Trust Universities? Governance for Post-Capitalist Futures

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Using the UK as an example, this paper argues that universities are exposed to governance hazards as a result of ambiguity of ownership. These hazards include the appropriation of academic resources for managerial gain at the expense of social interests. To address this risk we draw upon existing alternative governance models and propose the creation of Trust Universities. These would make universities irrevocably part of the knowledge commons, vest beneficial ownership and control in students and all employees and help prevent excessive managerial predation. Systems of accountability and regulation would help rebuild mutually beneficial compacts both internally and with the surrounding society.

What is the Problem?

Globally, higher education policies assign universities a central role in the development and expansion of the so-called knowledge economy. The dominant elites of rich OECD countries look to their universities to generate the ideas and graduates needed to sustain national global advantage, while the World Bank encourages countries in the global South to use their universities to leapfrog out of poverty (Wright, 2007). Some national policies urge their universities to operate on a global stage, competing for 'world class' ranking, while others regard them as drivers of national and regional economies.

These policy imperatives beg the question of how governments direct universities towards these goals. Whilst policies vary, they have in common a distrust of collegial governance where, in principle, decision-making lies in the hands of all scholars (but which does not, in practice, rule out unjust power relations). Rather, policies advocate the adoption of modes of governance that embody close control and direction by managerial elites of 'strategic leaders'. Whereas university administrators support academics in the organisation and coordination of their work, these 'senior management teams' are tasked with directing the activities of scholars towards competitive engagement with the so-called knowledge economy (Boden and Epstein, 2006).

Most UK universities have adopted this 'managerialist' mode incrementally and of their own accord (Deem et al, 2007) – although arguably in response to government policy imperatives (Nedeva and Boden, 2006). In other countries, managerialism has been abruptly introduced through legislation (Wright and Ørberg, 2008). Whatever the route, everywhere these changes have had common effects, most notably a shift in the control of universities from scholars to managers. In this industrial architecture, managers both direct academic workers (Boden and Epstein, 2006) and broker contracts between 'their' university and the governments and industrial corporations who seek access to knowledge as an economic resource (Rata, 2010). This exposes universities to the risk that governance will be guided less by scholarly concerns than by managerial interests, perhaps motivated by personal pecuniary gain.

Neoliberal governments assert that such reforms are necessary to make universities serve the interests of the market economy and, in second place, wider society. There is evidence that universities are increasingly sites of excessive private profit taking, for instance, by global publishing corporations (Ciancanelli, 2007). At the same time, business leaders are being appointed to positions of power within the academy, forging closed, clientelistic relationships (Tuchman, 2009). These reforms give management elites the opportunity to expropriate wealth through their remuneration packages and offer the prospect of senior managers leading their organisations further into privatisation, with all the associated personal economic benefits that can thereby accrue (Wright and Boden, 2011).

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These developments pose two hazards. First, they permit the wholesale private appropriation of public resources without concomitant public benefit. Second, they create incentives for universities to allocate resources to disciplines deemed to serve business interests and towards projects whose purpose is to make money. This allocation, we argue, will severely impair the ability of universities to serve the social, cultural andand economic needs of the entire community.

In the next section we argue, by reference to the UK, that the origins of these hazards lie in governance failings of ownership, control, accountability and regulation. This is followed by our proposed alternative, designed to address these shortcomings. Our ideas for reform engage with the notion of trust – both as a legal form and as an aspect of social relationships – and aim to provoke imaginative responses to the challenge of securing universities and their knowledge products as social rather than private assets.

Problematising Governance

Broadly, 'governance' describes the systems and arrangements by which organisations rule themselves – who owns them and how, and by whom they are controlled, made accountable and regulated. As collegial entities, universities evolved as vehicles for providing the financial, social and cultural resources necessary for scholars to create knowledge and disseminate it through teaching and public engagement. By permitting access to these resources, a social division of labour was instituted which gave scholars the privilege of professional autonomy and the time and facilities to learn. As such, scholars were party to a social compact with wider society. Their membership made them the beneficial (but not legal) owners of their universities, but also implied a social obligation towards the society that provided their resources. These arrangements did not necessarily result in just and equal universities, and social obligations were not always (perhaps rarely) honoured. But one important and consistent feature of such reciprocal arrangements was that the question of legal ownership of university assets had no significance and remained ambiguous. This was unproblematic because, despite this ambiguity, these arrangements gave scholars access to the laboratories, libraries and other resources necessary for their work.

Ambiguity of ownership may be more problematic in marketised universities. In market relationships, ownership of an asset facilitates its economic exploitation. Formal ownership affords de jure title and therefore the right to exercise control. Where legal rights are fuzzy, de facto power over assets becomes decisive. We argue below that ambiguity regarding the ownership of UK universities became problematic when power began to shift from scholars to managers, especially as universities were also increasingly directed through government policy towards the fulfilment of particular, narrowly defined, economic objectives.

Ownership and control are central to contemporary usage of the term 'governance'. In the UK, this usage originates in responses to the self-interested financial behaviour of corporate managers that was eroding shareholder value (Cadbury, 1992). The hazards to property rights posed by managers who controlled firms led reformers in the 1990s to institute frameworks for decision making aimed at strengthening owners' powers over managers.

This approach is grounded in Adam Smith's reflections on the emergence of entrepreneurial capitalist firms in eighteenth century Glasgow (Smith, 1776). Smith observed that entrepreneurs who both owned and controlled their firms' affairs behaved prudently because their own capital was at risk, permitting a laissez faire policy towards the private, market behaviour of business owners who could be relied upon to be the best stewards of their own wealth. Smith's implied contrast was to the vast public-private partnership of the East India Company, whose emergent controlling managerial elite he regarded with suspicion.

During the nineteenth and early twentieth centuries, these owner-managed firms were increasingly supplanted by modern corporations in which ownership was dispersed among individuals who owned shares of the aggregate capital at risk. As such large numbers of dispersed owners could not exercise day-to-day management of the affairs of a business, the modern corporation made inevitable a separation between control and ownership which offered professional managers an opportunity to feather their own nests at the expense of owners.

As early as 1932 Berle and Means (1968 [1932]) emphasised the moral hazard arising from this separation of ownership and control. Of necessity, managers had day-to-day control of other peoples' wealth and were therefore in a position to divert it for their own benefit through such mechanisms as excessive salaries and perquisites.

Attempts were made in the UK to mitigate this hazard in two ways. First, the concept of 'stewardship' was emphasised in an attempt to align the interests of managers and owners through social notions of fiduciary obligation; owners repose confidence, good faith and trust in managers, who are expected to act loyally and to benefit the owners' interests.

Second, by the 1970s, the UK's progressive personal tax regime penalised managers for excessive salaries and perquisites, reducing the incentive to appropriate owners' wealth. These measures were not entirely successful in reducing managerial predation, but did create incentives on managers to limit the salaries they paid themselves.

In the 1980s, radical policy shifts undermined these efforts at social controls on the managers of large corporations. Instead, there emerged an ideology which declared market forces could be relied upon to control managers' 'rational' motivation to maximise their private interests at the expense of owners. Markets in managers and corporate control along with sensible employment contracts would align managers' interests with those of the owners (Ross, 1973; Jensen and Meckling, 1976). Such thinking found support in the 1979 Thatcher government, which also eliminated punitive tax rates for high earners, making the appropriation of shareholders' wealth by managers very much more financially rewarding.

Market forces turned out not to be an effective curb on managerial predation, and so excessive were the resulting appropriations that institutional investors such as insurance companies and pension funds demanded reform, culminating in a series of self-regulatory governance codes designed better to protect dispersed shareholder value, beginning with the Cadbury Code (Cadbury, 1992).

Even so, such was the grip of the ideology of markets as disciplinary (rather than allocative) devices, successive governments in the 1980s and 1990s extended the ideas to the governance of public bodies and services resulting in the emergence of managerial elites who were supposed to introduce the efficiency of markets in the delivery of public services.

The potential capacity of such elites to gain effective personal control over organisational resources exposed the same moral hazards as evidenced in the corporate sector. The answer, for government, was the extension of Cadbury-type self-regulatory governance frameworks to the new not-for-profit entities created through marketisation, including both old and new universities. Thus universities, inter alia, were tasked to appoint more external governing body members (akin to non-executive directors) and to institute corporate practices of dubious effectiveness such as audit and remuneration committees.

This reliance on private sector governance solutions for the public benefit issues of UK universities has been problematic for two reasons. First, Cadbury-type regimes have not proved robust in the face of concerted managerial predation – limitations which have come to light most forcefully in the recent banking crisis. The sheer scale and scope of the market failure and moral hazard evidenced in the bankers' behaviour has prompted proposals to reverse Cadbury and shift from self-regulatory governance to more direct forms of regulation.

Second, and more pressingly, if the failure of markets to discipline and the strength of moral hazard in the private sector arises from managers' appropriating the wealth of the clearly identifiable, powerful and profit-motivated owners of shares, surely both hazards increases significantly when there are no clearly identifiable owners empowered or motivated to protect the assets and other wealth of a public university.

Indeed, in such circumstances the moral hazard would be much greater. Indeed, it would be possible for the managers to divert such a large share of organisational resources to private purposes that these public organisations would come to function as the de facto property of its top managers. Some might even come to imagine themselves as entrepreneurs but of a new type: individuals who risk the capital asset of others rather than the type described by Adam Smith.

Problematic University Governance

UK universities have been founded at different times and for different purposes and are enmeshed in varied ways with society and the economy. But all are private organisations, and the majority are still not-for-profit. In governance terms, they can be equated with Adam Smith's notion of owner-managed enterprises, but the identity of the entrepreneur has changed. As long as they were organisations beneficially owned by self-governing communities, the scholars were the owner-managers. More recently, the managers have become the entrepreneurial de facto owners. We now explore how this transition arose.

The Jarratt Report (1985), produced by the Committee of Vice Chancellors and Principals (now Universities UK), proposed that universities transform themselves into quasi-private corporate organisations with vice chancellors operating as chief executives. The Thatcher government was immensely supportive.

Critical to such a project was the 1988 Higher Education Reform Act, which ended academic tenure in the UK. Tenure had meant that, once admitted to a university, scholars could only be dispossessed of their beneficial ownership of scholarly resources in exceptional circumstances. The ending of tenure turned academics into employees rather than Adam Smith-style owner-managers (Boden and Epstein, 2011). Universities remained formally unchanged as self-governing organisations, yet academics, in their new guise as employees, could no longer do the governing.

This begs the question of who now governs universities and through what mechanisms. Successive governments have sought to steer universities at a distance through funding levers, performance measures and systems of accountability. Governments have used these mechanisms to advance their policies, but they are too crude to constitute nuanced control and serious information asymmetries persist. Moreover, the close alliances with decision makers built by managers acting as brokers risks regulatory capture. The wide variety of groups in the surrounding society who might be said to have an interest in universities – the public, taxpayers, employers, students, their parents and others – have access to few mechanisms with which to seek alignment between their concerns and university activities. The other party to this social compact is the universities themselves – and here the evidence of their commitment to work with the surrounding society is weak and variable. Governance control might come, alternatively, through market mechanisms. But markets operate badly, if at all, where there are no clearly defined property rights and where products cannot be easily defined. Unlike private sector firms, where a board of directors can hold a CEO accountable for financial results, university managers have no owners holding them directly accountable for how they use resources.
In sum, the dispossession of scholars as beneficial owners, and the absence of alternative regulatory, social or market mechanisms of governance has opened the door to uninhibited managerial autonomy.

The levels of vice chancellors' pay provide material evidence of this hazard. In 1994-5 the median VC pay was £92,000 and in 2009-10 their average pay was £254,000. Over the same period, the top of the senior lecturers' pay scale rose from £33,000 to £55,500. In 1994-5 VCs earned 2.8 times the pay of a senior lecturer at the top of the scale, whilst in 2009-10 the comparable multiple was 4.6 (Times Higher Education 12 May 1995; Times Higher Education 7 February 1997; Sunday Telegraph 21 January 2011). In 1995 the Prime Minister's salary was £82,000 and 29 out of 103 vice chancellors earned more than £100,000. In 2010 the Prime

Minister's salary was £142,000, but every single VC was paid more than him, as were a further 800 other university employees (Sunday Telegraph 21 January 2011).

Managers defend these resource allocations by asserting that their strategic leadership provides a 'value-added' contribution. Thus, in justifying the £382,000 annual remuneration package of the VC of the University of Birmingham, the organisation's spokesperson described him as the head of a "complex and successful organisation" whose:

> remuneration needs to match his challenging and wide-ranging responsibilities and reflect the social and economic contribution that the university makes locally, nationally and internationally (Sunday Telegraph, 21 January 2011).

This language suitably describes an entrepreneur but UK universities are not businesses and VCs have no personal capital at risk, as persuasively argued by commentator Iain Pears, when considering managerial pay in UK universities.

> Pay is best seen as a symbol, an indicator of where power lies, rather than as a matter of primary importance in itself. For those rises in salaries have been accompanied, and facilitated, by the gradual accretion of authority by managers over the institutions for which they work (Pears, 2010).

What is to be Done?

In considering how to remedy the problems evident in UK universities, we set ourselves questions based on three elements of governance: control, accountability and regulation. First, how should the ownership of universities be clarified so that control over their resource usage and strategic direction promotes work that benefits wider social and economic interests? Second, how can a mutually accountable social compact be restored that provides scholars with the freedoms and resources to do their work in return for an obligation to create and disseminate 'really useful knowledge' – that is, knowledge of value to all, not just elites (Johnson, 1979)? Third, what rules and procedures are required to regulate and sustain these arrangements? We propound, in answer, a model in which all university staff and employees, as beneficial owners, hold the organisations in trust on behalf of society as a whole

Clarifying Ownership

In rethinking university ownership, this paper moves beyond the binary divide between public and private forms of ownership to build a hybrid, radical alternative (Gibson-Graham, 2006). The UK has a long tradition of enterprises that attempt to be socially responsible, dating back to Robert Owen's pioneering New Lanark experiment (Cato and Bickle, 2008), the Co-operative Rochdale Pioneers and the Quaker capitalists such as Cadbury and Rowntree (Cadbury, 2010), and extending to present-day industrial co-operatives (Cato, 2004). These businesses offer a range of forms of ownership and control that challenge and subvert state ownership and private capitalism, both of which hold dangers for universities.

One example of such alternatives that offers promise for university reform is the John Lewis Partnership (JLP), currently the UK's most successful retailer. In 1929 John Spedan Lewis, the owner, took the decision to reform radically the ownership of his family firm in order to benefit all of the employees. He vested his shares in a non-revocable trust, the beneficiaries of which were the employees. The workers became 'partners', with formal rights to influence the direction of the business. They became, in effect, the beneficial owners of JLP. The trustees distribute the profits of JLP to partners as an annual bonus (calculated as an equal percentage of each partner's salary), much as a shareholder gets a dividend. Legal title to the shares remains locked irrevocably within the trust under the aegis of the UK's ancient and common trust laws. These laws seek to ensure that the original owners of property can effectively designate for all time the purpose to which it is put. This separation of legal and beneficial ownership of JLP ensures that current partners cannot self-interestedly deny benefits to future partners by selling off the firm. In contrast, both co-operative and other mutual ownership organisations can suffer this fate – as evidenced by the demutualisation of building societies in the UK for personal profit.

In establishing the trust, Spedan Lewis also defined in perpetuity the purpose of JLP. The first article of the trust deed states that JLP exists to ensure ‘the happiness of all its members, through their worthwhile and satisfying employment in a successful business’ (John Lewis Partnership, website). Thus JLP’s core mission is to benefit the partners, not corporate capital: profit helps meet partners’ needs, rather than workers’ serving the needs of profit.

To prevent managers’ allocating excessive salaries for themselves at other partners’ expense, strong internal structures specified in the trust deed embed a complex and sophisticated system of partner-democracy. A tiered system of representation from store level permits partners to select 50% of the JLP board. A second mechanism for preventing managerial predation is the trust deed’s imposition of fixed salary differentials between managers and the rest of the partners.

Drawing on this model, we propose reform of university ownership via the creation of Trust Universities. Ownership would be clarified by placing each university’s assets in a non-revocable trust which would hold the formal legal title to the organisation’s assets. This would also create clear governance responsibilities under trust law and prevent the privatisation of publicly funded assets. All current employees (academics and those in other roles) and students would be designated as trust beneficiaries, entitled to utilise university assets and resources. This would enhance academic freedom, which has been eroded by managerialist control of resources (Boden and Epstein, 2011). The trust deed, echoing that of JLP, would designate the purpose of the university as facilitating:

> socially, culturally and economically beneficial scholarship, through the work of all employees and students, whether in research, teaching and learning, or public debate.

This would affirm the university’s status as a community social asset and an element of the knowledge commons. By virtue of this legal strategy, Trust Universities would be beyond the predation of managers, markets or state interests.

Creating an Accountable Social Compact

The Trust University’s deed would define all employees and students as its beneficiaries, entitling them to access to the organisation’s resources, and would create an obligation for all of them to use these resources for the purpose of facilitating ‘socially, culturally and economically beneficial work’. But the university, unlike JLP, cannot (and should not) test its service quality by selling all its output in a competitive market. Instead, the trust deed would establish a social compact between members of the university and surrounding society, underscoring the common ownership of the university.

There are three problems in turning this obligation into practice. First, ‘society’ is a slippery concept which very rarely assumes an organisational form. As a proxy, resort is made to categories such as ‘stakeholders’ or ‘users’, even if they only ever take an imaginary form as in the scientist’s ‘Imagined Lay Person’ (Strathern, 2005). Inclusion or exclusion from such categories is imbricated in the operation of power.

Second, organisational forms need to be found which can facilitate an ongoing dialogue between society and universities. The danger is that, as in current universities, such forums may be captured by powerful vested interests. And third, the resources made available to the university and the work that will be done with them must be specified in such a way as to demonstrate how the mutual obligations of the social compact are being fulfilled.

These are serious hurdles, but there are various mechanisms and models available that may be of assistance, in particular techniques of action research (Greenwood and Levin, 2000; 2001; 2005; 2007a; 2007b; Levin and Greenwood, 2011) which may be adapted into university governance forms.

Such a process would involve initially setting institutional agendas through ’search conferences’. These would engage representatives from the university and the relevant elements of ‘surrounding society’. Through participatory methods of problem identification and analysis, action planning, and team building, the parties to such a process engage in mapping existing relationships, identifying social lacunae and imagining a better future that they can seek together. Core to the success of such exercises is the collaborative inclusion of all the parties to the organisation.

These search conferences would then be repeated at regular intervals with stocktaking, new problem identification, and new action planning. The quality of this dialogue needs to be one of mutual respect between equal partners, not a contract for service because all the parties have a role to play in organisational success.

These dialogues would constitute a strong form of accountability: they would be informed by formal reporting, but importantly, the parties would hold each other to account through social processes and relationships which cultivate increased understanding of each others’ work life, hopes and worries.

Regulating the Trust University

If accountable relationships between the Trust University and surrounding society are strong and interests are aligned, then formal regulatory control over universities’ conduct would need to be minimal. In the UK, trust law would provide a first line of regulation, offering recourse to legal remedy if Trust Universities are not well-managed, accountable or acting in accordance with designated purposes.

There would also be need for a second form of regulation to set professional standards, thereby offering general assurances on conduct and quality. Such regulation could take two forms. First, skill thresholds to ensure that students and staff are suitably qualified to undertake their designated work are desirable. Second, national Council of Scholars (CoS) might be an appropriate mechanism for regulating scholarly standards and conduct.

The CoS would be a body similar to the General Medical Council (GMC) in the UK, which admits suitably qualified doctors as members onto its register, an essential prerequisite for authorisation to practice. The GMC sets professional conduct standards and is a disciplinary body. Moreover, just as the GMC negotiates with policy makers over health care provision, so the CoS could replace such bodies as Universities UK at the negotiating table with government. This would place scholars rather than managers at the heart of higher education policy.

A Programme for Reform

Universities are knowledge-creating and disseminating organisations vital to economic, social and cultural wellbeing. Working well, they strengthen democracy. The shift from collegiality to managerialism in the governance of universities in the UK and elsewhere has engendered administrative bloat and predatory behaviour by managers. This runs the real risk, possibly already extensively realised, of diverting the efforts and energies of universities away from that which is good for wider communities and towards profit-maximising activities.

This transition has, to a significant extent, been made possible by the ambiguous ownership of UK universities. Until comparatively recently, communities of scholars effectively controlled universities and formal ownership was not a matter of concern. The extent to which the work of these past communities delivered wider social, cultural and economic benefit can be disputed, of course.

However, this is not the question we address in this paper. Instead, we have focused on neoliberal reforms and demonstrated how the reforms effected since the 1980s have, in the context of ambiguous ownership, allowed or even encouraged rent-seeking behaviour by managers and university governance which focuses on augmenting revenue rather than scholarly mission. UK universities are crucial to the nation’s social, economic and cultural wellbeing and continue to be the recipients of significant public funding, support that will continue even when students are charged higher fees from 2012 (Chowdry et al, 2012). In short, public money increasingly underwrites private benefit at the expense of wider civil society.

Drawing upon existing alternative models of social ownership, we propose the creation and implementation of a Trust University model, at the heart of which is an explicit and legally binding clarification of ownership and responsibilities which will ensure the gift embedded in the trust is put to its intended purpose in perpetuity. Our proposal further advocate trust assets are used to benefit the wider communities and societies in which they are situated.

We consider these measures would make universities irrevocably part of the knowledge commons, provide beneficial ownership and control to students, scholars and other employees and prevent managerial predation. As such, this model for a Trust University offers the prospect for safeguarding the effective and accountable use of these important social assets. Current turbulence in higher education organisations in the UK, and especially in Wales (see Matthews, 2012), open up potential spaces in which such alternatives might flourish. What is needed is imagination and the determination to make change happen.

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