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NICE AIMS, SHAME THE LAW'S A MESS...

The simple past, troubled present and unclear future of central government's oversight of the education system

Policy Exchange

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“If you have ten thousand regulations you destroy all respect for the law.”

Winston Churchill

“When I so pressingly urge a strict observance of all the laws, let me not be understood as saying there are no bad laws, nor that grievances may not arise, for the redress of which, no legal provisions have been made. I mean to say no such thing. But I do mean to say, that, although bad laws, if they exist, should be repealed as soon as possible, still while they continue in force, for the sake of example, they should be religiously observed.”

Abraham Lincoln

“The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of law, where there is no law, there is no freedom.”

John Locke

Keeping a tidy shop – the importance of underpinning educational policy with coherent legislation

Tim Oates CBE, Group Director Assessment Research and Development, Cambridge Assessment

Clarity in law is much more than an arcane pursuit. This publication examines the importance of ensuring that the legislation associated with education both supports the policy aims of the State and matches our understanding of high quality provision.

It is naïve to assume that Law is essential to guaranteeing every aspect of quality in education systems, and in ensuring all policy aims. Restriction is essential, but restriction occurs through many processes, in which the formal procedures of Law – legislation, enforcement, litigation, and sanction – are important, but not exclusively significant. Alongside Law occurs a wide range of processes of restriction. By 'restriction' I am referring to processes in professions and society which strongly encourage or require compliance with specific practices. This includes professional training and certification, funding criteria, accountability measures, and so on.

There are two issues immediately to bear in mind:

Firstly, law frequently follows and reinforces a change already occurring in society not, as is often assumed, always preceding change. Social expectations of female right to universal vote did not occur as a result of Law. In this instance, changes in society brought about a change in the Law, which then further consolidated female rights in society. This is important for the debate about the state of Law in respect of education. The Lincoln quote at the opening of this publication emphasises a vital aspect of legitimacy of government: Government can and should use legislation to reinforce desirable policy, but bad or unenforceable law undermines both Government and the institution of Law itself. Therefore, the state of educational law is not a trivial or arcane concern. In this publication, we contend that educational law should, with coherence and precision, reinforce desirable policy aims. It should encourage practices and structures which are supported by evidence, and should both reinforce and be supported by social consensus regarding compliance with the specifics of the Law.

Secondly, education policy can be extremely specific, indeed it needs to be if it is to support schools and pupils in an effective manner. Recent examples include development work on the assets of 'mastery' models in mathematics, addressing shortfalls in subject-specific teachers, and so on. The manner in which highly

specific education policy is underpinned by law varies. In some cases, legislation gives an administration general powers under which the precise instruments or provisions can vary – for example be 'fine-tuned' in the light of practice. It is important to recognise that the Law is highly specific in the powers it conveys to ministers, with an elaborate set of layered processes – from local to supreme courts – to ensure precise interpretation of what the Law requires.

Scratch beneath the surface of much educational requirement regarding inspection, accountability, and so on, and you find legal provision. But this brief description of our arrangements in the UK perhaps suggests that all is well with the condition of the relationship between policy and the provision of law. It is not. This is not a new problem; lack of coherence between legislation and policy aspirations has been a known feature of education for as long as educational historians such as Gary McCulloch have been studying it. But the incoherence on specific matters has far-reaching consequences. This publication is designed to support policy-makers in their management of the relations between education policy and legal requirements, not to attack particular elements of educational policy.

Some of this is best understood through example. I give two here.

1. The concept of 'curriculum entitlement'

This term has been used widely and for many years to describe the idea that a principal purpose of the National Curriculum, enshrined in law from 1988, is that all pupils should have access to a common, broad and balanced curriculum. Interestingly, the term is not included in the original legislation, but the spirit of the term certainly is embodied by the provisions of the Education Reform Act 1998 and subsequent amendments and additions. It has proved to be a powerful concept, widely accepted by educationalists, politicians, officials and the public. However, Cambridge Assessment's research in 2008 suggested that the principles and spirit of 'curriculum entitlement' had come under threat by the direction of travel of the 2007-08 review of the National Curriculum. We argued that the highly generic nature of the revised curriculum – in contrast to the helpful specifics of the 1995 and 1999 revisions – was both out of step with other jurisdictions around the world AND infringed the notion of 'curriculum entitlement'. This arose from the lack of clarity in the specifications (greatly reduced from 1999 and vaguely worded) which thus allowed huge variation in interpretation of subject content. Pupils could pass through a school curriculum which met these generic requirements, but omitting key concepts and core knowledge in all National Curriculum subjects. Interestingly, officials at the time said something very contradictory regarding legal requirement: '…we've made the National Curriculum less restrictive by reducing the requirements on schools through a more generic National Curriculum, but we've kept the detail in the Schemes of Work unchanged…'. The National Curriculum Programmes of Study are a legal requirement. The Schemes of Work were not – although our research showed that many teachers thought that they were. This left the Law – and the

concept of 'curriculum entitlement' - in a very muddled state. While politics is characterised by some as 'an art of the possible', dodging and weaving through inconvenient legislation to achieve 'desirable' policy aims, such tactics can reduce the accountability of governments, damage legitimacy, and expose policy to concerted legal challenge from which it cannot adequately defend itself. In this instance, the idea that 'we've made the National Curriculum, less restrictive … (by reducing the legal requirement) but kept in 'entitlement' to core knowledge (by leaving the detailed non-statutory guidance unchanged) …' is not only contradictory and sophistic in the extreme, but threatened the key commitment in legislation to genuine 'curriculum entitlement'. Following the recommendations of the 2010-12 Expert Panel, the Coalition Government of 2010-14, in the new 2015 National Curriculum restored the curriculum to the 'trajectory' of clear, focussed requirement which was present in the 1988, 1995, and 1999 versions. It added significant international benchmarking, and emphasised the fact that curriculum entitlement – detailed specifics of subject disciplines – was a required feature of the legal instruments: the programmes of study.

Analysis: the 2010 Coalition Government confronted the legal and policy confusions present in the late 2000s policy around the National Curriculum. In particular, the 2008 National Curriculum genuinely threatened 'curriculum entitlement' and established the unaccountable and non-statutory guidelines (QCA Schemes of Work) as the 'carriers' of sufficiently detailed curriculum requirement, leaving the generic and ambiguous statutory Programmes of Study as the only formal legal reference point. All formal governance and accountability responsibilities are assigned in law to the Programmes of Study, leaving a serious question of legitimacy regarding the Schemes of Work. The Review and the adopting Government not only confronted these legal confusions and corrected them, but also ensured international benchmarking of the curriculum, using both domestic and international research.

2. Academy status and the National Curriculum

The National Curriculum was removed as a requirement for schools converting to academy status, and for Free Schools. National assessments remain a requirement for these schools, as do other regulations relating to inspection, admissions, special educational needs and exclusions. The requirement for 'entitlement' – a cornerstone of the policy assumptions associated with 'national curriculum' and 'national standards' around the world – thus is carried in Academies only by inspection, assessment and accountability arrangements. They are obliged to teach a 'broad and balanced curriculum' but not to follow the specifics of the National Curriculum. Accountability is highly dependent on assessment – national assessments in primary schools, and national qualifications (principally GCSE) in secondary schools. Whilst national assessment is a statutory obligation in academies, the absence of specific curriculum requirements does dilute the principle of 'curriculum entitlement'. When the National Curriculum Review undertook widespread consultation in

2011, the discrepancy between State Schools and Academies was highlighted by many school leaders, but with academy managers saying '…if you do an excellent job on the curriculum, of course we will reference it, we do after all, have to do national tests…'. This emphasised the importance of assessment and accountability in the minds of managers, with the interpretation of 'broad and balanced' curriculum by inspectors being a further important requirement. Yet during the Review the Government placed considerable emphasis on the importance of the revision of the National Curriculum – both the international benchmarking of content and the clear communication of core knowledge; it was seen as a major plank of education policy.

With only a proportion of schools re-designated as academies, and with 3,980 academies in 2013/14 of 22,000 schools, the country's education provision could still be seen as fundamentally driven by the National Curriculum. The academy programme was driven heavily by a commitment to school improvement through considered enhancement of school autonomy, originating in Lord Adonis's initiative under New Labour. In other words, the academy programme is a fundamental element of school improvement policy. With partial 'academisation', there was no substantial material conflict between the policy aims of school improvement (academy status) and the policy aims of entitlement (National Curriculum), despite the underlying tension between them. However, with the policy announcement of total academy conversion (Spring 2016) – all schools as academies by 2022 – the National Curriculum would no longer be a formal legal obligation of any State-funded schools. This would leave inspection and assessment as the sole instruments carrying the principle of 'entitlement' – a radical legal departure from the original 1988 Education Reform Act and the 2010 Review. The Government's policy appeared to retain a strong commitment to high equity and high attainment – with standards linked to 'international standards' (established in most countries by a national curriculum/national standards) and a school improvement process based on structural reform without the legal obligation to follow detailed national standards.

Analysis: I would suggest that these shifts represent a breach of the idea of 'a policy instrument for each policy aim'. The legal basis of 'entitlement' was shifted considerably, from a statement of standards (the National Curriculum) to inspection and assessment. It is not clear that the concept of 'entitlement' (which remains essential to the Government's policy commitment to equity and attainment) can be adequately supported by these latter alone.

The English Baccalaureate (EBacc) requirement at secondary level does ensure some breadth and balance across subjects at GCSE – but some disciplines such as physics and geography can be preferentially avoided (choice between history and geography for example, and three of four sciences). Crucially for the discussion in this publication, the EBacc is not a statutory requirement, but an accountability measure. It is, however, a non-statutory requirement of considerable potency in the system. From the day of its announcement, it was taken extremely seriously by schools; a function, we believe, of the historically

strong role of accountability and inspection. If it is so potent, does its legal status really matter – after all, if politics is 'the art of the possible', then if something is conditioning the system in an effective way, a coherent legal base to all policy aims and instruments surely is not necessary? The anxiety is that the potency of the EBacc measure potentially is intrinsically fragile – if people lose faith in it or choose not to 'aim' for it, then it no longer will be an instrument for carrying key policy aims. Whilst it is true that The People can lose confidence in a specific law, but law (if correctly designed) can be enforced, unlike non-statutory instruments. The force of non-statutory measures lies in belief and social consensus. If that evaporates, then the instrument is dead, and policy aims are unrealised. Organised reaction against a specific policy measure can threaten social consensus. If that organized reaction is effective with key agents of compliance (teachers and educational leaders), yet threatens wider social consensus or powerful evidence regarding 'public goods', then government lacks the means of prompt enforcement. In other words society may agree with Government and expect Government to act when problems arise, but the means of decisive action may be denied if no adequate legislation is in place. Mike Tomlinson's concerns regarding the difficulty of decisive action in the Birmingham 'Trojan Horse Affair' is a case in point [26].

Policy research and political biography suggests the following:

- Policy aims need adequate policy instruments
- Policy instruments supporting highly rational and well-evidenced policy aims benefit from statutory underpinning
- Policy instruments lacking statutory force can place policy aims at risk
- Ambiguity in the legal status of policy instruments can make good temporary headway but creates deceptively fragile policy

The analysis presented here is not an attack on policy. It emphasises the sophisticated relation between social consensus and law. It presents an argument for the need to 'sweep' behind policy formation and policy enactment, securing clear, coherent reinforcement by legislation. Moving too far ahead with policy which relies on societal or professional belief in the 'quasi-statutory' nature of policy instruments can create significant vulnerability of policy aims – a highly undesirable situation where policy is rational and evidence-based. Legislation which is badly drafted, ambiguous in its status and poorly enforced has always, and will continue, to compromise policy aims. The sheer weight and complexity of legislation – including adverse interactions between different Acts – is an additional impediment to securing policy aims. Rather like a military campaign moving beyond its supply lines, educational policy which moves beyond legislation supporting it can become vulnerable and exposed. 'Good housekeeping' in respect of legislation is an important element of statecraft, and should not be neglected.

“Nice aims, shame the law’s a mess”: The simple past, troubled present and unclear future of central government’s oversight of the education system

Jonathan Simons, Director of Policy and Advocacy, Varkey Foundation

There are two salient points to note about central government’s role when it comes to legislating on education. Firstly, a formal definition came about late – well within some living memory. The British government had been legislating that education was required from the mid-19th Century onwards (the 1870 Education Act established a national system of school boards to build and manage new schools to supplement the existing system of voluntary schools). But it wasn’t until 1944, with the Butler Act, that the state definitively committed to an all through comprehensive state funded education system and set out how that should be managed.

But the second point is that having started late, it then rushed ahead with the zeal of a convert. Tim Brighouse has noted that:

“Before 1980 the state had three powers over the schooling system: approval of the removal of air-raid shelters from school grounds, decisions on how many teachers could be trained each year, and decisions on the size of the building programmes that LEAs should use to build sufficient school places. Following the Education Act 2011, the Secretary of State now has, by my estimate, over 2,000 powers” [28]

Two other quotes also go to show the extent to which central government now enmeshes itself within the school system:

“The law relating to local government and maintained schools has been painstakingly assembled over the last century, and since the expansion after the Education Reform Act 1988 covers perhaps 1,000 to 2000 A4 pages, much of it supporting the Academy school structure through the funding agreement.”

John Fowler, Policy Manager LGIU, 2016 [29]

“There are 198 statutory duties which fall to Local Authorities within the field of schools and children’s services… but although care has been taken to ensure that this list is both comprehensive and accurate, it should not be considered a legal document nor as a replacement for independent legal advice”.

DfE, 2013 (i.e. before even more recent Education Acts) [30]

In other words, the additive nature of legislating – which very rarely explicitly abolishes old legislation, though it often incorporates it into newer bills – means

that the volume of responsibilities mushrooms over time. This is by no means exclusive to education. In 2010, the Chartered Institute of Taxation wrote a paper, much cited by the then Conservative Opposition, which noted that:

"The UK now has the longest primary tax code, and one of the most complicated, in the world. In 2009, Tolley's tax guide, the handbook of tax legislation, ran to 11,520 pages, a 10% increase on the previous year and more than double the number of pages from 1997". [31]

However, the thesis of this essay is not that more legislation is axiomatically a bad thing. Indeed, it will seek to make the following argument: legislation seeks to further advance an underpinning theory of school improvement and associated tenets which, although held cross party over the last 25 years or so, are actually questionable; but that more importantly, a lack of discussion about the principles hampers legitimacy of legislation. Secondly, that the mass conversion of the legal status of state schools to Academies since 2010 places some of the traditional tools into question, which will be exacerbated by the forthcoming (almost) universal completion of this movement. And thirdly, and relatedly, that the way in which government has sought to steer the system over the past few years has actually moved away from primary legislation towards a mixture of other legal and quasi legal instruments, combined with soft power. Whilst this has been effective to date, there are a number of questions which ought to be asked about it for future Education Secretaries to consider, and a need to determine the ongoing role for various actors in the system.

How Westminster grew: the underpinning rationale of education legislation

In the immediate aftermath of World War Two, the growth of 'welfarism' as a governing philosophy, alongside a pressing need to rebuild the economy in peacetime, led to an accompanying growth of the state's reach in social policy. As the century progressed, greater expenditure on education and wider social changes led to further interest from government as to the performance of this major public service. Yet at the same time, there was a growing discontent amongst the public at the performance and legitimacy of services solely being regulated by local government, and a feeling in public opinion that central government ought to have something to say about a major taxpayer-funded public service. The development of a 'New Right' agenda within the Conservative Party, in particular, meant that a lot of intellectual work was focussed on developing a narrative around improvement driven by school 'independence' from Local Education Authorities (LEAs) in areas including curriculum, funding, and teachers.

The 1988 Education Reform Act (ERA) was a watershed piece of legislation, which sought to marry these themes. It simultaneously codified both central government's interest and reach into schools, and set out the extent to which the Thatcher government wanted to see schools themselves take control. This

Act introduced a number of approaches which are still relevant today, including Local Management of Schools and the introduction of a National Curriculum. Whilst such an approach gave heads far greater control over many elements of their school, most notably their budgets, the Act also gave hundreds of new powers to the Secretary of State, mostly taken away from LEAs.

This philosophy leading up to the ERA, and the processes which the ERA kicked off, can be summarised as follows:

- Central government has both a responsibility and the authority to act to improve state schools.
- The overall goal of government action is principally, to raise performance of the bottom x% of schools, regardless of what raw level of performance they are at, and by doing so, both raise overall performance of school system and narrow gaps between schools.
- Performance is defined principally via national exam data which is generated from standardised tests at fixed age and drawn from a national curriculum, with some supporting human intelligence from an independent inspectorate.

This is, in some sense, very simple. The role for government is clear, the areas for focus can be identified, and the remedial actions are straightforward in policy terms. What is notable is that whilst there are many stakeholders who argue against it, at a policy level (which is, bluntly, the only level that really matters for enacting change) there has been a remarkable cross party consensus in the almost 30 years since the passing of the 1988 Act. [32]

Different countries take different approaches to their ultimate priorities for school improvement; for example, placing a greater focus on equity of outcomes. It would be perfectly possible for England to adopt such an approach – for example, through ensuring that the FSM – non FSM gap closure became the single top priority for education Ministers, rather than improving the performance of bottom performing schools. Other conceivable priorities for an education system include one that prioritises achievement amongst the highest achievers; [33] one that seeks to achieve the best value for money; one that prioritises building confidence in the system above everything else; one that requires stability and limits any change; or one that seeks to extricate government from education and move to an entirely market led approach.

This is of more than academic interest. Because although the role for government and the motive for its actions can be seen as simple, it is only that if one starts from a shared understanding. This understanding flows from a shared and explicit understanding of the goal it is seeking to achieve. Such a goal also needs to be expressed more precisely than “educational excellence everywhere” or “schools that work for everyone”, to take the titles of the last two major education consultation documents out of the Department for Education. The absence of anything approaching this shared and explicit understanding of end goals therefore has an impact on the efficacy of legislation, because the

governing principles and theory of change of legislation have not been clearly articulated.

But the second major blockage to effective legislating is the growth of the Academies agenda in the recent past and present, and it is to this we now turn.

The 'Academisation' agenda and the wobbly current nature of legislation

As noted above, Westminster has traditionally had very little locus in legislating about or governing schools – that was a responsibility left to the powerful Local Education Authorities. From the end of the Second World War through to the 1970s, the English had prided themselves on possession of "a national service, locally administered" in the provision of education; the lack of direct national instruction to the LEAs was a matter of honour, and often seen as a mark of English refinement in contrast to the more dirigiste regimes of the continent.

One way of illustrating this is that the famous Circular 10/65 – which under the aegis of Anthony Crosland announced that "it is the Government's declared objective to end selection at eleven plus and to eliminate separatism in secondary education" – actually did no such thing. As John Blake pointed out in his TES article celebrating 50 years since the instruction, the circular simply requested LEAs to act and reorganise their system. [34] Although Crosland deployed considerable soft power and the bully pulpit of the Commons to emphasise his desires, he had no formal powers over LEAs, which is why some held out and indeed continue to have grammars today.

Since then, as noted above, powers have accreted to the Secretary of State and away from the LEAs / LAs. But rhetorically – and in many ways in reality – powers have also been devolved down to schools, such that Westminster has consciously or subconsciously lost its levers of control.

The Academies agenda brings this into sharp relief. The presence of independent state schools outside LA control obviously existed before Academies, through City Technology Colleges and Direct Grant schools. And the accompanying narrative to such moves, that "heads know best how to run schools, not politicians and bureaucrats centrally", had also been present across multiple public services for a long time. In a practical sense, this meant Westminster abandoning much of its moral authority to impose central prescription on schools. To take a very practical example, when I was serving in Government under Tony Blair and Gordon Brown, the DfES (as was) created a "New Relationship with Schools". This was a non-legislative compact with all the major unions for teachers and heads which essentially pledged government not to interfere with school operations or to prescribe them duties beyond those really required, both to minimise workload and as a recognition that schools are best placed to make such decisions. One can note, however, that such a relationship was often honoured more in the breach than in the observance – certainly anyone working in senior leadership in LAs and schools throughout the 1980s

and 1990s would not necessarily recognise a slackening of the levers of control and centralism.

But the rapid growth of Academies, particularly since 2010, brings a whole new challenge to policymakers - essentially through a framing of school independence into law, rather than just custom. Such schools have moved away from being governed by legislation, and towards being governed by contract – specifically, via the Funding Agreement signed between the Academy Trust governing the school and the Secretary of State. As Craig Thorley and Jonathan Clifton write in a stimulating pamphlet for the ippr, [35] *"this may sound like a small technical issue, but it is at the heart of debates about school autonomy, and integral to how the government manages the education system"*.

Primary legislation awkwardly abuts this contractual governance model. When there were relatively few Academies, who all shared the same features (specifically, underperforming urban secondary schools) it was manageable to run both systems concurrently. But since the explosion of numbers in 2010, what had previously been an abstract issue becomes more real. In many instances, legislation (both primary and secondary – including statutory guidance), simply does not apply to Academies; including hard fought and politically contentious changes such as those in the new National Curriculum which Tim Oates writes about elsewhere in this publication. In some instances, legislation specifically does encompass Academies, and it is specified that that legislation trumps the Funding Agreement (or more precisely, mandates an amendment to each school's existing Funding Agreement) – such as the requirement on all primary schools to abide by new school meal nutritional standards.

This contractual position, and how it is used for governance by Westminster, leaves civil servants and politicians in an awkward position. As Thorley and Clifton point out, there are five main downsides (from the perspective of effective system management) to running schools via Funding Agreements:

- **They don't always protect autonomy**. As noted above, the Agreements have not always protected academies from interference, as governments have occasionally renegotiated them to include new duties. In addition, governments place conditions on academies through other means (e.g. inspection) which Funding Agreements do not safeguard against.
- **They have created a large bureaucratic burden on government and schools**. While government can renegotiate Funding Agreements, in practice this is both costly and time-consuming. It therefore places a significant administrative burden on the Department for Education, as well as on schools, which increasingly need to employ lawyers to administer their contractual agreements.
- **They have created an inconsistent and contradictory set of freedoms among different Academies**. The fact that renegotiating existing Funding Agreements is costly and time-consuming means that governments

sometimes choose to impose conditions on new Academies and Free Schools at the point at which they sign new Funding Agreements (rather than trying to impose new conditions on existing academies by renegotiating existing Funding Agreements). The upshot of these changes to conditions is that an inconsistent and sometimes contradictory set of freedoms and controls has emerged among different academies, depending on when they signed their Funding Agreements.

- **They risk hampering action against underperforming Academies**. The desire to safeguard independence above all else in early Funding Agreements has meant that when those underperformed, it was difficult for DfE to take action. [36] Separately, when an Academy joins a Multi-Academy Trust it loses its legal identity; it is the trust, rather than the individual academy, that is party to the funding agreement and there is no flexibility for Academies to move. There is a risk that Academies might find themselves tied to poorly performing chains and unable to leave – just as some maintained schools were tied to poorly performing Local Authorities before the introduction of the Academies programme.
- **They are subject to less parliamentary scrutiny**. The government is able to make changes to the requirements placed on academies (through funding agreements) without full parliamentary approval. This potentially gives government the power to make changes to schools' terms and conditions without sufficient parliamentary scrutiny and oversight.

So, faced with the growth of a sector more difficult to steer through traditional legislative means, and a strong rhetorical commitment to move away from top down policymaking, how does Westminster now manage and steer the English school system?

How government steers an Academised system – and the problems of non-legislative control

In addition to some continuing primary legislation, I would suggest there are five main ways in which the system is now managed:

1. Secondary legislation

The vast majority of legislation passed in the UK is not the laws which are debated through both houses of Parliament and take six months or more to move from initial proposal to Royal Assent. Such legislation, known as primary legislation, is relatively rare (though it may not feel that way and indeed, by international standards, the UK legislates on education quite frequently). The bulk of lawmaking is done through what is known as secondary or subordinate legislation, where government places into law very specific and technical details which grant various bodies the power to take action. These are collectively known as Statutory Instruments (Sis).

A quick search of www.legislation.gov.uk for 2016 shows that there were 42 SIs passed in that year specifically concerned with education – the vast majority very specific and detailed, for example approval of various individuals to become Her Majesty's Inspectors of Education (HMIs).

Some SIs, however, have a large impact. For example, the Education and Adoption Act in 2015 laid out that the Secretary of State would have various powers to intervene in what were called coasting schools. This was a hotly contested proposition and much discussed and argued about. The Act, however, did not define such schools, and the Government sought only legislative power to grant the Secretary of State authority to set such definitions in the future – removing any possibility of the definition being amended through the primary legislative process. The actual definition was made through 'The Coasting Schools (England) Regulations 2016', a Statutory Instrument – with minimal, if any, parliamentary scrutiny.

What this means in practice is that the majority of steering, even when done under the aegis of enabling legislation, impacts schools through what looks like top down announcement from DfE.

2. Academies Financial Handbook

The second means of steering the system is through contractual management, and specifically a requirement in the Funding Agreement for Academies to pay heed to various pieces of government guidance in future. Through a general enabling principle such as this, rather than specifying every instance where Academies ought to comply, the government gives itself maximum flexibility.

The main way in which Academies are steered with regard to operations and finance and governance is through the Academies Financial Handbook. This sets out "the financial management, control and reporting requirements that apply to all academy trusts." Although DfE slightly optimistically declare that it acts through "[describing] a financial framework for trusts that focuses on principles rather than detailed guidance", the 2016 edition contains 112 specific "musts" which Trusts need to ensure they do. [37]

It is also worth noting that the remit of the Academies Financial Handbook has grown considerably over time, reflecting both the growth of the Academies sector and, relatedly, the scope of issues which (on occasion retrospectively) it is clear Government needs to steer. As a concrete example, the 2012 Handbook (the first one under the new system of expanded Academies), had 28 pages. The 2016 Handbook has 59 pages.

3. Other non legislative forms of accountability

The third way of steering an Academised system – and one of the most effective and heavily used – is through the traditional methods of the accountability system, notably Ofsted and school performance tables. Certainly, when I was in government, these were the first two 'clubs out of the bag' which were considered with regards any new policy, and they are equally beloved of lobby groups seeking prominence for their issue (just Google 'put x in Ofsted framework' or 'add y to the school league tables').

Government makes periodic attempts to hack these back, but the nature of the beast means that, Hydra-like, they will always regenerate a new head for every one slain. For instance, in 2011 Michael Gove stripped the Ofsted framework right back, moving away from a framework which had 27 criteria to one which focussed on just four. But since then, priorities have again been added to it – for example, a new requirement to assess schools on compliance with fundamental British values. Similarly, the performance table data published by DfE has grown exponentially in recent years, with data now being published on attainment split down by various pupil sub groups but also workforce data, finance data, and new top level indicators of school performance including the English Baccalaureate and Attainment 8 / Progress 8.

This essay is not the place to debate the effectiveness or otherwise of the methods of accountability, their consequences, and the environment both positive and negative which they generate. All that should be noted is that both – in many ways – are non-statutory and non-binding on schools. The significant exceptions from this, of course, are schools deemed less than Good by Ofsted, schools below statutory floor targets or those deemed to be Coasting, where significant statutory consequences flow onto a school. But for the 8 out of 10 schools in England currently rated Good or Outstanding (or to be precise, the subset of those who are secure in those judgements and at little or no risk of dropping below Good in the short to medium term), the inspectorate's power is solely reputational. Similarly, for schools performing above the intervention thresholds set by government, the placing in the league tables offer no direct consequence from government.

4. Non education law and policy

Another area which should be noted briefly is the growth of other areas of law which affect schools. Schools, of course, are not just education institutions. They are employers, they are community assets, and in the case of Academies they are exempt charities. There are a whole range of other pieces of legislation which therefore affect schools – including the Equalities Act, the Health and Safety at Work Act, various pieces of company and charity law, employment legislation (a growing field, which is also driven significantly by case law, rather than law made in Parliament), and issues such as the Living Wage and the Apprenticeship levy.

On occasion, such laws which affect schools in one of those other roles can cut across their role as educational institutions, or simply act as a burden on schools. Two quick examples illustrate the point. Some requirements in the Academies Financial Handbook, for example, concerning the reporting and handling of Related Party Transactions and the recording of Trustee information at Companies House, are driven by charity and company law rather than education legislation. Similarly, the Apprenticeship Levy is targeted at large institutions (£3 million paybill and above) which are required to pay 0.5% of paybill, which can be recouped through providing Apprenticeships in their organisation. Small schools under this paybill floor are exempt. However, due to a quirk in the way in which small community schools still have their payroll processed and staff employed centrally by a Local Authority, such schools are in fact caught by the levy, contrary to the broader policy intent of the levy. Furthermore, because of the way that staff in practice are employed in each institution rather than centrally, such schools will also have little opportunity to employ Apprentices to offset this cost.

5. The bully pulpit

The last area is unique because it is neither based in statute nor through the use of accountability information with statutory consequences. This is more properly (and less prejudicially) known as the soft power of politicians – who use their authority and platform to demand, plead, assert, beg, cajole, direct or otherwise discuss what they feel schools should do. It is a tempting tool to use because it costs nothing but is on many occasions quite effective, without the downside of needing to legislate or otherwise use harsher tools. It tends to also be used in areas where the government does not really have the levers to make something happen even if they wanted to.

Character education fits in here as a perfect example. Of course, on the face of it, schools should teach their children moral purpose as they grow up. But Government doesn't really know how to increase this, or what good looks like, and is unlikely or unable to therefore use a harder tool to mandate it. So the Secretary of State would typically talk about it extensively and use a three part structure: say it's a good thing and why it should be done, make clear that it's up to the system to do it, but highlight some schools that do it well, and therefore use the power of their office and the ability to set the agenda to nudge schools into complying. [38]

It is also used in areas where government offers talking about an issue as a sop to interest groups in an area they don't want to legislate in. Compulsory sex education would be an example here (at time of writing, there are signs that government may shortly legislate to make this a statutory requirement).

And lastly, soft power is used, implicitly, even where there are nominally 'hard power' sanctions. The Academies Financial Handbook referred to above is policed by the Education Funding Agency (EFA), with transgressions being

subject to a possible Financial Notice to Improve (FNtI), a serious sanction that also tends to trigger more formal intervention and rebrokering of schools. But in truth, the breadth of the Handbook and the scale of Academy Trusts means that the Handbook conditions become effectively soft power – where the government and EFA rule by tacit agreement that Trusts will not breach the conditions.

Soft power can be an incredibly effective tool, when used in the right way. In a complex ecosystem with few formal levers, it can often be the only tool. But as with everything, it can suffer from overuse or inappropriate use.

Conclusion

The growth of Academies, especially since 2010, has built on an existing drive to move away from top down policymaking to create a new relationship between schools and Whitehall. This relationship, however, can best be characterised by how Lord Peter Hennessey described the British Constitution in 1996; "the hidden wiring". The system is not just one of hidden wires but one that has had junction boxes and additional cabling tacked on at different intervals, with no one person having a clear view of those whole structure. It is, in truth, a system beset with ambiguities, contradiction, and confusion. The ambiguities come through a lack of a clear understanding of how contractual management with 5,000 standalone independent charities ought to be enforced by a central department. The contradictions come through the ongoing proliferation of top down announcements – whether through ongoing traditional legislation, other forms of the accountability system, or the use of Ministerial power to enforce through words alone what schools ought to do. And the confusion comes from anyone, whether Governor, Headteacher, policy wonk or citizen, trying to pick their way through just how schools are held accountable and how education policymaking works in 2017.

Even when understood, the current process has a myriad of downsides. Chief amongst them are:

- **Lack of scrutiny**: for all the (mostly correct) claims about the weakness of parliamentary scrutiny and oversight, it at least has the opportunity to debate and to amend primary legislation. There are no scrutiny or amending powers available, by contrast, with regards to the next edition of the Academies Financial Handbook. Nor are there for the vast majority of Statutory Instruments, even when they hold significant consequences for many schools, such as the definition of Coasting schools. Similarly, the feedback loops of scrutiny are ill defined. The full answer to "to whom do I complain when I have an issue with my child's school?" is about six paragraphs long, and moves quite swiftly to "and then go to the Secretary of State". This is, to put it mildly, not a particularly useful process for most people.

- **Lack of democratic legitimacy**: relatedly, it is difficult to argue that there is sufficient democratic oversight for much of current education governance from central government. I have long argued that such a thesis can be overblown; there was never a golden age for such oversight even when under local government control, and in general the move away from unaccountable LEAs has been a positive thing. But the pendulum has swung considerably, and it is at least arguable that there is little more legitimacy attached to a large part of what government does in education than that attached to the democratic mandate of the Secretary of State herself.
- **Perverse incentives and unforeseen consequences**: this paper has outlined a number of areas in which the growth of steering leads schools into taking action which is either not foreseen or is otherwise harmful. This is not an education specific issue, and occurs commonly in complex public ecosystems. But it happens more either when the purpose of education steering is not clear, or action is deemed to be imposed without sufficient discussion, or where the hidden existing mechanisms in a system mean that good policy intent translates into messy policy implementation.

But the most pressing issue which this hidden wiring has led to is a lack of consent. Consent, or consensus, is often held up as the ultimate goal in education policymaking. If only government would listen to teachers (and do what they say), or if only politicians would all get round the table and agree what the best thing to do is (as if such a thing could be defined), then all would be well. As can perhaps be surmised from the previous sentence, I think that the aim of consent, much as the aim of democratic oversight, can be overblown. It is legitimate for government to take action on education in order to fulfil its mandate – and for it to suffer the consequences if it goes wrong. Where government is taking on hard issues – be they failing schools, or poorly performing teachers, or funding reallocations – they will always face resistance. That does not mean that the issues themselves are the wrong ones, nor that the solutions meeting resistance should be abandoned.

But in general, I do subscribe to the thesis that in a complex ecosystem, where DfE has relatively few hard levers, they need consent from the system – or at a minimum, sullen acquiescence that DfE has a goal and a right to require action from schools to pursue it. The critical reason why consent is needed is that without it much education reform is doomed to fail. The diminishing marginal returns of the traditional tools of statecraft – legislation, inspection and performance data – means that DfE must use these sparingly, and instead work through other mechanisms with the co-operation of the system.

The EBacc (English Baccalaureate) provides an excellent case study both for the strengths and weaknesses of this current steering system. Following an announcement in the November 2010 White Paper The Importance of Teaching, in the 2010 performance tables, a metric was added which ranked

schools by how many pupils gained GCSEs in each of the five categories: English, maths, a humanity, science, and a modern foreign language. This was a soft accountability measure – no consequences were attached to it.

Yet the prominence given to it by politicians (the bully pulpit), combined with the power of traditional accountability measures, did lead to a shift in subject take up amongst GCSE pupils. Analysis for the Sutton Trust by Education Datalab shows a move towards subjects contained in the EBacc for most pupils – 4% increase in double science and 10% in triple science; 9% increase in languages, 8% increase in history and 7% in geography. A subset of secondary schools who really embraced the EBacc, dubbed 'curriculum change' schools, made even more dramatic changes. As the paper notes:

"The speed of curriculum realignment in these schools is amazing. In these 300 schools, the proportion taking at least two sciences rose from 43% to 71%; the number taking a language GCSE rose from 26% to 57%; and the number taking an EBacc humanity subject rose from 35% to 70%. By comparing them to 300 schools with similar demographic characteristics, we are able to see a pattern of leap-frogging from comparatively low entry levels in traditional academic subjects to much higher entry levels." [39]

So far, so positive. But the conclusion of the DfE was that there remained too many schools who were not giving their pupils the opportunity to access this core knowledge. In 2010 15.1% of pupils that year achieved the measure. In 2013, this figure had risen to 22.8%. Provisional figures for 2015 state that this has since risen to 23.9%. As such, the Conservative government announced that the EBacc would become compulsory for the vast majority of pupils (90%) to take. Additionally, the proportion of pupils entering the EBacc would become a headline measure of mainstream secondary school performance, and the EBacc entry and attainment would be given a more prominent role in the Ofsted inspection framework (although the consultation shied away from a black and white statement that schools not offering the EBacc would not be able to achieve particular ratings in Ofsted inspections, as had been mooted).

There is a wholly legitimate argument that the EBacc represents the type of core knowledge which all pupils should study, and that it should effectively become the core curriculum for all schools. Indeed, the premise of having such a national curriculum backed by statute is of course long standing. Nevertheless, there was and is significant sector opposition to this move. At time of writing, there has still not been a government response to the consultation on this shift, announced in November 2015. And there are a growing number of heads and professional associations that have made their opposition to this target explicit, and pledged not to comply with it.

The point of the example is this:

- Firstly, schools do respond to incentives, even soft ones – witness the shift in 2010-2015. But such soft incentives do of course not compel, and

there can on occasion be a widening of the gap where schools which are already the highest performing are more likely to take up these (what the government perceive as) positive reforms, whereas those who could (be thought to) benefit the most are least likely to do it voluntarily.

- However, making such a requirement statutory has limited enforcement mechanisms – in truth, nothing more is available than the old style one-two of Ofsted and league tables.
- But finally, and most intriguingly from the perspective of this essay, even these normally go-to mechanisms have low weight. For many schools, if they simply refuse to make curriculum changes to comply, then the only real consequence is likely to be a poor percentage figure in the performance tables, and an adverse comment from Ofsted. If this doesn't itself lead to consequences – in particular, if it doesn't lead to teachers and parents avoiding the school – then there will be little reason to stop other schools joining this protest, and the tables will cease to have meaning. If one school has a 25% entry rate, and every other school has 90%, then that may raise eyebrows. But if it has no consequences, and as a result other schools change their offer, such that in future years entry rates span a whole range from 25% up to 90%, then that data will become meaningless, and DfE will have lost its power to nudge. Worse still, from DfE's perspective, is that this breaking of consent could easily spill into other areas where schools are sceptical about DfE prioritising – such as fundamental British values.

Robert Peel is thought to be the author of the dictum that policing in the UK operates by consent; specifically, that *"To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws"*. [40] Bluntly, if even a very small number of previously law abiding people in the UK decide to become law breakers simultaneously, there is nothing the state can do to stop them. Much less discussed, however, is that increasingly we have schooling by consent. If Heads and schools decide to test this consent, DfE may find themselves in a difficult position.

At this point, one could shrug one's shoulders (or indeed exclaim gleefully), and say 'so be it'. This is the logical conclusion of the school-led system. Government moves full circle and gets out of the top down process of lawmaking and policy formulation, and schools decide what to do.

I do not accept that. There remain a host of challenges in English education. All but the libertarian right and anarchist left would concede that government has both the authority and the necessity to play some role in helping shape a response to these challenges.

The challenge for policymakers in 2017, therefore, is to recognise the weakness of both historical hands off approach, and the more recent management, via either top down Blair style reforms or Govian contractual management and an

ungainly middle tier. The challenge for the next phase of reform is to design a suitable toolkit for a decentralised and complex education ecosystem and to work out when and where law can be used, and make it efficacious to do so.

Steering at a distance

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The educational policy regime of the past 50 years has relied increasingly on detailed legislation to control and enforce change. It was not ever thus. Over the preceding half a century there were other policy instruments that effectively regulated the expansion of the state education system at a time when it developed into a mass system of primary and secondary education for the population as a whole. By and large, this was a set of mechanisms that allowed the central department of education to steer at a distance, well removed from schools, teachers and classrooms. It was an approach based on 'guidance' supported by custom and practice, and reinforced by law as a general structure. So well established was this approach that it was regarded as a distinctive English tradition, cultivating a set of relationships that became a form of partnership agreeable to teachers, local education authorities (LEAs) and the department itself. Was this a 'simple past'? What policy instruments were available to Ministers and the department? And what were the advantages, and the disadvantages, of such a system?

In broad terms, state-funded schooling in this country might be said to have gone through three phases of development in terms of how much control was exerted by state mechanisms. In the first, from the Elementary Education Act of 1870 until the end of the First World War, the education department sought to maintain close control over elementary schools provided for the mass of the population, while private schools including the elite 'public' schools of Victorian England jealously preserved a tradition of independence and freedom. In the first half of the 20th century, and especially from the 1920s, the central department loosened the reins of control over the maintained sector while the private sector continued to guard its own liberties. Since the 1970s, the central state has steadily extended its powers in the maintained sector of schooling as well as in higher education, with the tradition of freedom still uppermost in the private sector while a number of initiatives have sought to bring the public and private sectors together.[14]

Looking more closely at the period from the 1920s to the 1970s, this was overall a time of change and expansion. At the beginning of this period, maintained schools were divided between a system of elementary schools for the mass of the population and secondary schools for a selected minority. At the end, mainly through the Education Act of 1944 and later adjustments, there was a single system of maintained schools with primary education leading on to secondary education for all up to the age of 16. Throughout this phase, the central education department (the Board of Education up to 1944, then the Ministry of Education until 1964, when it was superseded by the Department of Education

and Science) endeavoured to avoid becoming directly involved in the schools. This was supposed to be a matter for the schools themselves, supported by the relevant LEA.

In 1927, for example, the former permanent secretary of the Board of Education, L.A. Selby-Bigge, could begin a discussion of the Board's role with a long list of what it did not do. He pointed out that the Board did not itself directly provide, manage, or administer any schools or other educational institutions except the Royal College of Art. It also had no authority over universities, university colleges, or university education. It had very little authority over endowed schools that did not receive grants. It had no authority over schools run for private profit and did not make grants to them. Nor did it have authority over schools or branches of education that were in the province of other government departments, for example reformatory and industrial schools, Poor Law schools, and Army and Navy schools. The Board did not engage, pay, promote or dismiss teachers in grant-aided schools and institutions. It did not supply, prescribe or proscribe any textbooks for use in grant-aided schools. Moreover, the Board did not prescribe in its regulations, except in general terms, the curriculum or the methods of teaching in grant-aided schools. It also avoided interfering in particular school subjects. The Board also had no general power to interpret the Education Acts or to determine questions of law. It was not able to dissolve LEAs; it did not provide school buildings; and it was the Ministry of Health rather than the Board of Education that sanctioned the raising of loans by LEAs. What the Board did take credit for was the 'superintendence' of a service 'which in respect of its significance for the welfare of the community is national, and in respect of its administration and a large part of its maintenance is local'. [25]

The Ministry of Education after 1944 was intended to be rather more assertive than the Board had been, but even then it was very reticent about involving itself in details of the school curriculum. Maurice Holmes at the Ministry of Education noted in 1945 that 'This Department is under constant pressure to secure that this or that subject is included in the curriculum of schools.' He preferred what he called the 'traditional and, I think, wholesale practice' in which 'We have always resisted such proposals on the ground that in this country the details of the curriculum are not controlled or directed by the Ministry but are left to the determination of the LEAs and the teachers.' [11] The new Minister, Ellen Wilkinson, was no less suspicious of such departures: 'I couldn't agree more', she minuted in return. [27] As the Ministry of Education continued to declare in 1963:

"…in England and Wales it has long been public policy to uphold the responsibility of the schools for their own work. This is the cardinal principle of national policy in relation to the schools' curriculum and examinations…. To the maximum possible extent, each school should therefore be free to adopt a curriculum and teaching method based on its own needs and evolved by its own staff"

Indeed, it was widely regarded as a matter of national pride that, unlike in France for instance, nobody knew what was being taught in English schools at nine o'clock on a Monday morning.

Yet this past was not simple, nor even particularly innocent. There were many policy instruments available to the central department which were used to guide and support the work of schools and teachers. These included legislation, although this was normally used to lay out a general framework rather than to prescribe every detail. For example, the most important piece of educational legislation passed in this period, the 1944 Education Act, contained only 122 sections and confined itself to providing an overall scheme. As is well known, the Act did not prescribe three types of secondary school, even though this was the preference of the Ministry of Education itself. It was left to a report, [22, 5] the White Paper preceding the Act, Educational Reconstruction, [6] and successive pamphlets issued after the Act was passed [16] to promote a 'tripartite' design of grammar, technical and modern schools. In addition, under Section 11 of the Act, every LEA in England and Wales was required to provide a detailed estimate of local needs in primary, secondary and further education, and to submit a development plan to the Ministry of Education to show how these needs would be met. It was at the local level that questions about types of schools, and practical issues of accommodation, staffing and organisation, were then confronted. [13] This provision built in an element of flexibility and a capacity to adapt to later demands without the need for further legislation. Thus it was that in the 1960s, when LEAs were requested to move towards comprehensive reorganisation under a new national policy, it was not necessary to introduce a new Education Act.

The preferred route towards reinforcing policy or introducing a new one was to issue 'Circulars' to LEAs, following a process of consultation with them. This indeed was the approach taken to comprehensive reorganisation in the 1960s, with Circular 10/65 being issued following extensive consultation with LEAs and a wide range of interest groups. There was a debate within the Labour government of the time about whether there should be an enforcing Act or else compulsory provision included within the Circular, but ultimately it was agreed merely to 'request' LEAs to move in this direction. [15] This decision put the emphasis on persuading or 'educating' the recalcitrant LEAs and indeed the country as a whole as to the merits of comprehensive education. [15]

The issue of Circulars was a well recognised method of pursuing policy matters as early as the 1920s. In December 1922, Circular 1294, on the curricula of secondary schools in England, permitted secondary schools to exercise greater freedom in planning their curriculum than had been the case previously. The then President of the Board of Education, Lord Eustace Percy, noted that time requirements on certain subjects had already been abandoned, and indeed that 'The whole tendency of the Board in recent years has been to give greater freedom in the curriculum of secondary schools.' [24] In 1926, the Elementary School Code was also relaxed in terms of the amount of control exercised over

LEAs through detailed Regulations for the conduct of their schools, with the Board reducing its own administrative expenses in the process. [23] The Code no longer required approval of a school timetable, except that under Section 27 (i) (b) of the Education Act of 1921 the times during which any religious observance was practised or religious instruction provided at any meeting of the school was to be included in a timetable to be approved by the Board. Exceptional provision for religious education continued to be prescribed, unlike for any other subject, under Section 25 of the 1944 Education Act.

Another policy instrument of the central department was the Consultative Committee of the Board of Education, provided under the 1902 Education Act, which was revised to become the Central Advisory Council (CAC) for Education (one for England and another for Wales) under Section 4 of the Education Act of 1944. In the interwar years it was the Consultative Committee of the Board that was responsible for authoritative reports on specific areas of education that became widely known, such as the Hadow Reports on the education of the adolescent [2] and primary education, [3] and the Spens Report on secondary education. [4] After 1944, the CAC for England produced further key reports for example 15 to 18, [18] Half our Future, [21] and Children and their Primary Schools.[8] The CAC remained on the statute book after 1967 but fell into disuse, the new preference being for small ad hoc committees that would generate speedy reports on particular topics such as the James Report on teacher education and training. [9]

A further means of supporting and influencing the work of schools and teachers was the Handbook of Suggestions. This was revised and reissued regularly by the Board, not with the aim of providing instructions for teachers in their daily work but to give 'suggestions', on the basis that, as the first issue of the handbook recommended, 'each teacher shall think for himself [sic], and work out for himself such methods of teaching as may use his powers to the best advantage and be best suited to the particular needs of the school'. It added for good measure: 'Uniformity in details of practice (except in the mere routine of school management) is not desirable even if it were attainable. But freedom implies a corresponding responsibility in its use.' [1]

It might be assumed that such a relaxed attitude towards detailed provision on the part of the central department might lead to wide variations in practice. Yet on the whole this does not seem to have been the case. According to the handbook of suggestions provided for primary school teachers in 1959 there was a tacit consensus that prevailed on the basic elements of the curriculum:

Because tradition is so strong, and because the process of education in this country has always been a slow evolution, not subject to sudden change, and because teachers as a body are in close touch with each other and with others concerned in the education of children, the curriculum is fundamentally the same in all primary schools, though no directive is given to Heads in his matter, except concerning religious instruction. [19]

It continued: Names that might appear in the timetable, the arrangement of the day and the emphasis given to different aspects of the work, and especially the ways of teaching, differ from school to school, but in every primary school the children's education includes, besides religious instruction, education in the mother tongue – in speaking, listening to, reading and writing it – and in enjoying stories and poetry.

Arithmetic, history, geography, nature study, drawing, painting, music, physical exercise, games and dance were also universal, and it concluded, 'Generally speaking, parents and public have come to expect that this is the field the education of their children will cover, and there would be some surprise and consternation if any part were omitted.' [7]

A number of other instruments of policy also served to ensure a measure of consensus, including regular school inspections and an examinations regime. The inspectorate was an important dimension of the provision of advice and support for schools, with formal inspections provided every few years. At the same time, examination syllabuses leading initially to the School Certificate and Higher School Certificate, and from 1952 the Ordinary level and Advanced level examinations, reinforced a similarity in grammar school timetables that the Ministry did not need to go out of its way to enforce. The eleven-plus examination, the main basis for selective entry into grammar schools after the Second World War, was a further source of curricular discipline.

Over this period, then, policy mechanisms were generally based on a shared agreement on the part of teachers, LEAs and the central department as to the level of support, persuasion and enforcement that were required. Strict control from the centre was seen as inappropriate and also unnecessary. Steering from a distance appeared to be an effective technique of maintaining surveillance and encouraging improved practice. Such a complex system of checks and balances could create confusion, as was the case when Sir David Eccles became Minister of Education in the mid-1950s. Eccles had no prior experience of maintained schools, and was soon asking his civil servants how to effect change. He inquired, for example, whether the 1947 pamphlet The New Secondary Education, issued by Clement Attlee's Labour government, was still in circulation, and asked whether as Minister he could insist on a greater emphasis on English. [10] He was informed that the pamphlet was still in circulation having had nearly 75,000 copies sold by the end of 1952, and that he could not 'insist' on changes in English. However, his advisers observed, 'he can give guidance about the curriculum leaving aside the ordinary process of inspecting, and reporting on, individual schools'. Moreover, they noted, 'Such guidance is given through the medium of handbooks of suggestions – the very title is significant.- and pamphlets on particular subjects, written by Her Majesty's Inspectors – again the title is significant.' [17]

It was Eccles himself who began the move towards exerting stronger control from the centre, in a speech to the House of Commons in 1960 in which he

famously criticised the ‘secret garden of the curriculum’, but it was still a long way from there to the National Curriculum of 1988 and the microcontrol exercised in the early years of the next century. [12] Eccles was the heir of a regime that was certainly of its time, owing much to a fundamental mid-century consensus on the purposes of schools, the inherent conservatism of teachers, the inbuilt uniformity of the curriculum and examinations, and a heightened sensitivity to the dangers of a centralised control that might slide into totalitarianism. It was by no means a simple past, nor should it be seen as a golden age. And yet, for all its inconveniences, frustrations and potential misunderstandings, it did at least have some advantages over a system that was to pursue an illusion of detailed prescription from the centre. Policy makers perhaps have much to learn from the approaches used carefully to balance controls and freedoms during the period of ‘steering at a distance’ – both at the level of detail and at the level of strategy.

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30 | As cited in Policy Exchange, “Primary Focus The next stage of improvement for primary schools in England” London, 2014

31 | As cited, and verified, by Full Fact. “George’s Osborne’s tax book example” https://fullfact.org/news/george-osbornes-tax-book-example/

32 | I always used to ask, rhetorically, opponents of this consensus why it was that at last count the last eight Labour Secretaries of State or Shadow Secretaries of State had all endorsed Academies since their creation. What was it about the predominantly left wing alternative paradigms for education reform (which were all anti Academy in some sense) which was manifestly so unattractive to the major left wing political party in this country?

33 | It could be argued that the move towards an expansion of selective education in England is an effort to switch, at the margins, the focus of policy towards this goal

34 | Blake, J. “The comprehensive system at 50 – confused ideals leave a complex legacy” Times Educational Supplement, London, 10 July 2015 https://www.tes.com/news/tes-archive/tes-publication/its-50-years-birth-comprehensive-education-will-it-live-another-50

35 | Thorley, C., and Clifton, J. “A Legal Bind: The Future Legal Framework For England’s Schools”. ippr, London, January 2016.

36 | “Lord Nash admits academies have been ‘untouchable’ due to funding agreement issues” Schools Week, December 11 2015 http://schoolsweek.co.uk/untouchable-academies-to-be-brought-into-line/

37 | https://www.gov.uk/government/publications/academies-financial-handbook

38 | See as a masterclass of the genre, DfE “Nicky Morgan opens character symposium at Floreat School”, 21 January 2016. This includes the key phrases “I firmly believe character education prepares our young people for life in modern Britain, regardless of their background or where they grew up. A truly one-nation government cannot accept that only some people deserve the opportunities that will help them to get on in life. Every single child deserves that chance” (Case for change), “there is no one clear definition of character.

There is no one easy list of boxes to tick. We don't want to set down rigid guidelines on this because character isn't a one-size-fits-all concept" (Clarity that this won't be a compulsory measure), and "We want schools to choose how best to deliver character education in ways that suit their pupils, their teachers and their communities… We know that some of the best schools are already prioritising good character education… I want every single pupil to benefit from that kind of character education, that's why we are building the evidence base so we can develop the best approaches and make sure all schools have access to this information… Today is a celebration of the excellent work already being done. To those schools whose efforts are to be applauded - thank you." (Nudge to schools to take this on through public approval of those doing it already)

39 | Allen, R., and Thompson, D. "How are the EBacc and Attainment 8 reforms changing results?" Research brief for the Sutton Trust, London, 13 July 2016.

40 | Taken from Home Office FOI release, setting out the 'General Instructions' given to every new police officer from 1829 https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent