "temperamentally or psychologically disinclined" to attend university due to the fees charged is ultimately irrelevant.[88]

What this means for universities is that more students equates to more money. For many years, successive governments capped the number of students universities could accept every year. From the 2015-16 academic year, this cap will be removed.[89] This means that universities can recruit as many students as they wish to their courses. This may see more and more students being recruited from outside of the UK. Universities, pushed into the market and impacted by globalisation, have taken a global view of higher education. In the 2012-13 academic year, student numbers fell by over 4,000, the first decline in thirty years. In the past thirty years, international and EU student recruitment at UK universities has increased from 50,000 to over 300,000.[90] The 2010-2015 Conservative – Liberal Democrat Coalition Government introduced stricter visa regulations for students in April 2012. In part driven by this, many UK universities have opened up campuses overseas, bringing a UK university experience to the student.[91]

This is what Nick Foskett has called a 'wild environment'. This is one where groups of similar institutions, with different missions and strategies, differentiated on quality through entry grades and research reputation, serve different sorts of markets.[92] Here, each university designs and implements its own strategy and competes with other institutions, and their

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[86] Higher Education Funding Council for England, "HEFCE allocates £3.88 billion to universities and colleges in England for 2014-15" (26 March 2014) available at http://www.hefce.ac.uk/news/newsarchive/2014/news86801.html; Higher Education Funding Council for England, "2009-10 funding allocations" available at http://www.hefce.ac.uk/whatwedo/invest/institns/annallocns/archive/2009-10/.
[87] Article 2, Protocol 1, European Convention of Human Rights 1950; *Hurley* [42].
[88] *Hurley* [42].
[89] HM Treasury, *Autumn Statement 2013*, Cm 8747 (London: HMSO, 2013).
[90] HEFCE, *Global demand for English higher education: An analysis of international student entry to English higher education courses*, *No. 2014/08a* (April 2014), available at http://www.hefce.ac.uk/media/hefce/content/heinengland/HEFCE2014_08a.pdf.
[91] Eddie Blassa, Anne Jasmana and Steve Shelley, "Visioning 2035: The future of the higher education sector in the UK," *Futures* 42: (2010) pp. 445-453; John Fielden, *Global Horizons for UK universities* (London: The Council for Industry and Higher Education, 2007).
[92] Foskett, "Markets, government, funding and the marketization of UK higher education," p.35.

survival depends upon market accountability.[93] What has been created is a legally endorsed, human rights compliant, highly regulated market. The recent reforms view higher education as a service industry and students are viewed as consumers of a product.[94] Education is no longer seen as identical with the goal of man.[95]

Universities will compete for students, and efficiencies will be encouraged. As part of this marketization, private universities have been established, designed to increase competition and diversity in the higher education sector.[96] Despite this, the upfront public cost of universities remains high. Government is underwriting a significant outlay upon students, who will pay back their loans in later life. Such a move is not without risk. More than £10bn is loaned to students each year. The amount loaned to students will top £100bn in 2018, and will reach £330bn in current prices by the middle of the century.[97]

This picture is complicated further by the repayment structure. Graduates would not repay their loans until they started earning more than £21,000 per year, and the loan will be repaid at a rate of 9% of income above this threshold. Until an individual is in repayment, they will be charged an interest rate of 3% plus inflation on their loan. A tapered interest rate will be charged when income is above the earnings threshold, rising to 3% above inflation when an individual is earning £41,000 per year. The loan's term is thirty years. After this point, any outstanding loan amount will be written off. Despite the rise in fees, there is an inherent risk for successive governments – if enough individuals fail to repay enough money, the student loan industry will become a huge liability. At the end of 2013/14, 58% of all student loans to date were eligible for repayment. 9% had been repaid in full, and 36% were not liable for repayment.[98] In March 2014, the UK Government estimated that 45% of university graduates would not earn enough to repay their student loans in full, after being criticised that they had been underestimating this number.[99] This is close to the 48.6% figure which has been calculated as being the 'cut-off' point for savings under the new regime. If more than this percentage of

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[93] Foskett, "Markets, government, funding and the marketization of UK higher education," pp.36-39.
[94] Department for Business, Innovation & Skills, *Higher Education: Students at the Heart of the System*, Cm 8122 (London: HMSO, 2011); Mike Molesworth, Richard Scullion and Elizabeth Nixon (eds.), *The Marketisation of Higher Education and the Student as Consumer*, (Abingdon: Routledge, 2010).
[95] Aristotle, *Nichomachean Ethics, Book II* in Aristotle, *Complete Works of Aristotle, Volume I* (Princeton: Princeton University Press, 1984), 1, 1103 a 14-19.
[96] Andrew McGettigan, "University Status, Fees, and Funding" *Council for the Defence of British Universities* (15 August 2013) available at http://cdbu.org.uk/university-status-fees-and-funding/.
[97] House of Commons Library, "Student Loan Statistics," *Briefing Paper SN/SG/1079* (28 October 2014), p.1.
[98] House of Commons Library, "Student Loan Statistics," pp.6-7.
[99] House of Commons Committee of Public Accounts, *Student Loan Repayments: Forty-fourth Report of session 2013-14* (10 February 2014) HC 886.

students fail to repay their loans in full, then the new fees system will cost the Government more than the previous regime.[100]

In response to the Browne Report, a huge literature has grown up surrounding the 'marketization', 'corporatisation' and privatisation of the university sector.[101] Typical of this response is Terry Eagleton, who saw the humanities as about to disappear from universities, as they did not fit into the government's plans to produce economically active graduates.[102] Yet, as Andrew Wernick has argued, the university as an institution for advancing knowledge and for training the high professions has always been enmeshed in material interests and ideology.[103] The university in the UK has always been part of the State's interests. The university's scholars, and the freedom they exercise in this role, should not be conceived as resistant to these processes. Our present difficulties with the university have been built into the system right from the beginning.[104]

III. The University as a Corporation

The predominant target of recent criticism has been the corporate university.[105] Academic freedom may seem anathema to this corporate world, but it was actually a constituent element of the development of the modern research university. Bureaucracy and markets have controlled and moulded academic freedom, and rationalised academic life.[106] The university is the legal and historical model for corporations, and academic freedom is a crucial part of the development of the university as corporation.

The legal standing of corporations is inseparable from the history of the American university. In an early case, the Supreme Court defined corporations as having the legal standing of an individual. The corporation claiming those rights in this case was Dartmouth

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[100] London Economics, The Higher Education fees and funding reforms in England: What is the value of the RAB charge on student loans for the Treasury to break even? (March 2014) available at http://londoneconomics.co.uk/wp-content/uploads/2014/03/Whats-the-breakeven-associated-with-the-reforms-of-Higher-Education-Final-Version-docx.pdf.
[101] For example, Andrew McGettigan, *The Great University Gamble: Money, Markets and the Future of Higher Education* (London: Pluto Press, 2013).
[102] Terry Eagleton, "The death of universities," *The Guardian* (17 December 2010), available at http://www.theguardian.com/commentisfree/2010/dec/17/death-universities-malaise-tuition-fees.
[103] Andrew Wernick, "Will There Be Universities After the Revolution?" (9 November 2011) available at http://publicuniversity.org.uk/2011/11/09/will-there-still-be-universities-after-the-revolution/.
[104] Olaf Pedersen, *The First Universities: Studium Generale and the Origins of University Education in Europe*, Richard North (tr.) (Cambridge: Cambridge University Press, 1968), p.ix.
[105] Williams, "History as a Challenge," p.64.
[106] William Clark, *Academic Charisma and the Origins of the Research University* (Chicago: University of Chicago Press, 2007), p.417.

College, established in 1767 as a public corporation.[107] Chief Justice Marshall noted the characteristics of a corporation, it being an artificial being, intangible and being a creature of law. Most important of all, the corporation is immortal and individual, it comprising of a perpetual succession of many persons. Just as a church might continue over time as 'one body' without state interference, so too could Dartmouth, and so too could a corporate business.

The university-as-corporation was not an American invention. The university as a self-governing academic institution appeared in the Middle Ages as a corporation. The medieval university was an ecclesiastical corporation – the earliest universities were part of the Church. This is why a medieval lecturer sat in a *cathedra*, a chair. The notion of a professorial chair stems from this.[108] The *cathedra* had been, at first, where a bishop sat to teach. The church where his chair resided became by synecdoche a 'cathedral'. From these high officials the chairs passed to professors – the funding of professorships originated in medieval canonries.[109] The conception of the imaginative personality of a corporation appeared for the first time in the ecclesiastical writings of Pope Innocent IV.[110] Innocent announced that when an ecclesiastical corporation of the type called a *collegium* was supposed to deliver an oath, they could have the oath sworn by a single person representing the college, rather than having oaths sworn by each of the members individually, as the *collegium* in corporate matters figured as a person.[111]

The independence which the university established from the State and the Church in the Middle Ages can be connected to their incorporation. A university in the Middle Ages meant an institution of learning recognised by the Church or the State where the teachers or students were united in guilds enjoying a certain privilege or autonomy, where a 'superior' study such as Law, Medicine or Theology was taught in addition to the Seven Arts and Philosophy, and where definite curricula led to specific degrees.[112] These degree giving schools were known as *studium generale*, denoting that they were open to all students of all Christian nations or all provinces of monastic orders.[113]

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[107] *The Trustees of Dartmouth College v Woodward*, 17 U.S. 518 (1819).
[108] Clark, *Academic Charisma*, p.4.
[109] Clark, *Academic Charisma*, p.5.
[110] Maximilian Koessler, "The Person in Imagination of Persona Ficta of the Corporation," *Louisiana Law Review* 9 (1949): pp.435-449, 437.
[111] Koessler, "The Person in Imagination," p.437.
[112] Samuel Eliot Morison, "The universities of the middle ages and the renaissance," *The Rice Institute Pamphlet* 23 (1936): pp.211-245, 213.
[113] Ludwig Huber, "Towards a New *Studium Generale*: some conclusions," *European Journal of Education* 27 (1992): pp.285-301, 286.

The role academic freedom played in the university can be traced to this corporate structure in the High Middle Ages.[114] In 1158, the Holy Roman Emperor Frederick Barbarossa issued the *Authentica Habita* edict protecting scholars.[115] Academic freedom began as a feudal privilege of the professors to authoritatively teach and interpret the scholastic doctrines.[116] Two prototypes of university autonomy emerged, in Paris and Bologna. It was the Parisian model that spread around Europe.[117] In Paris autonomy was considered in terms of the freedom to teach, and applied to the professors, not the students. In Bologna, autonomy was vested in the student body, which hired the academics and reigned supreme in every area except for matters relating to the examination of candidates for degrees.[118] Both institutions were subjected to external attempts at control, and academics responded by migrating to other towns. The Great Dispersion of 1229 is an example of this. This interference led to scholarly liberty being acknowledged as a university right, exemplified in Pope Gregory's Papal Bull of 1231.[119]

Despite this French influence, academic freedom as it is commonly understood (especially by many of the views explored by Fish) is largely derived from the nineteenth century German research university. It was the German research university that transformed the functioning of learning and higher education in nineteenth-century Europe.[120] The German model included the developments of graded written examination for undergraduates, seminar papers for graduate and postgraduate students, doctoral dissertations as the rite of passage into professional academic life, the notion of 'publish or perish' for a professorial appointment and the constitution of the library catalogues recording and referencing such publications.[121]

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[114] Justin Thorens, "Liberties, freedom and autonomy: A few reflections on academia's estate," *Higher Education Policy* 19 (2006): pp.87-110, 92.
[115] Walter Metzger, "Academic tenure in America: A historical essay," In: William R Keast and John W Macy (eds), *Faculty tenure: A report and recommendations* (San Francisco: Jossey-Bass Publishers, 1973), pp.93-159, 94.
[116] Gero Lenhardt, "Europe and higher education between universalisation and materialist particularism," *European Educational Research Journal* 1 (2002): pp.274-289, 275.
[117] M A Stewart, "Academic freedom: Origins of an Idea," *Bulletin of the Australian Society of Legal Philosophy* 16 (1991): pp.1-31.
[118] Guy Neave, "On being economical with university autonomy: Being an account of the retrospective joys of a written constitution," In: Malcolm Tight (ed.), *Academic freedom and responsibility* (Buckingham: Open University Press, 1988), pp.31-48.
[119] A G Traver, "Rewriting History? The Parisian Secular Masters' Apologia of 1254," In: Peter Denley (ed.), *History of Universities, Volume XV* (Oxford: Oxford University Press, 1997), pp. 9-45, 16.
[120] H S Jones, *Intellect and character in Victorian England: Mark Pattison and the invention of the don* (Cambridge: Cambridge University Press, 2007), p.5; James Turner and Paul Bernard. "The German Model and the Graduate School: The University of Michigan and the Myth of the American University." In: Roger L Geiger (ed.), *The American College in the Nineteenth Century* (Nashville, TN: Vanderbilt University Press, 2000) pp.221-241; Thomas Albert Howard, *Protestant theology and the making of the modern German university* (New York: Oxford University Press, 2006), p.4.
[121] Clark, *Academic Charisma*, pp.29-30.

The rationalisation of academia took place within a bureaucratised framework, typified by police science, *Policy-Wissenschaft*.[122] Good policing aimed to see that useful arts, sciences, and crafts were learned, that resources were not wasted, and to make sure that productivity was maximised.[123] Universities, just like in the UK during the last hundred years, were treated like any other form of economic production – students were to be made useful in the future for the State, and moulded into upright citizens.[124] Within a structure policed by government ministers, and regulated by the burgeoning capitalist market, German universities developed an infrastructure of entrepreneurial activity.

Academic freedom was to be harnessed and developed by state supervision and the market to aid productivity.[125] Academic fame would aid student recruitment, which in turn necessitated the production of further academic fame. Academia was thus inserted in the market in the Germanies; ministries recognised academic fame, which was left to the market in forms of expert and peer review.[126] Academic freedom was shaped by the concepts of *Lehrfreiheit* and *Lernfreiheit*, associated with the reforms of Wilhelm von Humboldt.[127] In reality, Humboldt's reforms were synthesised with Enlightenment traditions at the end of the nineteenth century, rather than being influential from their writing a hundred years previously.[128] Once they were accepted, German universities embraced three interrelated principles: *Lehrfreiheit*, *Lernfreiheit* and *Freiheit der Wissenschaft*.[129] Importantly, all these elements supported the university's mission to help develop the State's economy.

By *Lehrfreiheit* the German educator meant two things. Firstly, the university professor was free to examine bodies of evidence and had to report his findings in lectures or publications; he enjoyed freedom of teaching and inquiry as a member of the academic profession. Secondly, it denoted the paucity of administrative rules within the teaching system, to enable the academic to design their own syllabus, and not require prior approval.[130] Academic freedom was the atmosphere of consent that surrounded the whole process of

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[122] Clark, *Academic Charisma*, p.11.
[123] Clark, *Academic Charisma*, p.12.
[124] Clark, *Academic Charisma*, pp.12-13.
[125] Joseph Ben-David, *The Scientist's Role in Society* (Chicago: University of Chicago Press, 1984).
[126] Clark, *Academic Charisma*, pp.13-14.
[127] Stephen R Goldstein, "The asserted constitutional right of public school teachers to determine what they teach," *University of Pennsylvania Law Review* 124 (1976): pp.1293-1357, 1293.
[128] Robert Anderson, "Before and after Humboldt: European universities between the eighteenth and nineteenth centuries," *History of Higher Education Annual* 20 (2000): pp.5-14, 12.
[129] Walter Metzger, "Profession and constitution: Two definitions of academic freedom in America," *Texas Law Review* 66 (1987): pp.1265-1322, 1269.
[130] Richard Hofstadter and Walter Metzger, *The development of academic freedom in the United States* (New York, Columbia University Press, 1955), p.368.

research and the institution which it occurred within.[131] This led to academics working together to improve their academic credit and reputation by mutually citing each other's work.[132] Techniques of academic self-registration and self-promotion flourished, and fame became important to attract students.[133] This aspect had antecedents in the Parisian model of universities.[134]

Lernfreiheit, or 'learning freedom', represents a disclaimer of any university control over the students' course save for that needed to prepare them for their examinations.[135] This had antecedents in the Bolognese model of universities.[136] The final aspect, *Freiheit der Wissenschaft*, reflected the right of academic self-governance and institutional autonomy of the university.[137] The Humboldtian model was a unity of teaching and research, accepting the need for academic freedom to be enjoyed by academics and students, coupled with institutional autonomy from the state, exercising internal self-governance.[138] We can therefore read academic freedom as part and parcel of the development of the university within modern capitalism. Academic freedom reinforced the aims and objectives of the university-as-corporation. Academic freedom was the freedom to do one's job as an academic, within an institution which aimed to bolster the State's economic development.

Today however, the nature of capitalism has shifted; neoliberalism is now the dominant economic ideology. In *The Birth of Biopolitics* Michel Foucault analysed the passage from the liberalism of the eighteenth century to the German ordoliberalism of the early twentieth century to American neoliberalism which developed in the late twentieth century.[139] In so doing he revealed the mechanisms and principles that underlie contemporary capitalist society. These mechanisms, or apparatuses, have promoted insecurity, inequality and individualisation as part of ensuring the conditions of power to exercise a hold over conduct.[140] Neoliberalism intervenes to promote multiplicity, differentiation and competition of enterprises and to incite and constrain each individual to become an entrepreneur of him or herself and become 'human

[131] Hofstadter and Metzger, *The development of academic freedom*, p.386.
[132] Clark, *Academic Charisma*, p.373.
[133] Clark, *Academic Charisma*, pp.377, 379.
[134] Karran, "Academic Freedom," p.267.
[135] Metzger, "Profession and constitution," p.1270.
[136] Karran, "Academic Freedom," p.267.
[137] Metzger, "Profession and constitution," p.1270.
[138] Karran, "Academic Freedom," p.268.
[139] Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-1979*, David Macey (tr.) (Basingstoke: Palgrave Macmillan, 2010).
[140] Maurizio Lazzarato, "Neoliberalism in Action: Inequality, Insecurity and the Reconstitution of the Social," *Theory, Culture & Society* 26 (2009): pp.109-133, 110.

capital'.[141] The shift from liberalism to ordoliberalism was defined by the shift from exchange to competition; the logic of competition is generalised in neoliberalism to apply to the workings of all apparatuses of the state as well as subject considered as autonomous individuals. The market makes economic activity the general matrix of social and political relations, but it focuses not on exchange, but competition.[142] Whereas exchange related to equality, competition relates to inequality.

What this means is that corporations (including universities) no longer create products to sell to passive consumers, but they shape and create the social world in which they exist.[143] One must start from consumption rather than production; the capture of consumer markets (seen in the positioning of students as 'consumers' that need capturing through recruitment) is now the main business of corporations.[144] This in turn has changed the nature and quality of work, forcing us to question the classic definition of work and workforce. The worker's productivity and subjectivity have to be made susceptible to organisation and command.[145] Workers become 'active subjects' in the coordination of the functions of production. [146] This leads to the distinction between work and leisure time being blurred, with work-time expanding to fill "the entire time of life".[147] Living and producing therefore become indistinguishable.[148] We are all empowered to take charge of our careers and become entrepreneurs within our delimited fields of production.

This new conception of work has been termed by Maurizio Lazzarato 'immaterial labour'. Traditionally, labour tended to "produce the means of interaction, communication and cooperation for production directly".[149] Contrarily, immaterial labour creates immaterial products,[150] and produces "the informational and cultural content of the commodity".[151] Immaterial labour, as a result, involves a series of activities not normally recognised as 'work'. These activities involve defining and fixing cultural and artistic standards, fashions, tastes,

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[141] Foucault, *The Birth of Biopolitics*, p.226.
[142] Foucault, *The Birth of Biopolitics*, p.12.
[143] Maurizio Lazzarato, *Les revolutions du capitalisme* (Paris: Les Empêcheurs du Penser du Rond/Le Seuil, 2004), pp.93-151.
[144] James Muldoon, "Lazzarato and the Micro-Politics of Invention," *Theory, Culture & Society* 31 (2014): pp.57-76, 68.
[145] Maurizio Lazzarato, "Immaterial Labor," in: Paolo Virno and Michael Hardt, *Radical Thought in Italy: A Potential Politics* (Minneapolis, MN: University of Minnesota Press, 1996), pp.133-147, 147.
[146] Lazzarato, "Immaterial Labor," p.135.
[147] Michael Hardt and Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (London: Penguin Books, 2005), p.111.
[148] Hardt and Negri, *Multitude*, p.146.
[149] Lazzarato, "Immaterial Labor," p.147.
[150] Hardt and Negri, *Multitude*, pp.108-109.
[151] Lazzarato, "Immaterial Labor," p.133; Ben Trott, "Immaterial Labour and World Order: An Evaluation of a Thesis," *ephemera: theory & politics in organization* 7 (2007):pp.203-232, 221.

consumer norms, and public opinion, and includes linguistic and intellectual activity.[152] All these activities are, in Lazzarato's terms, "mass intellectuality".[153] They have modified the role and function of intellectuals and their activities within society. Mass intellectuality has been created out of the demands of capitalist production and the forms of 'self-valorisation' that the struggle against work has produced.[154]

Lazzarato's analysis of capital and labour can be utilised here to illustrate the role of academic freedom today within this neoliberal arena. For Lazzarato, capitalism has no inherent logic. There is no independent and autonomous law driving capital forward. Its historical existence must be understood through the continual construction and rearticulation of its basic conditions of possibility through discursive and non-discursive apparatuses of power.[155] Discursive apparatuses relate to control over statements, enunciations and what a subject may say. Contrarily, non-discursive apparatuses refer to the mechanisms that define, shape and intervene in what a subject may do.[156] Lazzarato sees discursive apparatuses as defining what is important, striking or interesting, and determine and construct the problems of a society at a particular time. Lazzarato, who includes universities specifically as producers of discursive statements, argues that such apparatuses delimit what is possible.[157]

In this manner, I contend that what is claimed as academic freedom consists of discursive practices (mass intellectuality) that produce commodities that can be packaged and marketised, be they ideas (in the form of publications as academic currency), or courses (which are used to recruit students). Discursive views of what constitute the rights of academics are co-opted and transformed into economically productive forms of behaviour and practice. The defence of academic freedom as necessary for the economic development of the State through higher education is being extended in modernity and neoliberal economics. Work produced by academics (including this article), no matter how 'radical' in the sense meant by Butler and Giroux, becomes part of capital's mode of operation. Academics are part of a corporation which has production at its heart; academic freedom becomes part of the process of production at universities.

In this sense, Stanley Fish is correct to claim that academic freedom should be understood as nothing more than the freedom to do one's job. We have, as members of staff of

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[152] Hardt and Negri, *Multitude*, p.108; Michael Hardt, "Affective Labor," *boundary 2* 26 (1999): pp.89-100, 97-98.
[153] Lazzarato, "Immaterial Labor," p.133.
[154] Lazzarato, "Immaterial Labor," p.133.
[155] Lazzarato, *Les revolutions du capitalisme*, p.114.
[156] Lazzarato, *Les revolutions du capitalisme*, p.82.
[157] Lazzarato, "Neoliberalism in Action," pp.112-113.

a corporation, the power and freedom to fulfil our job description, which is today (and has been for centuries) designed to feed into the university's corporate aims. Just because our corporation produces immaterial commodities, in the form of ideas, rather than cars, foodstuffs or computers, does not mean that the freedom for the worker is any different, or that academics should have special privileges over and above the population at large. This is in line with what Foucault himself wrote – that universities are a form of mass media which should not provide a reserve for scholars threatened by modern capital and information flows.[158]

IV. Concluding Remarks

Where then does this leave us today? My point in defending Fish's deflationary account is not to dismiss all existing opposition to the university's corporatisation. Nor is it to suggest that no resistance or opposition to managerial and corporate strategies is possible. My aim here is to refocus the debate surrounding academic freedom. Too much of the debate ignores, or effaces, the intrinsically corporate nature of the university. It is not possible to think of the university as a completely free place of enquiry because this has always been enmeshed in strategic interests.

What I suggest here is a modest proposal. By accepting the inherently corporate, politicised nature of the university, it may be possible to protect the academic's freedom to academicise. Idealised notions of academic freedom, and of education, ignore not just the reality of the university today, but also the reality of the history of the university. They are based in a history and tradition which has never existed. As such, a dose of realism is needed. This realism is not pessimism. It is a pragmatic political reaction to the reality of today. A professional body for academics, with the possibility to regulate standards and ethics, has the potential to operate as a counter-weight to the pressures of marketization in higher education. The very existence of such a body accepts the various political and economic pressures that academia is subject to; it is not possible for academics to exist in an idealised, atomised world of teaching and research. Such a body also has the potential to provide its members a voice, which can be used as a political mechanism to oppose or moderate reforms of the university which members deem injurious to their interests.

[158] Michel Foucault, "The Masked Philosopher," in Michel Foucault, *The Essential Works of Foucault, Volume 1: Ethics, Subjectivity and Truth*, Paul Rabinow (ed.) (New York, NY: The New Press, 1997), pp.321-328, 326.

However, even more important than this is the question of what interests such a body would represent. Instituting such an organisation would necessitate academics to confront key questions: what do *we* understand academic freedom to be, what are the limits to our *academic* practices, and what exactly is the point and purpose of a university, given its corporate background and history. Such a discussion is necessary, in order to stop us (in Foucault's terms) from treating academic freedom as an imprecise, secretive notion, something we all rely upon instinctively but never define precisely. This debate is crucial, now more than ever.