

Re-envisioning Rule within U.S. Colleges and Universities



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Criticizing the corporatization critique

“We are in the midst of the worst crisis in academic governance in decades,”¹ declared the American Association of University Professors (AAUP) in early 2021. Manifestations of this crisis include the arbitrary dismissal of tenured as well as contingent instructors, the summary cancellation of entire academic programs, the suspension of faculty senates, and much more. To its credit, the AAUP recognized that COVID-19 accelerated these transgressions against the principles of “shared governance” but is not their ultimate cause. Rather, the pandemic has “thrown into sharp relief” certain “preexisting conditions” within higher education “that have been exacerbated during the present crisis,”² but will not vanish once the plague passes.

What are these preexisting conditions? One obvious candidate is the so-called “corporatization” of colleges and universities in the United States: “The goal of corporatization,” wrote the president of the AAUP in 2014, “has been the transformation of what had been a world-class system of public higher education, whose aim was to provide high-quality education with a strong foundation in liberal arts and sciences, into a system more suited to serve corporate interests.”³ The “corporate interests” to which Rudy Fichtenbaum refers are those of the private for-profit sector; and that is why invocations of “corporatization” are so often accompanied by its conceptual kin: “commercialization” and “commodification.”⁴ These epithets designate troubling trends that can be traced to the mid-1970s when, Fichtenbaum argues, neoliberals began to defund “public higher education while supporting the metastatic growth of administrative positions, with the result that tuition and student debt have skyrocketed and higher education is being transformed into a private good.”⁵

This genealogy will not do. Yes, it is true that the pandemic has taught us much about how power is marshaled, distributed, and exercised within America’s colleges and universities; yes, it is true that the academy’s “corporatization” is eviscerating higher education’s constitution as a unique

collective good; and, yes, it is true that the last four decades have witnessed a fundamental reformation of the American academy as it has been incorporated within a neoliberal political economy. But to begin the story here is to start far too late, for certain essential roots of the contemporary “crisis” can be traced to higher education’s foundation within colonial America and specifically the academy’s constitution as a legally codified autocracy. To truncate this tale by framing it as one of neoliberal “corporatization” is to obscure the fact that U.S. colleges and universities are and always have been corporations; and, still more problematically, it is to conceal the contests that have erupted episodically throughout American history over what *kind* of corporation the academy should be.

Situating today’s events within this longer history enables me to invite my readers to entertain three propositions that at first blush may appear counter-intuitive if not perverse:

- 1) Criticisms of the contemporary academy that advance the charge of “corporatization” are in fact quite uncritical, for they indicate our unwitting acceptance of the specifically neoliberal corporation as its only possible form.
- 2) Once we recall elements of the corporate form that are suppressed by the neoliberal representation, we can then employ the idea of the corporation to challenge the academy’s “corporatization.”
- 3) Rightly understood, the corporation provides a model for the academy’s reconstitution as a social democratic enterprise, and that reformation is essential if we hope to nurture forms of higher education that are distinguishable in kind from what neoliberal “corporatization” would have it become.

When the corporate constitution of college was up for grabs

As a rule, we academics know very little about the origins and early history of the colleges and universities that employ us; and we know even less about the protracted conflicts that marked this

history. I cannot do justice to that story here. Instead, I will say a few words about the divergent models that informed the corporate constitution of two colonial colleges: Dartmouth and William & Mary.

All of America's early colleges, including Dartmouth as well as William & Mary, were created by charter, whether granted by the Crown prior to the Revolution of 1776 or by individual state governments after the Revolution; all were created in the legal form of corporations; and, following the British model, all were outfitted with governing boards. However, the question of who should serve on these boards, how expansive their authority should be, and to whom they were accountable was very much contested.

In 1769, in the name of King George III, the colonial governor of New Hampshire issued a charter for Dartmouth College. That charter provided for the college to be governed by a board that was constituted as a lay corporation. To this board was granted the usual panoply of "privileges, advantages, liberties, and immunities" that define all corporations. Among others, these included the exclusive power to "possess and enjoy" various forms of property;" to "nominate and appoint so many tutors and professors to assist the president in the education and government" of students; and, perhaps most important, "to make and establish such ordinances, orders and laws, as may tend to the good and wholesome government of the said college."⁶ In sum, by charter, Dartmouth College was constituted as an autocracy in which all legal powers, including the power to govern as well as to control the college's assets, were vested in a self-perpetuating unitary board whose members were outsiders in the sense that they were not drawn from among those who work for the college. Those who do work for the college, having no claim to govern persons or assets, were thereby constituted as the subjects or, rather, the employees of this governing body.

The constitution of Dartmouth is indicative of the governance form that comes to prevail at most U.S. colleges, but it's not the only model to emerge out of the colonies. For a rather different form,

consider William & Mary. Its charter, granted in 1693, authorized the colonial assembly of Virginia to elect trustees who in turn were authorized to found the new college. These trustees, however, were not legally constituted as a corporation. Instead, and this is what renders William and Mary unique among colonial colleges, the powers granted by the 1693 charter were to be exercised by its trustees only until the college was “actually erected, founded and established.”⁷ Once that was accomplished, the charter required the trustees to transfer the college’s assets as well as most of its governance responsibilities to a “body politic and incorporate” that was “named the President and masters, or professors of the college of William and Mary.” In short, at William & Mary, the powers that were allocated exclusively to Dartmouth’s autocratic governing board were ceded to its faculty and president in their capacity as members rather than subjects of this new corporation. Among others, these powers included the power to manage the college’s properties, donations, and revenues as well as to act as a self-governing entity authorized to make and enforce rules for its own internal governance.

Corporate types

Although his concern is not early American colleges and universities, David Ciepley has provided a typology that is helpful in making sense of the key differences between Dartmouth and William & Mary.⁸ The basic distinction he draws is between what he calls “property” and “member” corporations. The antecedents of both may be traced to ancient Roman law, as modified by medieval jurisprudence following rediscovery of Justinian’s Digest in 1135, but tracing that history with the care it deserves is also beyond the scope of this paper.

Suffice it to say that property corporations are rooted in the category of *jus rerum*, which denoted laws regulating the rights and powers of persons over things. In time, this category was incorporated within medieval canon law as a solution to a problem encountered by the Catholic Church as it sought to safeguard the estates of monasteries, abbeys, and bishoprics from lay rulers. By affording legal

recognition for this property in corporate form, the Church transferred ownership from individual vicars, parsons, and bishops to a legal entity that could and would outlive these all too mortal beings. On this model, in accordance with the Catholic Church's embrace of hierarchical relations of authority, ultimate authority to rule over this corporatized property as well as any personnel hired to manage it was located in a single office. Because occupants of these offices were considered temporal agents of God, and because they held office for life (barring removal by their superiors), they remained formally accountable to the purposes that defined any corporation they governed but unaccountable to the subjects over whom they ruled.

The second type of corporation discussed by Ciepley, the "member" corporation, can be traced to invention of the legal category of "*municipia*." This category furnished a way to assimilate communities into the emerging Roman empire by means of charters that defined their residents as "citizens" who retained certain powers of collective self-governance, including the right to vote for political officials. Unlike property corporations designed to ensure the intergenerational continuity of property ("*universitatis rerum*"), member corporations were constituted as "*universitates personarum*." Composed of persons in their legally constituted capacity as members, Justinian tells us, these corporations are built "on the model of the state" (*ad exemplum rei publicae*)⁹ and, according to William Blackstone's Commentaries, in the specific form of "little republics."¹⁰

Rule within these mini-republics, Ciepley explains, assumes this character: 1) Members jointly determine the admission of new members (as well as their expulsion should the need arise); 2) In accordance with the Roman legal maxim "*quod omnes tangit ab omnibus approbetur*" ("what touches all is to be approved by all"), members establish rules for themselves by means of debate followed by voting; and 3) Rule is exercised either immediately by members or by elected officers chosen by

majority rule based in the egalitarian principle of one-member one-vote (as opposed to the plutocratic one-share one-vote rule that prevails within neoliberal corporations).

The principal duty of these officers is to manage the everyday affairs of a corporation by enforcing what Blackstone called “the municipal laws of this little republic,”¹¹ serving as a court for adjudicating internal disputes, and administering the assets owned by a juridical person, the corporation, that could not be equated with any or all of them. Because members never relinquish their power of original jurisdiction, officers are never appointed in perpetuity and so can always be recalled or removed.¹² Hence, and altogether at odds with the pejorative sense intended by contemporary academics, on this model, “corporatization” does not signify a violation of the principle of self-governance but instead a form of rule that exemplifies it.

In sum, what distinguishes these two corporate forms is not the way each organizes the ownership of property, for both vest their assets within corporations that are legally distinguishable from natural persons, but their organization of the power to rule. Unlike the republican member corporation, Ciepley rightly notes, the constitution of the property corporation is essentially rather than incidentally “authoritarian.”¹³ Because the capacity to govern is not shared, following Aristotle, there are no citizens, for this term names those who rule and are ruled in turn. But nor are there any members; and that is so because authority is wielded not with colleagues but over subjects and, as such, cannot be an exercise in collective engagement in the wielding of power that is monopolized by no one.

If William & Mary provides us an example of a member corporation (at least prior to this constitution’s overthrow by its Board of Visitors in the second half of the eighteenth century), Dartmouth exemplifies a property corporation; and it is the latter that eventually comes to prevail within U.S. colleges and universities. Dartmouth plays a key role in establishing that primacy via the 1819 U.S. Supreme Court case *Trustees of Dartmouth College v. Woodward*.¹⁴ For present purposes, suffice it to

say that this case addressed the question of whether the New Hampshire legislature had the authority to modify Dartmouth's 1693 charter. In his opinion for the Court, John Marshall denies that the assembly possesses the authority to do so. To justify this conclusion, Marshall erroneously represents Dartmouth's founding charter as a contract between the college and New Hampshire. That enables him to argue that the state legislature violated the terms of that contract when it modified the charter, and, equally if not more important, that this violation took the form of a wrongful seizure of the college's property.

The effect of *Dartmouth* is to give a capitalist twist to the autocratic constitution of the colonial college. On this formulation, the trustees are the sole "legal owners" of Dartmouth's "corporate property."¹⁵ (For an illustration of this representation, consider a sign that once appeared on the perimeter of the UC-Berkeley campus and that graces this paper's cover page.) By construing the college on the model of private property and by naming Dartmouth's trustees as its sole proprietor, this construction effectively precludes anyone else from affirming title to participate in that property's disposition. When *Dartmouth* denies this right to all others, it effectively positions the trustees as employers in the common law sense of the term. That is, they are construed as those who have the right to "direct and control" employees who perform a designated set of tasks in return for compensation and who can be fired at will by the board or the board's chief executive officer, i.e., its president. The net effect of *Dartmouth*, then, is to reject the member corporation envisioned by William & Mary's charter and put in its place a property corporation ruled by autocrats who regard themselves as owners. In time, this historically specific conception of the corporation will morph into the target of the corporatization critique that is all the rage among faculty today.

The neoliberal academy

Today, when the all-purpose epithet "corporatization" is hurled, rarely if ever do we ask whether the sort of corporation we presuppose is perhaps a contingent and hence contestable creature of the

corporate form whose seeds germinated in Rome, whose fruits appeared in late medieval and early modern canon law, and whose contemporary mutation goes by the name of Facebook, Eli Lilly, and Exxon Mobil, to name but a few. That, however, is exactly what it is. On the neoliberal (mis)construction, a corporation is an offshoot of private actors engaged in the pursuit of self-interested gain within a free market economy predicated on private property and voluntary exchanges that take the form of contracts. This pursuit will generate the most goods for the largest number when the logic of the market is permitted to reconstruct as many spheres of collective action as possible; this is what the neoliberal calls “privatization.” The success of this reconstruction requires that, wherever possible, any constraints that retard extension of the market’s logic be minimized if not eliminated altogether; this is what the neoliberal calls “deregulation.” Above all others, the fetters to be countermanded are those imposed by state actors who, too often, enact “counterproductive” policies based on values other than those dictated by the market (e.g., the principle of popular sovereignty and hence laws designed to subordinate the market to democratic control); this is what the neoliberal calls “starving the beast” or, when crossing national borders, “free trade.” In short, if the corporate incarnation of the pursuit of private gain is to realize its promise of abundance, the for-profit firm must be released from all forms of accountability other than those inherent within the operation of a competitive capitalist market.

The neoliberal corporation is figured as an entity that is legally possessed by its investors who, as such, hold exclusive title to its assets as well as any surplus value deployment of those assets may generate. On one variation of this conception, the corporation is understood as what the law calls a “natural” person and hence as a being to whom legal personhood can be ascribed. On another variation, the corporation is regarded as a voluntary association of natural persons who aggregate their assets and so comprise a gussied up partnership or, alternatively, a “nexus of contracts” among those who supply inputs to the process of production. Either will do if, in cahoots with John Marshall, the aim is to ascribe

to corporations the rights of persons as these are enumerated within the U.S. Constitution and, as creatures of state governments, extended to them via the 14th Amendment.

Although “owned” by its investors, the neoliberal corporation—or, more specifically, any publicly-traded corporation—is governed by its board of directors. That board’s authority to manage corporate assets, including the form of human capital we call “employees,” is said to be delegated to them by the corporation’s shareholders. The principal duty of these directors is captured by the neoliberal doctrine of “shareholder primacy,” which holds that boards must maximize the price of shares and hence their owners’ profit. The neoliberal corporation thereby effectively collapses what is formally a fiduciary relationship between owner and director into a principal-agent relationship in which the latter’s discretion is confined to doing only that which advances the immediate interests of the former. After all, if the corporation is nothing but a combination of its profit-seeking shareholders, it can have no broader interests or long-term purposes that should be advanced by its board.

Maximization of short-term gain for the corporation’s “owners” can be secured by various means, each of which is an expression of the logic of neoliberalism. These include distributing the bulk of accumulated revenue in the form of dividends (as opposed, say, to reinvesting it); buying back stock to drive up its price; securing reductions in corporate tax rates; lobbying for right to work laws that decimate unions and so eliminate collective bargaining about wages and benefits; hobbling social welfare programs that draw their funding from tax revenues and so away from corporate profit; outsourcing and offshoring operations to drive down the costs of production; hiring gig workers to avoid contributions to medical insurance premiums and pensions; and so forth and so on.

Figured in these terms, the neoliberal corporation is the definitive organizational form of a historically specific form of capitalism. That corporation’s “owners” are rentiers who reap profit from their investments but need not know anything about their often unsavory sources; benefit from that

corporation's consolidated power over markets but bear no liability for any debts it may incur or harms it may inflict; and promote the interests of the oligarchical elite that holds the vast majority of shares in U.S. companies, but does next to nothing to advantage those who do not. As such, the neoliberal corporation systematically engenders massive economic inequalities while, at the same time, shielding those inequalities from democratic intervention. This form of the corporation is a contingent artifact, however, and to permit this particular type to exhaust our understanding of what this institutional form has been and can be is to perform the role of an ideologist.

Re-envisioning that corporate academy

The cure for what ails the academy is not a repudiation of its corporate constitution but, instead, that constitution's reconstruction. This is partly a matter of recovering elements of the corporate form that are forgotten when we academics respond with knee-jerk aversion to the very term "corporation," thereby revealing that we too have been taken in by neoliberalism's pretenses. If the salutary possibilities of the corporate form are to be fully realized, however, that form must also be radicalized by accentuating those elements that are at odds with the antidemocratic logic of capital accumulation. Only when recovery and radicalization are threaded together can the idea of the corporation be turned against the academy's "corporatization" and toward a constitution of rule that is better suited to foster the free inquiry that undergirds the academy's pedagogical as well as scholarly endeavors.

Toward that end, in what follows, I sketch two broad principles that are to guide the design of what I will christen "Commonwealth University" (or, as it is more familiarly known by its members, "CU"). This is not the place to offer a detailed blueprint of this constitution (whose specific design must in any event be left to those who are to fashion it via so much experimental practice). Instead, my aim is to ask, first, how this incorporated body is to organize the power of collective self-rule; and, second, how it is to manage the material conditions of this body's capacity to fulfill its educational and scholarly

purposes. While I will present these principles separately, each is a necessary condition of the other's realization, and it is their mutually complementary union that I mean to signal by employing the term "commonwealth."

Commonwealth University qua republican body politic

Today we often hear calls to reject the academy's "privatization" and so recover higher education's standing as a uniquely "public" good. These appeals are parasitic on classical liberalism's categorical differentiation of the world into public and private spheres, and that is what renders them problematic. On the one hand, liberal political theory characteristically associates the public sphere with the state and, paradigmatically, with the forms of coercion it alone is authorized to exercise (for example, by arresting or executing persons). On the other hand, setting aside the household, liberal political theory typically associates the private sphere with the marketplace and hence with the sort of freedom it identifies with contractual exchange. As such, liberalism's distinction between public and private deflects our attention from the forms of coercion inherent within capitalist employment practices. These are the relations of power Elizabeth Anderson seeks to highlight by invoking what, from the standpoint of classical liberalism, is the oxymoronic category of "private government."¹⁶

The nonprofit academy, whether public or private, is a site of private government. True, the academy is not a capitalist enterprise insofar as its purpose, in the judgment of the Internal Revenue Service, is not to maximize profit for its investors. But it is very much a capitalist enterprise in the way it structures employment, and that follows necessarily from construction of the academy's rulers as those who "own" the academy's resources and thus are exclusively positioned to hire those who do not. Organized in this manner, the American academy is a site of unfreedom. We will find it difficult to apprehend this truth, however, so long as we continue to think in the terms provided by liberal political theory.

We are better equipped to render these relations of domination and subordination visible if, as preliberal representations of the corporation implied, we consider the incorporated academy neither as a public nor as a private entity but, instead, as a body politic that cannot be comprehended within the categories furnished by classical liberalism. The corporation is a body to which the state grants certain essentially political powers, including the power of self-governance and hence the authority to adopt, adjudicate, and enforce the (by)laws that apply to those subject to their jurisdiction. As such, the corporation is independent of the state but not for that reason located within liberalism's private sphere.

If this power of corporate self-governance is organized autocratically, as the American academy is, this corporation's employees will be its subjects. If, however, this power is organized democratically, as the American academy is not, those who are now its subjects will become members identified by their title to take part in exercising the power of rule that each shares with all others. The category of membership thus becomes the common denominator and source of collective identity that displaces the inegalitarian relationship between employer and employee. That identity does not make power disappear within some idyllic home of happy harmony. But it does mean that conflict will no longer be structured by the contractually mediated form of domination that is the commodification of wage labor within a capitalist economy. Nor will the relations among members be hierarchically arranged in accordance with the bureaucratized chain of command depicted in the standard organization charts of America's colleges and universities.

The conception of membership commended here entails a critique of our accustomed way of thinking about what a corporation is and hence what the academic corporation might be. Prior to the mid-nineteenth century, the plural *they* was sometimes employed in reference to corporations. Use of this pronoun, which sounds odd to us today, indicates conceptualization of a corporation as an entity that *merges* multiple persons into a legally distinct entity but is not abstracted from these parties in the

manner suggested by our now more familiar use of the pronoun *it*. This less familiar sense is what the English legal theorist, J. W. Smith, presupposed when in 1843 he insisted that the incorporated joint stock company consists of “several individuals, united in such a manner, that they and their successors constitute but one person in law, a person distinct from that of any of the members, *though made up of them all.*”¹⁷ On this account, when recognized as a legal entity via conferral of a charter, persons form themselves into a corporation and, in the case of a specifically academic body politic, a *universitas magistrorum et scholarium* (a community of teachers and scholars) that is composed *by* but also *of* those who were not before but are now that corporation’s members.

By way of contrast, the contemporary corporation, academic or otherwise, is most often figured as an impersonal entity anthropomorphized as a legal person standing apart from and above its members, and hence in a position to affirm interests, rights, and privileges of its own. That representation is possible only because the political capacities of its members have already been expropriated and reified into a noun-like entity that now confronts “its” employees or, better, its subjects. The specifically neoliberal corporation perfects this process of abstraction by folding “it” within circuits of immaterial financialized property that are said to obey the impersonal laws of capitalist markets but in fact advance the interests of self-satisfied plutocratic elites. Within this corporation, we can find no members *of* a body politic but only subjects employed *by* the detached rulers to whom the unilateral authority to govern has been ceded by the state. This is also the fate of the contemporary American academy insofar as it assumes the form of a neoliberal corporation whose rule presents itself euphemistically as so much human resource management.

In the academy constituted as a member corporation, however, the power to rule is reappropriated as the academy is repoliticized not as an administrative bureau of the state but as a “little republic” whose powers afford it considerable autonomy from that state. Those who are “members” of

Commonwealth University are entitled to call themselves such not because each is implicated within the nexus of economic contracts that the neoliberal confuses with a corporation. Rather, each can affirm this identity because all are eligible to take part in the exercise of corporate powers that are essentially political in nature.

As the logic of a member corporation requires, within Commonwealth University, this body politic must operate in accordance with the principle of “one member, one vote.” Moreover, to ensure accountability, those who hold office within CU, whether president, provost, or even trustee, must be subject to election and removal by the university’s members. To check the exercise of arbitrary power, moreover, these officers must be bound by the republican rule of law and obligated to respect the norms of due process. Perhaps most important, because this is a necessary condition of higher education’s capacity to flourish, CU’s members must endorse a constitution that guarantees the practice of free inquiry by, for example, expressly ensuring the right to dispute all claims to knowledge but also and more radically to contest the very criteria that at any given time determine what is to qualify as knowledge.

Commonwealth University is acephalous in the sense that it has no head akin to that found in the autocratic academy. Within CU, the academy’s incorporated members must bear ultimate responsibility for fashioning the rules that specify how the power of rule is to be exercised, how disputes are to be adjudicated, and how competing interests are to be reconciled. Here, in other words, the fiduciary duty to secure the conditions necessary to education’s end is no longer exclusively vested within an external elite composed of laypersons ill equipped to grasp that purpose. Instead, this duty is democratized insofar as it is distributed among all who share in the powers of collective self-governance. No rule or practice may be adopted, therefore, that would render any members subject to unaccountable domination. To do that would be to deprive those subjects of their rightful standing as members, thereby

releasing them from any obligation to safeguard the conditions of free inquiry. Should this accountability be denied or neglected, those stripped of power will soon require discipline and/or an unending stream of enticements) to keep them in line. These means of human resource management, however, should never be confused with joint participation in the exercise of power that defines the academy constituted as a member corporation.

Commonwealth University is substantially independent but never perfectly autonomous, and that is as it should be. Instead, CU is nestled among corporations of diverse types, including the descendant of the member corporation that is a republican government. As such, CU remains ultimately answerable to the people in their capacity as the sovereign author of its charter. But because that charter vests the “little republic” that is the academy with the powers, liberties, and immunities afforded to all corporations, this franchise possesses considerable power to guard against governmental encroachment. Yes, CU is obligated to act in accordance with the trust vested in its members, which is to cultivate our collective interest in free inquiry; and, yes, in the last analysis, that trust remains modifiable and even revocable by the people or their elected representatives. But that no more renders CU a “public” university (in the sense we intend today) than it renders CU a “private” university (in the sense we intend today). CU is neither public nor private, for its constitution eludes capture on the conceptual terrain provided by liberal political theory. Instead, CU is a republican member corporation whose chartered purpose is to sustain the practice of free inquiry on behalf of the more comprehensive republican body politic of which it is an indispensable part.

Commonwealth University qua socialist body politic

The academic commonwealth can draw no categorical distinction between its political and economic articulations. To draw that distinction is to repeat one of the primary ruses by which liberal political theory immunizes capitalism from foundational political challenges. This, however, does not

mean that the academic commonwealth dispenses with capital, if that term refers to its financial assets or the material infrastructure that sustains its work through time and are fixed in the sense that they are not consumed as part of the processes that create them. How that capital is folded within Commonwealth University's republican constitution is an essential ingredient of its challenge to the contemporary academy's "corporatization."

As a member corporation, Commonwealth University must assume the form of a mutual enterprise whose assets, owned by no one, are unavailable for appropriation as so much privatized property and hence insertion within capitalism's circuits of accumulation; and that follows from the very nature of inquiry that deserves to be called "free." Academic disciplines are socialist endeavors insofar as their epistemic fruits are necessarily collaborative productions. Until intersubjectively confirmed, a claim to knowledge is but a claim. This fact is institutionalized in the practice of peer review, as each candidate for the status of knowledge is subjected to analysis and critique by those qualified to do so. Absent such scrutiny, we may be in possession of faith, intuition, or opinion but not knowledge. Error is weeded out and knowledge secured by the practices of mutual inquiry among colleagues whose participation in this endeavor is grounded in familiarity with received but forever contestable norms of scholarly inquiry and the bodies of knowledge these practices have accumulated over time.

This unique way of substantiating the authority of claims that cannot be validated by means of tradition, fiat, market demand, charisma, or status is most familiar to us in the experimental inquiry of the natural sciences. But this practice also defines the social sciences and the humanities, although its specific methods vary from discipline to discipline. Consider, for example, an argument to the effect that American colleges and universities are structurally constituted as autocratic corporations, and, in addition, that this constitution subverts the cause of higher education. Let us assume, moreover, that the author of this argument adduces considerable evidence, historical as well as contemporary, in its

support. Once published, that argument will be subject to assessment by others who may contest, qualify, or, to the delight of its author, confirm its key claims as well as the evidence adduced in their support. Only *after* that process is substantially complete can we be confident that this author's argument, or what remains of it following critical examination, should be considered valid.

Because that argument has now been reconstituted by the collective critical inquiry without which it cannot affirm the status of knowledge, it should not be considered its author's exclusive creature or possession. To hold otherwise, to speak of knowledge as if it were individually created and hence subject to the prerogatives of private ownership, makes no more sense than to say the same of the goods produced by neoliberal capitalist corporations:

Modern corporations—and the millions who participate in their activities worldwide and the many more millions who depend, directly and indirectly, on the success of those activities—are reflections and expressions of the general decline of production as a “truly ‘private’ economic activity” (quoting Joseph Schumpeter). They are aspects of the *socialisation* of production and of the growing economic interdependence that characterizes modern capitalism. Increasingly, our collective material fate is inextricably bound up with the use we make of corporate assets. It is arguable, therefore, that not only are corporate assets no longer private property, but that, as the product of the collective labour of many generations upon which we all depend, there are compelling grounds for designating them common property.¹⁸

Those who participate in producing these assets, Paddy Ireland concludes, are contributors to a fund of goods that would not exist absent the cooperative work that is a necessary condition of their creation, and the same, I maintain, is true of knowledge.

Scholarly inquiry is a distinctive form of work that over time generates what we might call an “cognitive commonwealth.” One of the features that defines this commonwealth's goods, which distinguishes it from many others, is what economists call their “nonrivalrous” character. When I drink water from a glass, you cannot drink that same water, and so this good is rivalrous. Were knowledge akin to that water, my gain would be your loss. However, when I share my knowledge with you, and you with me, we are both enriched. This, I take it, is what Justice Brandeis was getting at when in 1918 he

insisted that “the general rule of law is, that the noblest of human productions—knowledge, truths ascertained, conceptions, and ideas—become, after voluntary communication to others, free as the air to common use.”¹⁹

Accordingly, should someone represent as “knowledge” something that has been removed from the epistemic commonwealth and rendered a rivalrous good via its privatization, we should respond by explaining that this misconstrues what in fact no longer qualifies as knowledge. Should I, for example, appropriate what belongs to this commonwealth and reconstitute that knowledge in the form of a vendible textbook, I will thereby transform this good into a commodity, which is a very different sort of thing. By the same token, should I uncritically employ the oxymoronic phrase “academic capitalism,” you should be quick to tell me that I don’t know what I am talking about. The category of “academic capitalism” appears coherent only because it masks the violation necessary to expropriation of the epistemic goods it represents as so many ownable objects. In order to become so much private property entitled to the liberal state’s protection, like the pastures fenced in by the Enclosure Acts, these goods must be wrested from the social relations of production out of which they emerged and within which they would otherwise remain embedded. Only when removed from the epistemic commonwealth can they be reconfigured as the rivalrous entities presupposed by and necessary to the operation of a capitalist economy. Only then can their “owners” exclude others from access and, on that basis, claim sole title to whatever stream of benefits flows from these goods’ transformation into the marketable stuff of capital accumulation.

Within the academy, this dispossession was afforded its constitutional authorization when *Dartmouth* affirmed that the academy’s tangible assets are so much private property effectively “owned” by a head severed from the depoliticized body it now rules (see once again the photo on this paper’s title page). The neoliberal university consummates *Dartmouth*’s logic by extending this expropriation to

knowing's intangible fruits via their commodification, and that offense is realized in the form of intellectual property law. That law is the principal means by which socially produced goods are reconstituted as something susceptible to private ownership claims as well as their protection by the state. If, therefore, access to knowledge is now something that is available to those who can afford it but denied to those who cannot, that is not because scarcity is inherent in knowledge's nature. Rather, that is so because the privatization of knowledge is enabled and enforced by means of patent, copyright, and other laws that restrict who may and who may not enjoy these epistemic fruits as well as how much anyone must pay for that privilege.

Commonwealth University challenges this expropriation by affirming its identity as a corporation that denies to anyone the right to extract this or that from its common pool of resources and then claim exclusive rights over disposition of that thing. To illustrate how CU does so, consider the following provision in Ohio's Revised Code regarding all public colleges and universities in that state: "All rights to and interests in discoveries, inventions, or patents which result from research or investigation conducted in any experiment station, bureau, laboratory, research facility, or other facility of any state college or university, or by employees of any state college or university acting within the scope of their employment or with funding, equipment, or infrastructure provided by or through any state college or university, *shall be the sole property of that college or university.*" Here, setting aside this statute's misconstruction of the academy's members as employees, the Ohio legislature gets matters more right than wrong. It does so by affirming that the goods created by those who do the academy's productive work are not susceptible to ownership claims advanced by private individuals. This is the conclusion the statute correctly draws when it goes on to state: "No person, firm, association, corporation, or governmental agency which uses the facilities of such college or university in connection with such research or investigation and no faculty member, employee, or student of such college or

university participating in or making such discoveries or inventions, shall have any rights to or interests in such discoveries or inventions, including income therefrom.”²⁰ In sum, Ohio’s academic corporations are the legal persons that “own” the goods collectively produced within them, and no one can claim otherwise as a preface to or pretext for exploiting them for purposes of private gain.

Ohio’s statute goes awry, however, when it authorizes the autocratic rulers of its public universities and colleges to carve out discretionary exceptions to these general provisions:

As may be determined from time to time by the board of trustees of any state college or university, the college or university may retain, assign, license, transfer, sell, or otherwise dispose of, in whole or in part and upon such terms as the board of trustees may direct, any and all rights to, interests in, or income from any such discoveries, inventions, or patents which the college or university owns or may acquire. Such dispositions may be to any individual, firm, association, corporation, or governmental agency, or to any faculty member, employee, or student of the college or university as the board of trustees may direct.²¹

Here, eliding the contradictions internal to the category of “academic capitalism,” the state of Ohio provides for the autocratic head of a property corporation to claim exclusive authority over the academy’s collectively produced goods; to disfigure those goods by rendering them so much privatized property; and, finally, to allocate to specific individuals the right to profit from their commodification.²² That this right may sometimes be granted to certain of the academy’s employees, including faculty, does not release them from their status as subjects; it merely renders them bribed.

At Commonwealth University, ownership of that which its members produce remains vested within the creature of law to which they collectively belong. CU’s members no more own these assets than Ohio’s trustees do, and hence nor can they treat these socialized goods as if they were so much alienable property to be trafficked in capitalist markets. As members, true, they retain the collective power to regulate disposition of this common wealth. That power cannot be conflated with the bundle of rights conventionally ascribed to private property owners, however, because this power remains grounded within the republican body politic constituted by its members. This of course does not

guarantee that CU's members will make no ill-advised decisions about how best to make use of these goods. Nor does it presuppose that they are somehow especially virtuous and hence immune to the temptations of self-dealing. But it does ensure that what they collectively create will not come to oppose them as so much privatized property whose employment is dictated by those who are not this corporation's members but, rather, autocrats who rule them as so many disempowered subjects.

The term *commonwealth* in this university's name signifies the reabsorption of expropriated private property within a corporation that is composed of its members but is not reducible to them, whether as individuals or as an aggregation of individuals. As such, CU must not be confused with, for example, the legally constituted form of association that is a partnership. Were CU that, title to its property would remain with the natural persons who are its unincorporated partners; and, were that so, each partner would retain the right to withdraw assets proportional to that party's initial investment. Were CU thus constituted, it would remain forever insecure because its individual investors are legally entitled to cut and run whenever they are so moved.

CU's common wealth, instead, assumes the form of a nondivisible pool of resources. Because those resources are locked within this corporation and so shielded from private appropriation, the likelihood that this university will prove sustainable through time is considerably enhanced, as is its ongoing capacity to serve CU's chartered purpose. This renders CU quite unlike the neoliberal academy, which, best illustrated by the unholy alliances we call "public-private partnerships," is in fact more akin to a contractual pact whose assets are so many rivalrous goods and whose participants struggle to wrest as much revenue as possible from each other. At CU, democratic stewardship of goods held and regulated by its members in their corporate capacity replaces this legally-regulated war of all against all.

Were this the appropriate time and place, I would now explain with some care why I believe that the two guiding principles of Commonwealth University, once conjoined, facilitate the promise of

higher education, which is what the autocratic-capitalist academy so often thwarts. In lieu of that, at this juncture, I will merely submit that this corporation merits our consideration not in virtue of its democratic or socialist character per se but, rather, because its constitution opens the possibility of and may indeed act as a catalyst for decommodified forms of learning, educating, and knowing. Or, perhaps better, let us think of CU's constitution not as one that enables noncommodified inquiry but as itself an institutional articulation of knowledge-generating practices that elude the commodity form. Or, best of all, let's entertain the possibility that CU's corporate structure and these practices are mutually constitutive, and hence that neither is cause and the other effect.

Commonwealth University envisions the practice of inquiry as one that is common to all its scholars, including faculty as well as those we now too neatly demarcate as students. Here the commodity form does not dictate either's relationship to the academy, whether via the "private government" constituted by capitalist employment contracts or via the purchase of an education by means of tuition. Emancipated from that form and hence to the domination inherent within a capitalist political economy, these relationships become available for reconstitution in ways that better ensure (but never guarantee) the unique kind of freedom whose preservation is the academy's proper end.

In its "1915 Declaration of Principles," the AAUP correctly insisted that the viability and vitality of the academic enterprise requires the form of freedom that enables and encourages unflinching criticism of the disciplinary truths we now take for granted but also received opinions, conventional practices, and all powers that be, whether located within or without the academy. If that freedom is to thrive, we must dismantle the vertical relations of unaccountable power that, today, give rise to the dispirited malaise that pervades the neoliberal academy. Or, to put this point in the affirmative, that freedom presupposes the horizontal relations of authority that govern a republican member corporation. So, too, this freedom requires an epistemic commons that defies capture by those who would reduce

knowledge to so much cognitive capital, education to workforce training, and learning to the acquisition of credentials whose worth is measured by their exchange value in the occupational market. Each of these bastardizations assimilates what we mislabel “education” to ends other than its own and, specifically, those that define the project of capital accumulation within a neoliberal regime.

Achievement of this freedom requires the relative autonomy that accompanies Commonwealth University’s constitution as a corporation. That corporation’s powers enable it to stand not so much apart from but in an oblique relationship to the state that grants it corporate status but, by that very act, furnishes it with the capacity to frustrate its maker (as private for-profit corporations now do all too well). So positioned, CU harbors the potential to become a participant in broader democratic struggles against the forms of gendered, racialized, and socioeconomic exploitation with which neoliberal capitalism conspires. The conduct of inquiry within CU is not organized in accordance with the pricing mechanisms of the capitalist market, the managerial principles that inform hierarchically organized bureaucracies, or the coercive rule of law based in the state’s monopolization of the means of legitimate violence. Grounded instead in the mutually reinforcing principles enumerated here, CU’s very existence offers a standing critique of the relations of domination and subordination that prevail wherever and whenever forms of collective practice are ordered by these other methods.

The end of Commonwealth University

Although this is but a sketch, in this paper, I have argued for an academy that, because predicated on the model of a member corporation, is capable of resisting thoroughgoing incorporation within the circuits of accumulation that define a neoliberal political economy. This entails abolition of autocratic governing boards as well as re-socialization of the assets that are now stripped from the academic corporation, transformed into so many commodities, and then enlisted in the service of academic capitalism. I do not offer this sketch as a panacea for what now ails higher education. Nor do I

presuppose any essentialist or ahistorical understanding of education, knowledge, or the academy when I encourage us to imagine the academic commonwealth. Each of this trio of terms denominates a contestable artifact that might have been and may yet become something other than it is now. Only because these matters are contingent can we fight over their future, and only because they are vulnerable but also precious are they worth that fight.

Notes

1. Michael Bérubé and Michael DeCesare, “Governance Investigation Update,” *Academe Blog* (February 18, 2021), <https://academeblog.org/2021/02/19/governance-investigation-update/>, accessed on February 22, 2021. For a fuller elaboration of the argument presented in this paper, see Timothy V. Kaufman-Osborn, *The Autocratic Academy: Reenvisioning Rule within America’s Universities* (Durham, NC: Duke University Press, 2023)
2. Michael Ferguson, “What the Pandemic Has Revealed,” *Academe* 107:1 (Winter 2021), <https://www.aaup.org/article/editor-what-pandemic-has-revealed#.YDaodOhKiUk>, accessed on February 24, 2021.
3. Rudy Fichtenbaum, “Inequality, Corporatization, and the Casualization of Academic Labor,” *Academe* 100:5 (September-October 2014), <https://www.aaup.org/article/president-inequality-corporatization-and-casualization-academic-labor#.YDQasuhKiUk>, accessed on February 22, 2021.
4. Appeals to this conceptual trio are legion within the recent literature on U.S. higher education. A few examples include Shumar Wesley’s *College for Sale: A Critique of the Commodification of Higher Education* (New York: Routledge 1997); Jennifer Washburn’s *University, Inc.: The Corporate Corruption of American Higher Education* (New York: Basic Books, 2006); Derek Bok’s *Universities in the Marketplace: The Commercialization of Higher Education* (Princeton, NJ: Princeton University Press, 2003); and Andrew McGettigan, *The Great University Gamble: Money, Markets and the Future of Higher Education* (London: Pluto Press 2013).
5. Fichtenbaum, “Inequality, Corporatization, and the Casualization of Academic Labor.”
6. “Dartmouth College Charter,” <http://www.dartmouth.edu/trustees/docs/charter-2010.pdf>, accessed on May 21, 2020.
7. “The charter, The transfer. Acts, 1888 [and]1906,” *Bulletin of the College of William and Mary* (Williamsburg, VA: College of William and Mary, 1913), 3, 6, 7, <https://babel.hathitrust.org/cgi/pt?id=hvd.hn51dp&view=1up&seq=1>, accessed on March 31, 2020.
8. David Ciepley, “Member Corporations, Property Corporations, and Constitutional Rights,” *Law & Ethics of Human Rights* 11:1 (2017): 31-59.
9. Justinian. *The Digest of Justinian*, Alan Watson, ed. (Philadelphia: University of Pennsylvania, 1985): 3.4.1.
10. William Blackstone, *Commentaries on the Laws of England in Four Books*, vol. I (Philadelphia: J.B. Lippincott, 1893), vol. I, 468.
11. Blackstone, *Commentaries on the Laws of England in Four Books*, vol. I, 293.
12. Ciepley, “Member Corporations, Property Corporations, and Constitutional Rights,” 39.

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13. Ciepley, “Member Corporations, Property Corporations, and Constitutional Rights,” 41.
 14. Trustees of Dartmouth College v. Woodward, 17 US 518 (1819).
 15. Trustees of Dartmouth College v. Woodward, 17 US 518 (1819), 653.
 16. Anderson, Elizabeth. Private Government: How Employers Rule Our Lives (and Why We Don’t Talk about It). (Princeton, NJ: Princeton University Press, 2017).
 17. J. W. Smith, *A Compendium of Mercantile Law*, 3rd ed. London: Saunders & Benning, 1843, 81 (emphasis added).
 18. Ireland, “Company Law and the Myth of Shareholder Ownership,” 56.
 19. Int’l News Serv. v. Associated Press, 248 US 215, 250 (1918) (Brandeis, J., dissenting, 250).
 20. Ohio Revised Code, Section 3345.14 (Rights to and Interests in Discoveries, Inventions or Patents), <https://codes.ohio.gov/ohio-revised-code/section-3345.14> (emphasis added), accessed August 20, 2022.
 21. Ohio Revised Code, Section 3345.14.
 22. See Ohio Revised Code, Section 3345.14 (D)(1): “Notwithstanding any provision of the Revised Code to the contrary, including but not limited to sections 102.03, 102.04, 2921.42, and 2921.43 of the Revised Code, the board of trustees of any state college or university shall adopt rules in accordance with section 111.15 of the Revised Code that set forth circumstances under which an employee of the college or university may solicit or accept, and under which a person may give or promise to give to such an employee, a financial interest in any firm, corporation, or other association to which the board has assigned, licensed, transferred, or sold the college or university’s interests in its intellectual property, including discoveries or inventions made or created by that employee or in patents issued to that employee.”