

## **Language, juridical epistemologies and power in the new UK university: Can alternative providers escape?**

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### **Abstract**

*This paper describes how language, juridical epistemology and power is re-shaping mainstream UK universities, and how these changes create a default cultural floor that makes it difficult for alternative models to operate. It will make its argument via reflections on the second branch of Social Science Centre (SSC) in the country, in Manchester, which its author set up in 2016. SSC is an education co-operative. It will outline warnings about the difficulties such organisations face, if they eventually come under the legal yoke of UK HE marketplaces after the Consumer Rights Act (CRA 2015) the Competition & Markets Authority consultancy (CMA 2015) and the new HE Bill (2016). The language of all these documents make it clear that HE serves markets. Even if providers such as SSC wish to set up as an alternative, this paper critically questions the potential for them to remain 'outside' long term, infrastructurally, but also culturally. It argues that these independent Higher Education (HE) organisations, including SSC, now have a stark choice: To enter into a marketplace or to refuse it; to take on the quantitative logic of metrics and economies, or to be sidelined in a stigmatized world of fuzzy 'qualities'. This paper's contribution is to describe this new scene for co-operative education, but also to raise wider questions: 'Can alternative HE innovations remain outside of these structures?' and 'if we can, should we?' The other enormous question is of course 'how?'*

## **Introduction**

Social Science Centre (SSC) provides free, co-operative Social Science Higher Education (HE) in the centre of Manchester. In June 2016, SSC gained members and scholars alongside funds to get off the ground. Run as a co-operative that is owned by its members, the hope is that SSC Manchester will eventually be self-sustaining.

The Manchester branch of SSC is not the first: The first Social Science Centre, in Lincoln, has successfully offered free, co-operative higher education since 2011. This original Lincoln branch granted its approval for the new Manchester branch at its AGM in May, 2016. SSC Manchester began with exactly the same model and constitution as SSC Lincoln. Everything else was put into place after that inaugural AGM in Lincoln.

In the interests of disclosure, I set up this second branch of SSC in the country, in Manchester. I was the person who went to Lincoln to gain permission. I then undertook crowdfunding and initiated the branch in terms of its legal status and applied for its bank account, although the branch has a new Secretary and Chair, and I am nowadays an ordinary branch member.

A key aspect of both SSC branches is that the 'teaching' sessions are co-produced: we build knowledge through the discussion of texts rather than having an academic coming in to tell you things; although there are academics who know a lot of things at SSC, and everyone involved has access to them. The hard student-teacher dichotomy has been lost. There are members and scholars, members run things to whatever extent they wish to, and scholars come in and engage with what we do for free, but there isn't much of a barrier between the two.

After the 2015 general election and Brexit, and now the new Higher Education bill, it is clear that mainstream Higher Education needs alternatives. SSC wishes to remove the 'quantities' of the UK HE fee structure and while doing so alter the 'qualities' of Humanities Higher Education: Broadly, both branches are providing a kind of co-produced Cultural Studies free university. Mainstream universities are being marketised even further now. The fees model is not going to go away and so it was time to do something positive and proactive, rather than just attend demonstrations and complain.

It is hoped that the new Manchester branch will be the first of many more new SSC branches and that the two existing branches will turn into a network. With the event of SSC Manchester, there are now two branches in the UK, which means the SSC strategy has gone from an anomaly to a phenomena. It now needs to become a movement. It was very important to those involved in Manchester that we start another branch of SSC, rather than create our own idiosyncratic, egotistical project: SSC is also about movement-building, long-term, about providing free access and appropriate 'quality' for the humanities. Marketisation is not just about money and access. The very fabric of mainstream universities is being warped significantly by their changing structures. We may have to consider a different name to 'university' in some cases. This is how 'quality' signifies here.

However, there are immediate risks for SSCs ambitions that this paper will diagnose. There were discussions around the possibility of validating a co-operative humanities degree, possibly through an overseas institution and the new HE Bill was thought, at one point, to make this possible (Neary, Parkinson, Ross and Winn, 2016). Mondragon in Basque Spain was approached, but this route is now widely assumed to be blocked after Brexit: The HE Bill in its

current form means that Mondragon will have to incorporate in England to be involved (Cook, 2016).

But what worries us is that if it expands, SSC may have to run under the (de)regulatory framework of the new HE Bill (2016) the application of the Consumer Rights Act (CRA) to the HE sector, and the Competition and Markets Authority's (CMA) effective regulation.

This paper will explore the details of those recent regulatory developments and how they may or may not play out on alternative HE providers such as SSC. But the question that will be opened up via that exploration is a stark one, a binary choice delivered through the multiple complexities of these new regulations and frameworks.

This question can be summarised very crudely upfront as follows: Do SSC expand and risk being swallowed? Or do they remain small and avoid that, and can they even avoid being swallowed if they stay small? This is a warning: Even if they wish to set up as an alternative, we must seriously question the potential for organisations such as SSC to remain 'outside'.

On one level this paper will argue that these independent Higher Education (HE) organisations, including SSC - I avoid the use of the word 'radical' for reasons that will become clear - have a stark choice: To enter into a marketplace, or to refuse it, to take on the quantitative logic of metrics and economies, or to be sidelined in a stigmatized world of fuzzy 'qualities'. However, on another level this paper will question the binary of 'inside and out' and suggest negative transformation from within in the spirit of the Frankfurt School. Before that broader, more dramatic argument is reached, it is necessary to examine the situations that have produced it.

## **Recent shifts in UK HE structures**

In 2015, the UK government published the Competition & Markets Authority (CMA) 'advice on consumer protection law'. This was sub-titled 'Helping you comply with your obligations'. The document explained that it aimed to give 'advice to help HE providers across the UK understand their responsibilities under consumer protection law in their dealings with undergraduate students.'

The language of these documents made it clear - in case there were any doubts in the minds of those already working in the sector - that HE serves markets. The idea that it might create better citizens, or people who can innovate in a non-market way, or even that they might alter what a traditional consumer marketplace can do, was and is still absent. The language of markets has entirely replaced the language of the university:

'HE providers play a crucial role in the UK economy [...] Compliance with consumer protection law is important not only in protecting students but also in maintaining student confidence and the reputation of the HE sector and in supporting competition [...] The advice is particularly important at a time when a greater share of HE providers' funding is coming directly from students, which has highlighted particular expectations of providers when it comes to, for example, information they provide about degrees and courses available, the choices on offer, students' rights as consumers, and how complaints by students will be handled.' (CMA, 2015).

A different but related policy change came when the Consumer Rights Act (CRA) was fully applied to the HE sector early in 2015. This was communicated to universities across Britain, just before the Competition & Markets Authority (CMA) published its findings. In many universities this change in legal status was communicated to all staff as a warning of potential litigation and ultimately course closure, in one mass email. Neoliberal 'new managerialism' is also key to what is happening. For here is the level of culture

and power that comes after the policy drivers of further change in HE. As Kathleen Lynch put it:

New managerialism is further characterised by significant changes in nomenclature. There is a declining use of language that frames public services in terms of citizens' rights, public welfare and solidarity and a growing emphasis on language that defines the citizen's relationship to the state in terms of market values, be it that of customers, service users and competitors. There is a deliberate attempt to elide the differences between public and private interests. New configurations of public-private relationships are designated as 'partnerships' erasing the differences between public and private interest values, between providing a service at cost and only providing a service if it is profitable. (Lynch, 2014).

Lynch sensed the emergence of an instrumentalised, utilitarian HE landscape in 2014 that was legally reified a little later in the new HE Bill: It has been scripted in law through the Consumer Rights Act (CRA) at which point a new set of 'juridical epistemologies' emerges through the cultural ones. We are moving rapidly to a place where mainstream universities must be given a new name, and this is partly why the title of this paper includes the word 'language'. The name 'university' as it was previously understood is no longer fit for purpose in some cases. SSC offers courses that try to deal with this issue; courses that allow reflection and a different kind of temporality, which enable and encourage experimentation and a highly non-utilitarian engagement.

The new HE Bill has already been described in terms of its language of destruction (see Scott, 2016) because it clearly opens the market up further to competition, by allowing other players to enter and validate degrees. These might be private for-profit players such as Pearsons, already operating in the sector, who may want to expand, or it could be new organisations, and here is where the HE Bill may actually provide opportunities for SSC: If it wishes to

enter the market as a validated provider, at some point in the future, it may well be able to.

But a key question arises here: Do we use the language of the Competition & Markets Authority (CMA) documents, a language that already saturates senior management circulars in mainstream universities, or do we deny it? Do we enter into 'their' epistemology or do we refuse it? The larger question here is of course 'can we?' and 'how?' These questions sit on the new structures of HE, structures that are found in language and changing juridical epistemologies and power in the new UK university.

This term that I employ here, 'juridical epistemologies', means that the changing 'qualities' of HE are increasingly being driven by the possibility of litigation and that the structures within are being altered in order to respond to this perceived threat. 'Juridical epistemologies' means that the pedagogical relationship itself is not just being reframed further by a consumer-provider culture, it is, but it is being scripted into a legal obligation, with advisory bodies and attendant compliance frameworks. 'Juridical epistemologies' are scripted in language and enacted through language, and this is the other reason why language is a key term.

The way that this whole paradigm shift explodes into being can be tracked in discourses around Higher Education in Britain and America (Conant, Johnson, Brown & Mokwa, 1985). The American model is still being injected into British Higher Education and this broader cultural and historical narrative can be read in a series of papers from around 1983, culminating in an affirmation of the student-as-consumer in 1985 (ibid).

However, there is a broader, identifiable literature on the subject that is useful to summarise in some detail before proceeding. Here I will give an overview of literature 'critiquing the crisis' followed by a short summary of literature from co-operative HE providers 'addressing the crisis.'

### **Critiquing the crisis: Critical literature on the changing language of HE**

Looking at this literature, we can track calls to finally take marketing and consumerism to students seriously in 1985 (Conant, Johnson, Brown & Mokwa) through to Ritzer's *McDonaldization of The University* (1996). Interestingly, these pieces come from America. Then, roughly around 2009 in Britain, there is an explosion of dissent and discussion about consumerism in HE. The context for this is the Browne Report and the imposition of a fee-paying model for new students (Shepherd, 2010).

The work done in 1985 speaks from a context where the idea of (American) students as consumers has to be argued for, as a basic idea to take seriously, and they do argue for it. Ritzer then frames the debate in postmodern terms, something significantly absent in the post-2009 commentary, a point worth a separate paper in itself.

Then, the explosion: Molesworth, Nixon and Scullion (2009) are clear that marketisation 'erodes other possible roles for education because a consumer society is unlikely to support a widened HE sector that may work to undermine its core ideology.' (2009: 277). There is a tautological sickness to this, a snake-that-eats-its-own-tail logic. They use 'Fromm's humanist philosophy based on having to argue that the current higher education (HE) market discourse promotes a mode of existence, where students seek to "have a degree' rather than 'be learners'" (ibid). They suggest that consumerised education is unlikely to support a university that challenges consumer society outside the university,



although this has yet to be seen, as most educationalists reject the consumer-service provider model that is imposed on them, though clearly not enough and a lack of direct trade union activism is partly to be blamed.

There is a very important caveat to make here: Many lecturers do continue to provide challenging, experimental and open Higher Education, but they do so at increasing risk of complaint and in the face of a departmental culture that sometimes sets the bar quite low precisely because of the new environment opening up. More recently, Luciana Lolich & Kathleen Lynch (2016) argue that the KBE (Knowledge Based Economy) is 'one of the most recent of economic imaginaries devised by governments to manage the population' and that 'HE institutions have been assigned a key role in promoting economic growth in the competitive space of the global economy.'

They also argue that HE is 'represented as an insurance against the risk of under-employment or unemployment from a student perspective' and how 'students "buy" into this official imaginary and how it affects their decision to go to college and select a particular course.' Their research included a large-scale survey of 4265 students. The results of that survey:

'...challenged the prevailing assumption that students' decisions to go to college or select a particular course are driven solely by economic goals. The findings indicate that while the majority of students attributed a great deal of importance to market (employment) considerations, their employment imaginary was balanced against an affective imaginary, showing high levels of concern about care relations at an individual level. Risk is not only framed in terms of securing an economic future but also securing a relational future, the risks and opportunities for care and love relationships that particular careers or jobs entail are part of students' imaginary. HE students, especially female students, can be conceptualised as affective consumers of risk, offering a counter-narrative to the market ideology.'

We can thus frame providers and consumers, or to be old-fashioned, lecturers and students, as joint consumers of risk. What is interesting about these arguments is that convincing work has since been done that suggests students who focus on 'being a learner' rather than 'having a degree' actually achieve better grades (see Bunce, Baird and Jones, 2016). The affective strategies of risk consumption therefore have tangible outcomes at a quantitative level, for students at least, work would need to be done to seriously answer the question of whether or not lecturers progress through risk or not.

From personal experience all of this rings true, for some students Higher Education is nothing more than a ritual of credentialism, but they may well get lower credits because of that credentialism. Cultural capital and habitus is key to this argument: If your parents are university researchers they are clearly more likely to know that 'being a learner' rather than 'wanting a degree' actually achieves better grades. The babyish epistemology of the A\*, the last qualification many new first year HE students take before starting at university, is unhelpful, and is part of what a colleague witheringly calls 'big kiss marking'. Encouragement should always be present, but the form it takes can enable or disable in particular ways; again, this is a language and epistemology issue.

It is clear that a 'sad spirit' can be detected across higher education research from 2009 to the present. Nixon, Scullion & Hearn (2016) include pedagogical strategies 'that may, even inadvertently, gratify narcissistic strivings to be treated as an "individual", such as personalised learning contracts, should also be considered for their effects on fundamental pedagogic principles of collective endeavour in the pursuit of knowledge as well as notions of civic culture.'

There is a keen sense here that the changing epistemologies of HE institutions are warping their place in the public-private nexus. The concern of this paper is

how those epistemologies may affect co-operative Higher Education innovations if they try to go for validation after the new HE Bill (again see Neary, Parkinson, Ross and Winn, 2016).

Universities are now marketing themselves as brands, so that decisions may be based on the 'beautiful campus' rather than the presence of an admired academic (Stephenson, Heckert & Yerger, 2016). This marketing and 'consumer confusion' was previously outlined by Drummond (2004).

We should of course caveat all of this with a testimony to the general empowerment simply 'having' a degree gives to lower class students. Castilhos & Fonseca's study 'focused on analyzing the capitalizing practices of a group of lower-class consumers seeking to overcome social origins through the education market' (Castilhos & Fonseca, 2015). The qualitative dimension of their paper reveals the triumphalism and empowerment gained by lower class students just through the simple fact of having a HE qualification. The question for SSC does not become 'how do we empower those students with middle class qualities that understand the "being" rather than "having" dimension?' but rather 'how do we erase the instrumentalised dimensions of the new HE completely?' However, Molesworth Nixon & Scullion (2009) don't give a strong classed sense to 'being' versus 'having', they say that:

'The most desirable outcome of vocational HE is now accepted (potentially by tutors, students and the management of institutions) as the fulfilment of a having mode of living. Such an educational ideology [...] is potentially totalising.' (2009, 285).

Tony Woodall, Alex Hiller & Sheilagh Resnick (2014) argue that 'students are increasingly demonstrating customer-like behaviour and are now demanding

even more "value" from institutions.' Value, though, is a slippery concept, and they suggest that it has been 'operationalized.'

These academic debates can be tracked into more public arguments, particularly in what we might now call 'trade' publications such as Times Higher Education Supplement. For instance, a debate flared up between Sonia Sodha, Head of Public Services Policy at Which? and others. They argued over the appropriateness of consumer body Which? in debates over student choice. Both sides seemed to agree on one thing:

'It is not the case that students are merely complaining for nothing about the fee-charging university, institutions sink huge sums into infrastructure as their contact time is reduced and lecturer pay and conditions frozen or rolled back.'

A Foucauldian attention to the localism of power networks must be sketched into all these debates, because qualities are clearly different from place to place: SSC must not be shy of being assessed for 'quality', but the key question here is 'will that entail quantitative measurement by default?'

I have explored elsewhere the idea of 'meritocracy' (2016) and tracked, via Jo Littler's work, its turn from a pejorative category to something like the default cultural wallpaper.

However, there are serious problems looming for the mainstream university that supports the notion of a meritocratic culture as a compliment to an empowerment economy. What were once forms of employment for non-graduates, postal work, for instance, is now being filled by graduates as the university over-produces and the economy under-performs. Therefore, the idea of 'meritocracy' itself is under threat, and not just at the level of the student-as-

consumer leaving to make her or his way in economic life, but for the doctoral student graduating into a situation where tenure is less likely. Peter Wood (2011) asks 'is there a bubble in Higher Education?' and further warnings are not difficult to find. This bubble may burst, at which point a co-operative takeover may be possible.

But will a co-operative takeover from within mean the same measurement and quality standards will be imposed from without, if the new operators wish to put different qualities of HE in place? The crucial point to make in relation to the SSC is that 'being inside' these new, linguistic and by default legal circumstances will surely reframe the very particular 'qualities' that SSC are so keen to curate.

A key paper in 2009 raises a warning about the re-framing of temporality itself for students in the marketised university (see Gibbs, 2009). At this point, the serious challenges SSC faces in potentially trying to challenge mainstream education should be clear.

### **Addressing the crisis: Literature addressing the changing language and structures of HE**

There is, thankfully, a counter-literature to the often angry, critical work outlined above. Mike Neary and Joss Winn's work, sometimes together, sometimes sole-authored, sometimes with others, notably Gary Saunders, focuses on a set of themes which I will again group under 'critique' and 'advocacy'. What is powerful about their work is that it does not halt at the point when the 'problematic' has been clearly outlined. It goes on to offer alternative practices, and in the case of Social Science Centre Lincoln, an actually-existing co-operative humanities university as an example and exemplification.

Under the heading of 'critique', we find a grounding in dissent over the imposition of fees in 2009 and the marketization of Higher Education generally. More specifically for my argument here, Neary and Winn deal very well with how that plays out qualitatively, in cultures of academic labour, via academic leadership that frames the intellectual in the university and by default, the student.

Under 'advocacy' they wish to move toward a creative commons that brackets the academic identity in universities in order to place the university in a much more culturally communist framework. Mike Neary has worked on a 'student as producer' project in one form or another since his time at the University of Warwick. Again, the hierarchy between student and teacher are flattened in this to varying degrees. The key citations for all these concerns are Joss Winn (2013, 2015a and 2015b) Mike Neary (2012a, 2012b, 2010a, 2010b and 2016) Neary and Winn (2012 and 2015) Neary and Saunders (2011 and 2016).

### **Language barriers and epistemological divides**

Two barriers emerge from this literature, for SSC. The first barrier is the 'language' of the new mainstream university, textual and visual, indexical and aesthetic. This language increasingly mirrors that of corporate work environments and consumer marketplaces. It is the language of providing a labour market with labourers and serving its own need to avoid litigation from students who are now firmly and legally re-framed as consumers and customers.

The second barrier is produced by the first one: SSC sometimes finds it difficult to engage with people who might want to come in and access co-operative learning. Because SSC makes its teaching structures mirror its co-op framework and legal status, this can be a real barrier for newcomers, who essentially turn up with a default, mainstream structure already in their heads. SSC Manchester

experienced some student retention problems that were partly rooted in the language of co-operative education and the bringing in of a set of expectations regarding what Higher Education can or should be.

SSC Manchester also experienced difficulties in beginning courses by explaining what the co-production of knowledge is, to students who are saturated by this default model of didactic pedagogy, of someone who knows things, giving them some of those things, but in this case without any monetary charge. This didactic model of pedagogy, although quite significantly recalibrated since the nineteenth century, is still the default method of learning and teaching in the UK, certainly from secondary school up.

A recent debate at the Co-op College in Manchester revealed similar problems with engaging audiences across co-operative ventures. For instance, the language of the 'solidarity economy' was thought to be a potential block to engagement with people outside the traditional leftwing or co-operative audience and so 'people's economy' was suggested as an alternative. It was thought - and convincingly so - that the more general 'people' rather than the loaded and leftwing 'solidarity' might better engage wider publics.

Put more plainly, because the language of the mainstream is structured around a giver and receiver - which is now scripted in legal terms via the CRA - the alternative is likely to be felt as a barrier to engagement: 'A bit of a struggle to get into', as one scholar explained. But if the SSC validates its own degrees, will that relationship become a default legal obligation? What I have called 'juridical epistemologies' here may simply saturate SSC if it attempts to compete with the mainstream by entering into it. This hasn't happened yet and it is only raised here as a warning so that we might begin to think about the problem before attempts are made.

The problems at SSC Manchester did not end at the staff-student divide, or rather the member-scholar divide. Members facilitating courses left because they felt frustrated by the a-central way SSC runs. There is no leader at SSC, no Dean, no Vice Chancellor. One member, on leaving, suggested that SSC was being 'ironic' when it refused to manage the branch in the hope that others might shape the branch and make it a properly autonomous collective. So strange is this alternative that the only possible explanation can be that we are joking.

A further dimension of the questions I am raising here emerges: Should we view these difficulties as difficulties of language that can be attended to in order to better engage, when those language changes might mean bending towards the language of the existing mainstream neoliberal framework? Or are these epistemological issues and should providers such as SSC refuse to enter into those emerging, default epistemologies, including the use of the word 'provider', in order to maintain its unique position? Can we bend our language and remain outside of the mainstream, or not?

Clearly, then, there are frictions here already. Frictions that sometimes become problems. But it is the scale of frictions and problems anticipated if SSC validates as a mainstream, but alternative provider, that should concern us the most here. At the broadest level SSC and other providers, if they end up in a capitalist model - still the only game in town - cannot and will not escape the dominant logic of the Consumer Rights Act (CRA) the Competition & Markets Authority (CMA) 'advice on consumer protection law' and therefore 'effective regulation'.

### **Thatcher's spell**

There is a deeper cultural history to these changes in the UK, beyond these recent legal and policy developments, beyond the issues of the 'text' of HE,



which is worth exploring here. This cultural history emerges from the Thatcher government's encouragement of capitalist individualism, a key shift in the structures of feeling in Britain (Williams, 1961). There are also a series of dirty secrets to be faced in regard to that longer history: In mainstream universities, as the need to recruit in an increasingly competitive market intensifies, students are sometimes taken on without the pre-requisite grades. Students that struggle sometimes channel this struggle into official complaints. These official complaints can then lead to minor, or in some cases major, course document amendments.

Therefore, not only might the new (de)regulatory framework unhelpfully skew what the university is, this increased attention to the consumer-service provider relationship as a core replacement for the previous conception of student 'needs' may warp university structures further, over time.

'Student needs' are not inevitably framed by a buyer-seller logic. This is not a state of nature, it is a cultural turn forced by government policy. Needs are stimulated by structures: 'Needs' are produced; Plato's academy moved away from Sophistry and the teaching of rhetoric to a more reflective production of needs. The German gymnasium similarly produced needs in relation to its historical time. PPE in English red bricks produce 'needs' for a group of young elites moving to replace the outgoing elite. Hair and Beauty courses produce 'needs' for a classed and gendered demographic, for instance at Bradford and Wigan College. Such 'needs' are political, barbaric, and should be re-named.

This is not to say that student complaints are invalid, or that student agency is to be discouraged, quite the opposite. Student dissent is very often valid. I know this from long personal experience, as both a staff member and a student. I worked on a course that was falling apart, largely due to a manager close to

retirement who was simply no longer coping, a situation that was exacerbated by being effectively ignored by a member of senior management who was also a close friend of the struggling manager. I must make an appeal that this 'dirty secrets' section is not ruled out at review stage by an equally narrow criteria for what constitutes knowledge. All of this must of course remain confidential, and therefore anecdotal, but we can find plenty of evidence in public documents and the Competition & Markets Authority actually base their advocacy on similar case studies (2015).

This is not to refuse student empowerment, but to question how that happens and to attempt to completely invert the terms of engagement: SSC are trying to be the dialectical flipside of all of this: Students and teachers are working together and students make the course. But when the dominant HE structures encourage a culture of complaining about what one doesn't like, a consumerist logic little different, in some cases, to taking clothes back to a big chain store when they don't fit, the mainstream landscape itself puts blocks in front of the SSC's attempt to widen participation beyond those who engage with them through prior knowledge of the co-production of knowledge.

To be clear, I have no problem with change per se: What we are seeing at the university are the elaborate ritual death throes of an outdated cartel, a guild structure. But what is coming to replace it is thin and instrumentalised to the point where the use of the term 'university' to describe institutions ought to be seriously questioned.

The key change is that the line between student and teacher is moving from a productive link to a gap. Student and teacher now fully face each other on either side of a binarial division of labour that is framed antagonistically rather than co-productively.

It is important, as a further caveat, to point out that this situation is not total. Lolich & Lynch (2016) made their study in Irish HE institutions, where Nixon, Scullion & Hearn (2016) undertook similar work in Britain and find that 'narcissistic gratifications and frustrations may lie at the root of the damage to pedagogy inflicted by unreflective neoliberal agendas' (p.1). Whether or not a national difference lies at the root of the two differing perspectives must remain unproven without further work. But what is clear is that changes are coming through the CRA, the CMA and the new HE Bill and the direction of travel is 'consumer-provider'.

All these new structures - with their angry critics and fragile alternatives - encourage an individualist subjectivity in students that is at odds with a university ethos of the previous epoch.

Not only that, these emerging structures mirror the dominant consumer landscape so faithfully that they also make it difficult for alternatives to take root. To be clear, I am not outlining a conspiracy theory here. The sector is too chaotic to manage one. But I will offer these reflections as a 'complicity theory', in that it may well suit mainstream providers that this is the case.

### **Conclusion: Light at the End of the Tunnel, or Tunnel at the End of the Light?**

I have set up these binaries only to destroy them: Because the problem with these binaries is that there is no real 'inside' and 'outside'. On the wider cultural landscape, the idea that an 'outside' to Capital exists is widely discredited (for instance Hardt & Negri, 2000). This means that all we can do is negate from within, in the tradition outlined by the Frankfurt School and particularly T.W. Adorno (see Buck-Morrs, 1977). However, I raise the problems and difficulties in this way for a good reason and that is to start interested scholars on the

journey of thinking dialectically through what it means to begin in a place that is always already inside capital and what is at stake here.

The collapse of the binaries can be seen fully when one thinks through the idea of conversion for a failing university or part of a university that is then assessed from outside by universal standards now being set up by the HE Bill. Somehow, by conversion to co-operatives, these institutions need to be dialectically pulled inside-out, in terms of their qualities, this is no easy trick. Dan Cook spoke eloquently on the strategy of 'justify or explain' when faced with quality assessment (2017). But the problem is that we are always in someone else's linguistic and therefore juridical matrix, being asked to account for our actions, hence the title of this paper.

Brexit is not a full stop, surely even the most dogmatic Leave voter now knows this. It is a passageway, which we all must go through. But, I have asked, for alternative HE providers, is this the light at the end of the tunnel, or the tunnel at the end of the light?

Brexit also comes on top of the new HE Bill, now in its second parliamentary reading, which looks as though it will be passed. This Bill intentionally opens up the market to other providers who might wish to validate degrees. The Co-operative College and SSC Manchester have been actively considering the possibilities of this.

However, other changes to the Higher Education structure may make the entry of Co-operative Higher Education providers difficult, particularly if, like the Social Science Centre, they are trying to put a different quality of education into the mix, a less instrumentalised, qualitative model. The co-production of knowledge, a flattened hierarchy between staff and students, all risk being

subsumed by the emerging landscape of mainstream Higher Education. It is perfectly possible to put an alternative in place, but how will that alternative fare when assessed from outside by criteria produced outside the alternative model?

I have outlined the complexities of that emerging landscape above. To summarise, they include the introduction of the Consumer Rights Act and the Competition & Markets Authority advocacy of 2015 into an already marketised HE culture that has been largely rejected by educationalists. I have outlined some of that dissent, but also advocacy from some of the alternative providers that rose up with them.

What the Consumer Rights Act does is reframe the student-teacher relationship in legal terms, to a customer-service provider relationship. The Competition & Markets Authority advocacy essentially acts as a regulatory framework within a deregulated market.

In summary, the field of Higher Education is opening up to Co-operative providers, which may well provide welcome opportunities, but the mainstream structure of provider and consumer, with its associated risks, is likely to be the default structure into which new co-operative educators walk. It is highly unlikely that a situation of legal exception will be made for Co-operative Higher Education.

The question, then, is will this new mainstream legal structure warp the pedagogical framework of 'alternative' providers? Or is the choice one of remaining outside of the mainstream in order to remain different? Can they do this, and if so, how? I have described how language, juridical epistemology and power appears to be re-shaping the new mainstream UK university. The key

point I make in relation to those changes is how they create a default cultural floor that makes it difficult for alternative models to operate. The example I have given is the emerging new branch of Social Science Centre (SSC) in Manchester.

These blockages and constraints are put in place by juridical epistemologies that appear at the level of language and engagement. It happens in the CRA and the CMA (de)regulatory framework and inside the new HE Bill (see Scott, 2016). It finally happens in the terminal juridical epistemologies of court cases and a HE culture almost monomaniacally focused on risk management in the face of potential litigation. These risks are not hallucinatory, they are encouraged and enabled by the structures that are meant to be warding them off.

The first news of a project to create a federated co-operative university in England in which students negotiate or set their own fees, rather than receive free education, which was the point of the original Social Science Centre, and is still the point of the Manchester branch, emerged as I was finishing this paper. (Swain, 2017).

My contribution here is not to simply describe this new scene, but to raise the critical question 'can alternative HE providers such as SSC remain outside of these structures?' and if they can, 'should they?' The other important and pertinent question is of course 'how?' are they going to achieve this. Part of the announcement to create a new co-operative university proposes to create co-operatives within existing universities, something SSC Manchester strongly resists.

I cannot answer those important and critical questions at this time, but I can raise the questions in some detail. This said, the question is asked as higher

education policy and practice at the university is best described as a fast-changing landscape, in an unprecedented situation of urgency, if not emergency: The questions need to be put to policy makers as the fine detail of the new HE Bill is being filled in.

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