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Cajole and Control: The Law of Managing Education in a Globalised World
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Improvement of publicly-funded education has long been part of governments' more pressing mandates. With globalisation and recent economic issues, the pressure has intensified. This article canvasses the different legislative tactics employed in England to improve education delivery while reducing its cost. Two methods have been used in particular, control and cajole: successive governments have adopted a strategy of controlling the cost of education and cajoling teachers' to improve student achievement. A similar sequence of events arising in both England and Canada are canvassed in order to highlight the distinct new course taken by the former in 2010. This paper presents examples of legislative management of education at a time that governments around the world are facing significant demands to reduce public expenditure while simultaneously increasing student achievement (as a way of preparing for the future).

I. Introduction

In many jurisdictions, education has been an area of persistent attention because it is viewed as the means for equipping a country for the future. There has been constant pressure placed on public systems of education to equip future generations for a diverse range of challenges. And yet, the means by which this goal may be achieved are numerous. The only constant is public demand for progressive, cost-efficient and effective education. For a global audience, the management of education¹ in England is instructive. A point of departure arose in 2010 as the English Government embarked on a remarkable shift in the management of public education.

Since the Second World War, English education has become increasingly regulated by the national government. Two concerns have dominated over the same period: rising costs and perceived deficiencies in teachers' labours. In the 1970s efforts to limit expenditure and to ameliorate the substantive aspects of teaching emerged as dominant topics. Events in the latter part of the 1970s set the parameters for discussion to which Margaret Thatcher² responded in the 1980s. Her monumental reforms laid the groundwork for the next thirty years of centralised education governance. After her departure from office, centralisation of control over education was intensified, most especially under the Labour Government of Tony Blair. During his administration, there were subtle hints of incremental disengagement from a day-to-day form of control. This theme quickly came to the fore with the election of the Coalition Government in 2010. It took the bold step of actively promoting academies (much more than previous governments) as well as free schools, both of which epitomise a decentralised system of education governance. The shift suggests that central control had failed. Downloading responsibility for schooling to the local community offered another means of constraining expenditure and cajoling teachers' renewed efforts.

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¹ The term management as opposed to regulation is employed here because successive governments have used the law as a means of micro-managing education whereas to regulate education would suggest a degree of autonomy which school personnel (as the primary workers in this industry) do not enjoy.

² Prime Ministers' names and their political parties are used as identifiers only and not as a means of political commentary.

Comparison with Canada offers instructive symmetry. In both jurisdictions, education has been an area of significant unrest and Conservative governments have presided over ambitious legislative changes. The contrast emerges in more recent times as the respective governments engaged in the reform process and where the English government has taken a bold new direction.

This paper critically situates the legislative reforms of education employed in England³ since the 1980s to effect the goal of a cost effective, high achieving education system. A chronological order of reforms is employed so as to emphasise the 2010 reforms implemented by the Coalition Government which mark a point of departure from preceding ideas. Tracing English history of the influence of the dual focus on teachers' work and restricting expenditure, it is contended that the 2010 reforms initiated a new discussion filled with challenging decisions. The decentralised focus brings a procedural change which, like any new system, presents some difficulties such as reliance on specialisation in subject matters which raises questions regarding comprehensive student preparation for a globalised world. While the aims may be laudable, implementation of the reforms leaves much in question, thereby ensuring the continuation of control and cajole as the underpinning of education management.

II. Globalisation and Education

An Organisation for Economic Co-operation and Development (OECD) occasional paper situates the present challenges for governments with regards to the management of education. The authors identified globalisation as a force prompting change in the labour market. While the comments were couched in unemployment rates among the OECD countries, the authors characterised the time as one of 'innovation, experimentation and evaluation in order to find out what works and why.'⁴ Mere employment being itself insufficient, competitiveness has emerged as an aspiration for national governments with emphasis placed on education. The economic crisis of the early 21st century has increased expectations of publicly funded education: 'The case for education's role in the recovery will require a demonstration that education is capable of transforming itself to improve outcomes and value for money.'⁵ Within this framework of performance legitimacy,⁶ governments strive to demonstrate effective management of public services.

Education has become a bedrock for future national achievement⁷ in a globalised world. Globalisation has changed the 'power relations between the national and transnational

³ The focus will be on England as increasingly education has become a matter of more territorial concern in the United Kingdom.

⁴ OECD Directorate for Education, Employment, Labour and Social Affairs, 'Key Employment Policy Challenges Faced by OECD Countries', (1998) *Labour Market and Social Policy Occasional Papers No.31*, [34].

⁵ Organisation for Economic Co-operation and Development, *Education at a Glance 2009* (Paris: OECD, 2009), 6.

⁶ Where performance legitimacy is 'the ability of any political entity to deliver policy goals [and] [a]ttention is devoted both to the choice of policy priorities and their realisation': T. Novitz & P. Syrpis, 'Assessing legitimate structures for the making of transnational labour law: the durability of corporation' (2006) 35 *Industrial Law Journal* 367-394, 369

⁷ One may recall then Prime Minister Tony Blair's famous statement that his focus was 'education, education, education'.

levels'.⁸ To that point, OECD assessments in education are being relied upon in order to rank national performance of students, and therefore the success of education systems in preparing for future challenges. Many countries (including the UK and Canada) are participating in the OECD's Program for International Student Assessment. PISA measures achievement in education amongst volunteering countries. More specifically, it assesses the extent to which fifteen year old students 'near the end of compulsory education have acquired key knowledge and skills that are essential for full participation in modern societies'.⁹ As with any report of its kind, there are criticisms of PISA.¹⁰ Still, it appears to be used as an important indicator in England. In response to *PISA 2012*, Secretary of State for Education Michael Gove stated in Parliament – 'The programme of reform that we have set out draws on what happens in the best school systems – identified today by the OECD...'.¹¹

With globalisation and comparisons such as PISA, nation states have been placed in a competitive scenario. Globalisation has made skilled human resources a necessity in each country for the purpose of attracting foreign investment and international production: it 'rewards countries that have the human resources to exploit it, but also penalises those that do not'.¹² The increased importance of PISA is remarkable, especially for England, because it represents a form of standardized assessment for an area which is being decentralised. The OECD report entitled *PISA 2012 Results* (which focused on mathematics with minor areas of assessment being reading, science and problem-solving)¹³ identified a growing trend dating back to the 1980s which saw many governments grant 'individual schools increasing authority to make autonomous decisions on curricula and resource allocation on the premise that individual schools are good judges of their students' learning needs and of the most effective use of resources'.¹⁴ The UK was identified as one jurisdiction where school autonomy was found to be amongst the highest.¹⁵ The national apparatus is being abandoned in favour of a local response to education needs. The rapid evolution of education management in England, with growing involvement of parents, has seemingly made localisation of education inevitable. The added consideration is the financial implications of such a move where financial advantages for national expenditure may be realised. PISA shows that comparisons are being made on a country-wide level (instead of local); thereby raising the query of how a fragmented education system may fair against more structured competitors.

IV. The evolution of the post-World War II centralised system to 1979

The Education Act 1944¹⁶ has been called the most important piece of legislation during the Second World War.¹⁷ The lowest level of centralised control over teachers' work was in the

⁸ A.W. Little & A. Green, 'Successful globalization, education and sustainable development' (2009) 29 *International Journal of Educational Development* 166-174, 167.

⁹ PISA, 'About PISA' <http://www.oecd.org/pisa/aboutpisa> (last accessed 27 February 2014).

¹⁰ See for example, *The Economist* 'How accurate are school league-tables?' (online version of 5th December 2013; last accessed: 27th February 2014) and 'Finn-ished' (print edition of 7th December 2013).

¹¹ HC Deb 2 December 2013 Col.784.

¹² F. Stewart, 'Globalisation and Education' (1996) 16 *International Journal of Educational Development* 327-333 [Stewart], 331.

¹³ OECD, *PISA 2012 Results: What Makes Schools Successful? Resources, Policies and Practices* (Volume IV) (Paris: OECD Publishing, 2013) [*PISA 2012*]

¹⁴ *PISA 2012*, 129.

¹⁵ *Ibid.*

¹⁶ Repealed by the Education Act 1996.

¹⁷ C. Chitty, *Education Policy in Britain* (Hampshire: Palgrave Macmillan, 2004) [Chitty], 18.

years immediately following World War II.¹⁸ The systemic significance of the Act was the establishment of a linear progression for students from primary through secondary school which lasts today. The Education system as of 1944 was one of central oversight.¹⁹ While concerns were expressed regarding the breadth of the Secretary of State's authority, the Act was passed without amendment to that power. This control was aimed at local authorities that did not live up to standard.²⁰

The period immediately after World War II witnessed greater local control over education as compared to the years from 1980 onwards. Notably, the government did not exercise its authority to intercede during the earlier era.²¹ Teachers were left to do their work without significant prescription. One explanation as to why government refrained from injecting itself into the administration of education was that the factors influencing school curricula were better engaged at the local level.²²

Determining teachers' pay had been left to the Burnham Committee, since 1919, which provided a recommendation as to remuneration. Prior to 1944, these proposals were 'generally accepted',²³ but Local Authorities were not mandated to follow them. Section 89 of the Education Act 1944 required all Local Authorities to pay the Burnham salary once the Secretary of State had approved of the Committee's recommendations. This arrangement continued until its elimination in the late 1980s. Burnham's end had much to do with expenditure;²⁴ concern for which dated back to the 1960s when wage limits were imposed. For teachers, the limits were effected by the Remuneration of Teachers Act 1965²⁵ which introduced a framework change by providing flexibility regarding the outcome of pay recommendations.²⁶ As the years progressed, this intervention would not be the last. In the latter half of the 20th century, a new perspective was developing. As one example, Lord Plowden's 1967 report called for greater parental participation including better interaction between parents and school personnel and the opportunity for parents to choose schools.²⁷ He also recommended parents contribute financially to school activities. From the mid-1960s until the mid-1980s concerns grew as different means of restraining expenditure (with wages a focus) were attempted. Slowly, a 'twenty year crisis between 1965 and 1985' arose with attacks on remuneration premised on a fear of losing control of wages.²⁸

¹⁸ It has been contended that teachers did not take full advantage of this opportunity: D. Lawton, *The Politics of School Curriculum* (London: Routledge & Keegan Paul, 1980), 22.

¹⁹ Education Act 1944, section 1.

²⁰ H.C. Dent, *The Education Act, 1944: Provisions, Regulations, Circulars, Later Act* 12th edn. (London: University of London Press Ltd., 1968) [Dent], 5.

²¹ N. Harris, *Education, Law and Diversity* (Oxford: Hart Publishing, 2007) [Harris], 91.

²² Chitty, 115.

²³ Dent, 26.

²⁴ Incomes policies has been the generic term used. It was defined by Lord Wedderburn as 'attempts by law, sometimes soft-law or even government persuasion (often a mixture of the three) to intervene directly on wage bargaining "in the public interest":' Lord Wedderburn, 'Freedom and Frontiers of Labour Law' in *Labour Law and Freedom: Further Essays in Labour Law* (London: Lawrence & Wishart, 1995), 350-437, 359.

²⁵ Repealed by the Teachers' Pay and Conditions Act 1987.

²⁶ Section 4(2) granted Parliament the power to disregard an arbitrator's ruling based on 'national economic circumstances.' Section 2(5)(b) allowed the Secretary of State to amend Committee conclusions if 'it appears to the Secretary of State that effect could more conveniently be given to those recommendations by amending the scales and other provisions set out in the document.'

²⁷ Lord Plowden, *Children and Their Primary Schools* (London: HMSO, 1967).

²⁸ M. Ironside & R. Seifert, *Industrial Relations in Schools* (London: Routledge, 1995) [Ironside & Seifert], 25.

In the mid-1970s, the Labour Government, trying to include trade unions in the process of wage constraints, vested the Trade Unions Congress (TUC) with the power of enforcing wage restraint. The ‘Social Contract’ eventually failed to maintain the TUC’s support. At its 1977 Congress, the TUC voted to return to free collective bargaining. The following two years brought the ‘winter of discontent’ strikes during which time unions of workers waged massive actions seeking higher pay.

The substantive issue of what was being taught in schools emerged most prominently between 1973 and 1975 when public attention focused on William Tyndale Junior School in North London. The teaching methods of its staff were alleged to have diminished the importance of reading, writing and arithmetic.²⁹ A report concluded in 1976 that there were some teachers on staff who had grossly mismanaged the curriculum.³⁰ The scandal gave rise to considerable scrutiny of teaching methods. Long term, this incident provided a useful example as to why future governments prescribed, with increasing detail, teachers’ work. The emerging view was that government intervention was required. Into this breach stepped the Margaret Thatcher-led Conservative Party – earning an election victory in 1979. By that time, there was fear the failure of schools had seeped into industry and would disrupt the economy as well.

(i) The great debate

The framework for the monumental reforms of the 1980s has been traced to Labour Prime Minister James Callaghan (particularly his ‘Great Debate’ speech at Ruskin College, Oxford, in 1976) who made the following pronouncement:³¹

I take it that no one claims exclusive rights in this field. Public interest is strong and legitimate and will be satisfied. We spend £6 billion a year on education. So there will be discussion . . . parents, teachers, learned and professional bodies, representatives of higher education and both sides of industry, together with the Government, all have an important part to play in formulating and expressing the purpose of education and the standards that we need.³²

The Callaghan Government’s Green Paper *Education in Schools: A Consultative Document*³³ carried on from this 1976 pronouncement: ‘Teachers lacked adequate professional skills.’ These assessments were part of a call to teachers for change, to strive for excellence. They also constituted a warning: those who failed to adapt to changing times were unwelcome hindrances to this progressive movement. Anticipating the following pages, Callaghan’s elaboration on the need for standards and accountability in his 1976 speech planted a seed which the Conservative Party (lead by Margaret Thatcher) cultivated and let grow. Labour

²⁹ Chitty, 37.

³⁰ R. Auld. *William Tyndale Junior and Infants Schools Public Inquiry: A Report of the Inner London Education Authority by Robin Auld, QC* (London: ILEA, 1976).

³¹ Chitty, 57; R. Phillips, ‘Education, the state and the politics of reform: the historical context, 1976-2001’ in R. Phillips & J. Furlong eds. *Education, Reform and the State: Twenty-Give Years of Politics, Policy and Practice* (Routledge: Abingdon 2001), 12-27 [Phillips]; G. McCulloch, ‘The reinvention of teacher professionalism’ in R. Phillips & J. Furlong eds. *Education, Reform and the State: Twenty-Give Years of Politics, Policy and Practice* (Routledge: Abingdon 2001), 103 -117.

³² J. Callaghan, ‘Towards a national debate’ (16 October 1976) reprinted in *The Guardian* 15 October 2001 [Callaghan].

³³ Department of Education and Science, *Education in Schools: A Consultative Document* (London: HMSO, 1977) [*Education in Schools*], 2, 33.

(under Tony Blair) continued this effort.³⁴ Looking back, Callaghan's comments were precedent-setting.

III. Thatcher's dominant role in education

Unsurprisingly, the Thatcher (and to a lesser extent her immediate Conservative party successor as Prime Minister John Major) government in English politics remains a landmark period in English education reform.³⁵ The aims of the reforms were the quality and cost of education provided by teachers. Thatcher's term in office defined education for the next thirty years and it was the key reforms of this period which are highlighted below for their formative importance in education management. In their entirety, Thatcher's changes revealed both a distrust of teachers as well as an affinity for creating pressure points in order to cajole substantive improvements in teacher outputs. Furthermore, teachers' roles were greatly downplayed insofar as significant reforms to education were implemented without their input.

(i) Reform through teachers' work

In the 1980s, the Thatcher government took a more focused role in the management of education. Control and cajole were demonstrated by a mixture of consolidation of control in central government. They were also coupled with a decentralised notion of choice which replicated efforts at cajoling improved student results. Situating of central management over education in the government's hands was the most direct means of addressing public sector expenditure concerns.³⁶ It also gave the government the opportunity to engage further with teachers' work. For example, the national curriculum standardised what was taught in schools across the jurisdiction.³⁷ Teachers were shut out of this plan and other involvement in Government decision-making in the 1980s.³⁸ The Thatcher government's resolve was firm: it intended to follow a path of reform regardless of opposition from personnel in the area. In relation to cajoling better efforts, the Education Act 1980 re-energised the idea of parental choice.³⁹ As well, the publication of schools' performance data which were linked with accountability⁴⁰ sent an unequivocal message – teachers required motivation to achieve better results and this would be done by establishing a competitive market for schooling.

Unsurprisingly due to the scale of the reforms, tensions intensified through the early 1980s and industrial action drew attention to teachers' contractual obligations.⁴¹ When discord was

³⁴ Blair referred to Callaghan's urging a national curriculum in 1976 in his Foreword to Department for Education and Skills, *Higher Standards, Better Schools for All: More Choice for Parents and Pupils* Cm.6677 (London: TSO, 2005), 1.

³⁵ It is oft-cited as an instance of neoliberalism: See for example, D. Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005).

³⁶ Phillips, 17.

³⁷ It may be asserted that implementing national curricula brought England in line with other countries. The point here, however, is the context in which it arose – in a time of consolidation of powers over education and without teacher input.

³⁸ As Davies and Freedland noted, unions were during this time: P. Davies & M. Freedland, *Labour Legislation and Public Policy* (Oxford: OUP, 1993) [Davies & Freedland (1993)], chapter 9.

³⁹ In the late 1970s, the Taylor Committee called for greater involvement by parents in the school system because of their status as important stakeholders: T. Taylor (Chair), *A New Partnership for Our Schools* (London: HMSO, 1977), 3.8.

⁴⁰ 'If schools are responsive to parents, they will become accountable to the surrounding area': Dr. Rhodes Boyson, HC Deb 29 January 1981 vol. 997, 1161.

⁴¹ S. Fredman & G. Morris, 'The Teachers' Lesson: Collective Bargaining and the Courts' (1987) 16 *Industrial Law Journal* 215-226, 217.

voiced through litigation, the courts' response reinforced the government's own efforts. Three examples follow.⁴² The court in *Metropolitan Borough of Solihull v. NUT*⁴³ brought an end to a lunch time supervision dispute (that lunchtime supervision was not voluntary work) by relying on a view of teachers as professional employees. In *Royle v. Trafford B.C.*,⁴⁴ the Council sought to reduce costs by lowering the numbers of teachers and correspondingly raising the number of students in each class. Following the National Association of Schoolmasters Union of Women Teachers' (NASUWT) call for industrial action, Royle refused to teach the five extra pupils assigned to him, but continued on with his other duties (teaching the remainder of the class as well as taking on extracurricular activities). Trafford refused to pay him any salary for the six months of industrial action. The Court agreed with the Council's contention that Royle broke his contract; though there is little reasoning on the point.⁴⁵ *Sim v. Rotherham B.C.*⁴⁶ ruled on the question of whether or not teachers were expected to supervise the classes of absent colleagues. Scott J. classed teachers' contracts as those of professionals: agreements which could not possibly set out the entirety of the duties between the parties because the work itself defied explicit enumeration. In their totality, these decisions modified teachers' contracted obligations in a manner which produced cost savings. Moreover, these rulings interpreted unclassified work, which teachers had thought was undertaken as a matter of goodwill, as a contractual obligation. It should be noted that if these decisions had been in favour of the teachers' unions, the story could have been quite different.

The next phase altered how teachers' work was negotiated. In 1987 the government circumvented collective bargaining; a move which further centralised control of education in the hands of the national government and one in keeping with Thatcher's economics-dominated strategy.⁴⁷ The Teachers' Pay and Conditions Act 1987⁴⁸ eliminated teachers' collective bargaining and the Burnham Committee.⁴⁹ The authority vested in the Secretary of State for Education was extensive.⁵⁰ The work of teachers was more explicitly defined and the courts were at the ready to assist with any contractual ambiguities. And yet, this was not the end of the changes.

Not since 1944 had there been such massive, one-time reform of schools in the country as there was with the passage of the Education Reform Act 1988. The creation of a national curriculum remains one of the most notable components of the Act and a further step in the process of centralised management of education. The programme 'centred around new financial systems and structures which [were] founded in limiting resources and stimulating managerial controls'.⁵¹ Most telling was that the Act allowed the Secretary of State to make

⁴² For a discussion of professional work, see D. Mangan, 'The Curiosity of Professional Status' (2014) *Journal of Professional Negligence* (forthcoming).

⁴³ [1985] I.R.L.R. 211 [*Solihull*].

⁴⁴ [1984] I.R.L.R. 184 [*Royle*].

⁴⁵ Since the Council accepted the teaching of 31 students, they could reduce Royle's pay by 5/36 of his salary for that period.

⁴⁶ [1986] I.R.L.R. 391 [*Sim*].

⁴⁷ Davies & Freedland (1993), 9.1.

⁴⁸ Repealed 6 March 1992 by the Education (Schools) Act 1992.

⁴⁹ To replace the former process, the Act created the Interim Advisory Committee on School Teachers' Pay and Conditions (IAC) (Teachers' Pay and Conditions Act 1987, s.2) which lasted until 1991 when the School Teachers Pay and Conditions Act 1991 established its still existing successor the School Teachers Review Body (STRB) (Education Act 2002, c.32, s119(1)(b)).

⁵⁰ Section 3(7) of the Teachers' Pay and Conditions Act 1987 typifies this power: the Secretary may have rendered an order 'he [thought] fit with respect to the remuneration and other conditions of employment.'

⁵¹ Ironside & Seifert, 2

many of the decisions one would expect education personnel to make.⁵² Legislation identified core and foundation courses of study.⁵³ To ensure that the statute was followed, the National Curriculum Council (NCC) and the School Examinations and Assessment Council (SEAC) were established.⁵⁴ These were in addition to s 49 of the Education Act (No.2) 1986⁵⁵ which mandated the appraisal of teachers. Chapter IV of the 1988 Act created a process by which parents of children in primary and secondary schools (with an enrolment in excess of 300)⁵⁶ could opt out of Local Education Authority oversight and form ‘grant maintained’ schools. As of 1990, forty-four schools had been granted this status.⁵⁷ Competition within education for the purposes of raising standards⁵⁸ -- with the expectation that the education system would be much more responsive to parents⁵⁹ -- had been entrenched.

Moving briefly to the Major era, the Education (Schools) Act 1992 marked a subtle, initial move away from hands-on regulation by government. Though his time in office did not engage with education on the same scale as his immediate predecessor,⁶⁰ Major’s ideas anticipated those held by the Coalition Government, namely that education is a matter best addressed locally⁶¹ as well as repeating the need for parental choice.⁶² Notably for the present work, the Act established the first version of the Office for Standards in Education (Ofsted) which has become the regulatory body for quality assurance in schools (a role discussed further below in relation to the reforms of 2010). Within the context of the present discussion, though, Ofsted came in between government and the day-to-day operations of education. The Chief Inspector’s functions included information gathering and dissemination.⁶³ The added layer of regulation distanced government from the day-to-day management of the portfolio. Government was shifting its role from direct supervisor to overseer while maintaining its focus on expenditure and teachers’ work. This method of education management would be seen briefly in the then imminent Labour era but is quite prominent in Coalition plans.

The questions which then Prime Minister Callaghan posed in the late 1970s regarding the quality of teachers’ work became larger concerns under Thatcher. The legislative answer was to outline the work of teachers in remarkable detail – from the hours of work to what is taught. The common law assisted in the endeavour and perhaps this was where the most potent aspect arose. The courts read teachers’ employment contracts as those of professionals and yet there was a different meaning to this term. In the 1980s decisions, professionals’ employment contracts were incapable of exhaustively outlining all the duties of this cadre. And so, non-delineated duties were found to be mandatory; thereby granting significant leeway in favour of the government’s reforms and the consequent increase in expectations of teachers. The combined effect of government reforms which betrayed distrust of teachers

⁵² For example student achievement targets and the content of studies: s4(1),(2).

⁵³ Education Reform Act 1988, s3(1),(2).

⁵⁴ Education Reform Act 1988, Schedule II.

⁵⁵ Repealed by the Education Act 2002.

⁵⁶ Education Reform Act 1988, s52(6).

⁵⁷ N. Rao, *Educational Change and Local Government: The Impact of the Educational Reform Act* (York: Joseph Rowntree Foundation, 1990) [Rao], 15.

⁵⁸ Rao, 15.

⁵⁹ This would appear to be the aim as identified in Education Reform Act: Local Management in Schools, Circular 7/88.

⁶⁰ Clearly demonstrated by consistently situating plans within the continuum of Thatcher reforms in *Choice and Diversity: A New Framework for Schools* (London: HMSO, 1992) (Cm 2021) [*Choice and Diversity*].

⁶¹ *Ibid*, 3-4.

⁶² ‘Parents know best the needs of their children – certainly better than educational theorists or administrators, better even than our mostly excellent teachers’: *Ibid*, 2.

⁶³ Section 2(1) of the Education (Schools) Act 1992.

coupled with courts' rendering of decisions which (to teachers) turned matters of goodwill into professional work obligations demoralised. Castigating teachers was hardly the groundwork for positive change. It may be said that education needed a radical change and this certainly occurred. However, it seems to have disenfranchised education personnel; leaving the teacher workforce wary of future initiatives

V. Regulation, regulation, regulation

Labour (through its leader Tony Blair) embodied a sentiment of hope when it was elected to office in 1997. The public had identified a need for change and voiced that opinion through suffrage. The new government, it may be said, had the potential to lift the malaise which hung over teachers since the 1980s. In contrast to the hope it presented, one critic has characterised Labour's 'Third Way' as neoliberalism 'by stealth'.⁶⁴

The present section will outline elements of continuity between the Thatcher and Blair periods but will also highlight a noteworthy difference between these governments. Unlike the predecessor Conservative Governments, Labour focussed almost exclusively on improved student results and using teachers as the vehicle for this goal. Moreover, its strategy was to manage teachers' work in remarkable detail. Arguably this did nothing to reinvigorate teacher ranks and to abate continued criticism of teachers. The law and policy brought about during this period was premised on precipitating positive social change by better equipping citizens for the challenge of globalisation. Under this ethos, Blair ended up trying to bring government and teachers together with some level of success.

(i) The challenge of change

A new form of the Labour Party entered office in 1997: 'the state was to act more as a catalyst and an enabler, ensuring the necessary conditions around an agreed minimum framework of legal rules and regulations within which private enterprise could grow and flourish.'⁶⁵ With public sector unions, Blair's attitude appeared to be similar to that of Thatcher: 'he believed [that they] were stubbornly resisting his plans to privatisate central and local government activities because they wanted to defend public-sector inefficiencies and their restrictive labour practices.'⁶⁶ In education, it was clear that the *status quo* of public sector education would not suffice for the Government.⁶⁷

The stakes seemed to be too important to leave to teachers. Prime Minister Blair made education the benchmark for judging his leadership. He viewed education as a panacea for England's challenges: 'Teaching is a profession – one of the most important professions for the future success and well-being of our country'.⁶⁸ Aims went beyond the regulation of education workplaces to include 'labour market regulation in the interests of full employment and inclusion of the population within the active workforce'.⁶⁹

⁶⁴ S. Fredman, 'The Ideology of New Labour Law' in *The Future of Labour Law: Liber Amoricum Sir Bob Hepple Q.C.*, C. Barnard, S. Deakin & G.S. Morris eds. (Oxford: Hart, 2004) 9-39 [Fredman], 10.

⁶⁵ R. Taylor, 'Mr Blair's Business Model – capital and labour in flexible markets' in *The Blair Effect 2001-5* A. Seldon & D. Kavanagh (eds.) (Cambridge: Cambridge University Press, 2005) 184-206 [Taylor], 185.

⁶⁶ Taylor, 193.

⁶⁷ *Excellence in Schools* (CM 3681) (London: TSO, 1998) [*Excellence in Schools*], 45.

⁶⁸ *Excellence in Schools*, 51.

⁶⁹ P. Davies & M. Freedland, *Towards a Flexible Labour Market* (Oxford: OUP, 2007) [Davies & Freedland (2007)], 229.

One of Labour's earlier policy papers, *Teachers: Meeting the Challenge of Change*,⁷⁰ set an agenda with which the government expected teachers' cooperation. Recalling Callaghan's imperative, *Challenge of Change* was unequivocal as to the role of teachers in the education reform agenda: 'All this demands a new professionalism among teachers. The time has long gone when isolated, unaccountable professionals made curriculum and pedagogical decisions alone, without reference to the outside world.'⁷¹ Reinforcing the point in 1999, a follow-up document to *Challenge of Change* contained this assertion: 'we can only realise the full potential of our schools if we recruit and motivate teachers and other staff with the ambition, incentives, training and support.'⁷² The imperative voice detectable throughout told teachers they were part of a profession which *will* follow the directions given to it by government because to do otherwise would be out-of-step with modern education.

Cajole dominated over financial restraint in Labour's mandate. In introducing performance pay (in 2000),⁷³ the Government assumed that teachers would raise their efforts for higher pay. Competition was key but distinct from the Thatcher era; this form of competition was amongst colleagues. Willing to end the long period of pay restraint initiated in 1993,⁷⁴ the government believed that incentive-based pay would deal with the issues of enhancing performance,⁷⁵ recruitment and retention.⁷⁶ Performance pay, however, was ineffective⁷⁷ as a means of enhancing results for three reasons: teachers were not motivated by greater pay; as with other measures attempting the same aim, there were difficulties linking student achievement with objective criteria; and performance pay pushed funding beyond anticipated levels.

Since the report of the Public Services Productivity Panel in 2000,⁷⁸ it had been known that a performance-based system of pay for public sector employees posed its own challenges. The uniqueness of public sector employment raised difficulties in measuring performance, especially where objectives were diffuse.⁷⁹ The idea of serving a public need often reduced financial drive amongst workers.⁸⁰ The performance pay system in education was initiated primarily as a quality-assurance mechanism. The threshold for achieving this monetary reward was a combination of teacher knowledge, performance as well as pupil success. Performance pay was not warmly received.⁸¹ Fervent lobbying efforts by headteachers' and teachers' associations resulted in a number of key changes such as easing the path of

⁷⁰ Department for Education and Employment, *Teachers: Meeting the Challenge of Change* (London: TSO, 1998) (Cm 4164) [*Challenge of Change*].

⁷¹ *Challenge of Change*, 14.

⁷² Department for Education and Employment, *Teachers: Meeting the Challenge of Change, Technical Consultation Document on Pay and Performance Management* (London: HMSO, 1999), 5.

⁷³ Performance pay also provided some evidence of symmetry between the Conservative and 'New' Labour eras.

⁷⁴ Incomes Data Services, *An Examination of Teachers' Pay: A Report for the National Union of Teachers* (London: Thomson, 2008) [IDS Examination], 4.

⁷⁵ IDS Examination.

⁷⁶ E.C. Wragg, G.S. Haynes, C.M. Wragg & R.P. Chamberlin, *Performance Pay for Teachers: The views and experiences of heads and teachers* (London: Routledge Falmer 2004) [Wragg *et al.*], 180.

⁷⁷ Of interest on this point, the following contribution to the literature contains an apt title: D. Marsden, 'The Paradox of Performance Related Pay Systems: 'Why Do We Keep Adopting Them in the Face of Evidence that they Fail to Motivate?'' Centre for Economic Performance Discussion Paper No. 946, August 2009.

⁷⁸ J. Makinson (Chair), *Incentives for Change: Rewarding Change in National Government Networks* (Public Services Productivity Panel, 2000) [Makinson].

⁷⁹ D. Marsden & R. Belfield, 'Performance Pay for Teachers: Linking Individual and Organisational-Level Targets' Centre for Economic Performance Discussion Paper No.703, August 2005 [Marsden & Belfield], 3.

⁸⁰ Makinson, 6.

⁸¹ Marsden & Belfield, 2.

individuals attempting to move up the pay spine as well as tempering the connection between student achievement and performance pay.⁸² The upper pay scale (UPS) which was supposed to incentivise ended up being pay progression.⁸³ As a result, teachers' scepticism decreased gradually.⁸⁴

The original plan contained significant flaws (for example not establishing challenging criteria for the reward) resulting in failure to achieve the desired goal of rewarding performance. Furthermore, performance pay strained school budgets.⁸⁵ By 2007, over half of full time teachers were at the UPS level and 35% of secondary school teachers were at the highest UPS level (3).⁸⁶ As well, it took less time to reach top rate as the salary scale was reduced to six points from nine. As a motivational tool, performance pay failed with teachers. A 2004 study of the impact of performance pay concluded that there was no way to measure improvement in student performance.⁸⁷ The perception was that teachers received a pay raise without necessarily meeting stated goals. Still, there was an unexpected positive outcome: the new system helped to reconcile teachers' objectives in the classroom with those of the school as a whole (and by extension government aims).⁸⁸ These results simultaneously challenged and verified elements of Makinson's assumptions regarding performance pay,⁸⁹ thereby reinforcing the difficulties of education as a portfolio for reform. Cajoling improved student achievement was going to require a new strategy.

(ii) Cajoling through discourse

Despite similarities, Blair's leadership on education should not be casually associated with that of Thatcher. As noted, both Blair and Thatcher followed Callaghan's lead. In his second mandate, Blair altered his tactic and attempted directed dialogue.

*Schools Achieving Success*⁹⁰ maintained the focus on the role of teachers: 'The quality of teaching and learning in the classroom is key to raising standards. We want to ensure high national standards throughout the system, capable of being interpreted flexibly to meet the needs of all pupils.'⁹¹ Though the policies were to be enacted by teachers, an uneasy interconnection was found in the desire for measurement of success and these professional efforts. As has often occurred with education reforms, the benchmark was the floor. How many students moved from below standard to reach the desired level measured the success of the policy. Teachers were granted the flexibility of 'tailoring teaching to individual children's needs.'⁹² The importance of teachers' work in achieving political objectives may explain the less aggressive tone in *Schools Achieving Success* as compared to previous policy documents. The Government demonstrated sympathy for the challenges faced by educators, such as teachers' workload. Understanding morphed into a profound statement: 'We are clear that

⁸² D. Marsden, 'Performance Pay for Teachers in England and Wales' in Organisation for Economic Co-Operation and Development, *Performance-related Pay Policies for Government Employees* (Paris: OECD Publishing, 2005) 182-189, 188.

⁸³ 95% of the 80% who first applied for the reward were successful: Marsden & Belfield, 3.

⁸⁴ Wragg *et al.*, 179. Also noted by Marsden & Belfield, 8.

⁸⁵ Wragg *et al.*, 182.

⁸⁶ IDS Examination, 5.

⁸⁷ *Ibid*, 177.

⁸⁸ Wragg *et al.*, 180.

⁸⁹ Makinson, 2.

⁹⁰ Department for Education and Skills, *Schools Achieving Success* (London: TSO, 2001) [*Schools Achieving Success*].

⁹¹ *Ibid*, 17.

⁹² *Ibid*, 56.

teaching must be, and feel, a manageable job as well as a valued and important profession.⁹³ This new attitude constituted a change in tactic, but with the same aim of cajoling teachers to ameliorate their performance.

In this context arose the 2003 framework agreement amongst the Government, the employers' association (the National Employers' Organisation for School Teachers (NEOST)) and teachers' unions (except for the strident National Union of Teachers)⁹⁴ which outlined the mutual aspirations of the parties and set a floor of expectations.⁹⁵ The agreement's dual focus was to improve students' achievement by the reduction of teachers' workloads.⁹⁶ The parties based their discussion on the report by Price Waterhouse Coopers which outlined significant workload burdens on teachers and the negative impact this had on actual teaching.⁹⁷ Reformulating teacher contracts was one of the primary means of meeting this undertaking. The language employed signified an attempt to bring accord to burgeoning discord. The contractual changes for teachers singled out administrative and clerical tasks as the ones to be removed from teachers' work.⁹⁸ As of 2003, teachers were not to be 'required to undertake formal aspects of the line-management of support staff'.⁹⁹ The *National Agreement* also returned to the issues of coverage for absent teachers and preparation time which were litigated in the 1980s. Coverage was to be reduced starting at 38 hours per year; 'but it should be unusual for most teachers to provide such a high amount of cover'.¹⁰⁰ Preparation time of any teacher who provided cover for an absent colleague was protected. Planning, preparation and assessment time (PPA) would minimally be 10% of a teacher's normal timetabled teaching time (1265 hours per year).¹⁰¹ A distinct pedagogical philosophy took shape here and its motto was: 'There will be no progress if PPA time simply shifts other work into evenings and weekends.'¹⁰² Managing staff within their new entitlements became an essential part of this system of administration.

Despite the invitation to discourse, the Government did not completely depart from past actions.¹⁰³ Towards the end of Blair's time in office, the Government's trust in teachers remained minimal. In 2006, it produced The Education (School Teacher Performance Management) (England) Regulations 2006¹⁰⁴ which required school governing bodies to 'establish a written policy ('the performance management policy') setting out how the performance of teachers at the school [was] to be managed and reviewed'.¹⁰⁵ The results

⁹³ *Ibid*, 55.

⁹⁴ One of the most significant points of opposition for the N.U.T. was the fact that 'major issues [were] yet to be resolved': National Union of Teachers, 'Advice Concerning the 'Agreement'' *Headway for the Leadership Group* (February 2003) [NUT Advice], 2. Nevertheless, the Agreement did impact N.U.T. members since it resulted in changes to the *School Teachers' Pay and Conditions Document* and related legislation.

⁹⁵ *Raising Standards and Tackling Workload: A National Agreement* 15 January 2003 [National Agreement].

⁹⁶ This was to be achieved by a seven point plan outlined on page 2 of the document.

⁹⁷ *National Agreement*, 1.

⁹⁸ *Ibid*, 5. These tasks appeared to be the ones referred to in the 1997 White Paper, *Excellence in Schools*, where the government expressed a concern that teachers spend the maximum time with students and not involved in 'unnecessary bureaucracy.' *Excellence in Schools*, 50.

⁹⁹ *National Agreement*, 12.

¹⁰⁰ *Ibid*, 7.

¹⁰¹ *Ibid*, 8.

¹⁰² *Ibid*, 9.

¹⁰³ For example, the 2001 White Paper *Schools Achieving Success* contained another appeal to parents as 'key partners' and participants in education who must be 'more involved in some of the key moments of their children's education.'

¹⁰⁴ 2006 No.2661 [Performance Management Regulations].

¹⁰⁵ *Ibid*, s7.

would then be used to determine pay progression.¹⁰⁶ The mandatory elements of the policy included an outline of the intended achievements and how success would be measured. Each teacher's performance was then to be reviewed at the end of the outlined cycle and measured against the performance criteria. The framework in essence added another layer of oversight to an already dense area. It is a worthwhile consideration that even within the United Kingdom the method utilised in England was not adopted elsewhere.

Blair's strategy for education in England contrasted with the much more collegial form employed in Wales. Following the devolution of powers,¹⁰⁷ efficiency was to be found in 'collegial working'.¹⁰⁸ The difference in strategy was also accompanied by a difference in vision: while Blair had a clear plan, there was no blueprint in Wales for achieving efficiencies.¹⁰⁹ In Wales a much more local approach was employed whereas in England, centralisation of decision-making for education meant that local control had deteriorated significantly. As managers of teachers, the Welsh government was much less critical and viewed teachers as people 'to be trusted, to be listened to and to be respected rather than criticised and "shamed" as in some English educational policy discourse.'¹¹⁰ A troubling fact for the Welsh was that they ranked last of the four United Kingdom jurisdictions according to the 2007 PISA report.¹¹¹ A direct correlation between management of teachers and low scoring is not possible based on this survey. The difference could be attributed to the *ad hoc* manner of determining improvements. It could also be attributed to the lack of a comparable funding infusion for Welsh education as in England.¹¹² Still, there is a contrast between the choice of management styles in each jurisdiction with each believing a differing manner would be best suited to the locale.

Another contrast is the framework agreement reached in Scotland. There, a local and national collective bargaining framework was entrenched.¹¹³ Since 1980 there had been the Scottish Joint Negotiating Committee for School Education, established under section 91 of the Education (Scotland) Act 1980.¹¹⁴ This Committee was abolished by section 5 of the Standards in Scotland's Schools etc. Act 2000¹¹⁵ and replaced in 2001 by the Scottish Negotiating Committee for Teachers (a tripartite body composed of teachers' organisations, local authorities and the Scottish Government) established under article 5 of the framework agreement entitled *A Teaching Profession for the 21st Century*. These developments arose from the report of the Independent Committee of Inquiry into Professional Conditions of Service of Teachers.¹¹⁶ Similar to the method employed in Wales, the Scottish Government has been keen on an inclusive relationship with its teachers than the more prescriptive one found in England.

¹⁰⁶ *Ibid*, s32.

¹⁰⁷ The Government of Wales Act 1998, c.38.

¹⁰⁸ D. Reynolds, 'New Labour, education and Wales: the devolution decade' (2008) 34 *Oxford Review of Education* 753-765 [Reynolds], 755

¹⁰⁹ *Ibid*, 756.

¹¹⁰ *Ibid*, 757.

¹¹¹ Organisation for Economic Cooperation and Development, *Programme for International Student Assessment (PISA)* (Paris, OECD, 2007).

¹¹² Reynolds, 762.

¹¹³ *A Teaching Profession for the 21st Century*. Agreement amongst employer, teachers and the Scottish Executive (January 2001) [Framework Agreement], Art.5.

¹¹⁴ C.44.

¹¹⁵ 2000 asp 6.

¹¹⁶ This report is commonly referred to as the McCrone Report after its chair Professor Gavin McCrone.

In each of the Thatcher, Major and Blair eras, English reforms acknowledged the underlying premise that management of the teacher workforce and policy were inextricably linked in publicly-funded education. And yet, teachers' work defied the mechanistic means employed because they were the ones who translated the policies for individual students. Education reform depended on teachers because there were so many variables with teaching students and this point seemed to have been overlooked all along. This is not a statement suggesting teachers' victimisation. Rather it conveys an observation: teachers are pivotal in education success and yet no level of prescription can guarantee 'good teaching' or greater teacher achievement with students.

VI. Canada and England: Historical symmetry, contemporary divergence

The purpose of this section is to demonstrate how the English model described to this point has been followed (unwittingly or otherwise) in Canada. There are two premises for this comparison. First, there is an intriguing symmetry in the evolution of education management in both jurisdictions, suggesting a commonality transcending geography. Second, the recent bold steps taken in England have departed from the shared sequence of events, but may foreshadow future events as the country continues along a period of restraint with increased quality demands.

The comparison between these two jurisdictions is apt because of the historical symmetry between the locales. The Canadian province of Ontario has been selected for two reasons. First, Canadian law separates powers between federal and provincial governments. As a result of the Constitution Act 1867, education has been made a matter of provincial jurisdiction. And so, there is no national level of regulation and oversight in Canada. Second, Ontario has been selected because of its close parallels with events in England since the late 1970s. As outlined below, events (until 2010) have unfolded in a similar manner, despite a separation of about fifteen years between the two trends. In late 1970s England and early 1990s Ontario, a government of a more socialist ethos ((what now might be called 'Old') Labour in England and the New Democratic Party in Ontario) sought to control public sector salaries by way of a 'social contract' which resulted (after a few years in England and almost immediately in Ontario) in massive unrest amongst the public sector unions. It is contended that these unions' boisterous reactions against social contracts established a notorious legacy for public sector unions which extends to the present day. Since that time, governments have been either outwardly hostile or very cautious towards this group. Immediately after the fervent opposition to the social contract, a Conservative government was elected (1979 in England and 1995 in Ontario). These governments quickly started upon centralising control of education, thereby reconstituting management of the system. Teachers (and their unions) were castigated by the presiding governments for delaying improvements and teachers retorted in kind. In each jurisdiction, Conservative governments made choices in how to deal with the challenges. Responding to the loss of faith in English schools during the mid-to-late 1970s, the Thatcher Government took aim at teachers' unions (for example by removing collective bargaining rights in 1987). The Conservatives in Ontario (1995 to the early 2000s) presided over a similarly labour-hostile period (though there was no removal of collective bargaining rights). A key difference between England and Ontario was the absence of a similar crisis. Ontario's government took over direct control of the portfolio in order to reduce education spending. Putting aside any distinctions as to motivation, both governments seized the political opportunity and reforms were given effect via the legal framework. Both Conservative parties centralised power in government's hands, thereby diminishing (some may say neutering) local control. Strong policies aimed at the (perceived) poor work of

teachers also characterised this tense period. Teacher accountability was said to be increased while incomes (in the public sector overall) were subject to policies curbing rises.

After years of conflict, a new, less confrontational government was elected (an ostensibly more liberal government – though not like those which brought in the ‘social contract’ – being (most recently called ‘New’) Labour in England in 1997 and Liberal in Ontario in 2003. A more cooperative era emerged, but also one in which teachers’ unions appeared unsure of their paths.¹¹⁷ Although these new governments brought hope of cessation to labour strife coupled with a promise of persistent efforts to raise standards in schools, neither dramatically dismantled its predecessors’ reforms. Instead, management of education remained centralised; the most obvious change being procedural as some more earnest efforts at dialogue were made.

2008 stood out as a year of important change in Ontario. This was the year in which the Provincial Government cemented the use of framework agreements (in Ontario it would be referred to as provincial collective bargaining) as it brought school boards and teachers’ unions together to agree to a framework. 2008 was the year in which collective agreements from the Liberal Government’s first term in office expired. The 2004 effort was heavily criticised by school board organisations for imposing terms on them (the allegation being that the first framework agreement was reached between the government and the teachers’ unions). Although provincial bargaining of sorts was employed in 2004, that effort is distinct from the 2008 form. Intent on forming consensus from all parties, the government’s 2008 attempt brought all provincial organisations together to create a common framework. This agreement outlined the overarching terms and conditions between teachers and school boards. Unlike the same effort in England in 2003, this agreement contained great detail and was to form the template for all local level collective agreements reached throughout the province.¹¹⁸ The 2008 agreement solidified the central position of government as both purser and facilitator but, most importantly, the government was the lead in achieving the result.

A comparison of each jurisdiction’s education management also features dissimilarities. Perhaps the most obvious difference is the tolerance of trade unionism, where Ontario offers a relatively friendly locale as compared to England. Recent court decisions illustrate the distinction. The 2007 decision of the Supreme Court of Canada recognised a right to collective bargaining for unionised employees.¹¹⁹ Prior to that, secondary picketing had been constitu-

¹¹⁷ What is meant by teachers’ unions in both jurisdictions becoming unsure at the same time is that with the ‘preferred’ government in power, the unions were loathe to take action leading to a new government and yet the present administration was not always doing what the unions wished.

¹¹⁸ These details included putting to rest the issue of when teachers must arrive in their classrooms. It has now been determined that it will be fifteen minutes prior to the start of the morning exercises (for example, 8:45 am). As an aside, this issue remains quite bewildering and for it to be resolved in this mediated manner speaks to how lamentable relations have become amongst school boards, teachers’ unions and government.

¹¹⁹ *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27. It should be noted that there has been fervent debate regarding this decision including arguments that *Health Services* constitutes an interpretation of labour law history and not necessarily a gradual development: E.M. Tucker, ‘The Constitutional Right to Bargain Collectively: The Ironies of Labour History in the Supreme Court of Canada’ Comparative Research in Law and Political Economy Research Paper, 03/2008.

tionally protected pursuant to workers' rights to freedom of expression.¹²⁰ In contrast, the 2009 English Court of Appeal in *Metrobus Ltd. v UNITE* characterised the 'right' to strike as little 'more than a slogan or a legal metaphor.'¹²¹ This quotation typifies a far more narrow conception of labour rights in English courts than that commonly found in Canadian judicial decisions.¹²² Furthermore, unlike their Ontario counterparts, English trade unions must meet a series of imposing obligations which appear designed to frustrate collective action as opposed to ensuring member support for such activity.¹²³

The notion of partnership¹²⁴ also points up a difference between the two jurisdictions where Ontario appears to be leaning more towards greater input from teachers (by way of negotiated, detailed framework agreements) as compared to the continued itemisation of work obligations in England. In neither instance, however, is partnership an operation of equals. Rather what is called partnership is an exercise of government power so that government retains overarching authority, but permits the other parties to participate in finding solutions.

Other Canadian provinces have experienced difficulties with the management of education. Similar to Ontario, labour law has been the backdrop for debate in British Columbia (Canada's western-most province). The Public Education Labour Relations Act¹²⁵ gives the impression that there are many bargaining agents, however, there are only two: for the employer, the British Columbia Public School Employers' Association and for teachers, the British Columbia Teachers' Federation (BCTF). The early part of the 21st century has been a time of extensive labour unrest in the province as the Government terminated all public sector collective agreements. This act was challenged in the courts and came to a conclusion with the Supreme Court of Canada's decision in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*.¹²⁶ The Supreme Court ruled that the government had violated health sector workers' collective bargaining rights by failing to make any effort to dialogue with the relevant unions. As the *Health Services* case moved up the court system, the BCTF took strike action in 2005. The ability of government to alter the parameters of bargaining (in this case by declaring teachers to be essential service providers) significantly changed the collective bargaining landscape; in essence unilaterally changing the collective agreement. In a move similar to that of the Conservatives in Ontario, the government also claimed that monies were not readily available to put into the education system. BCTF's strike action was ruled 'illegal' and it was found in contempt of court.¹²⁷ The British Columbia Government's use of the tools available revealed the contemporary pressures of fiscal management of public services in a globalised era. The two examples of

¹²⁰ *R.W.D.S.U. v. Pepsi-Cola Canada Beverages (West) Ltd.* 2002 SCC 8, [60]

¹²¹ [2009] EWCA Civ 829, [118]. This quotation was the subject of pointed criticism in R. Dukes, 'The Right to Strike Under UK Law: Not Much More than a Slogan?' (2010) 39 *Industrial Law Journal* 82-91.

¹²² This is not to suggest that all of Canada is union friendly. See for example the wide-ranging definition of 'strike threat' in Alberta's Public Sector Services Continuation Act 2013, c.P-41.5 s.1, as well as the associated penalties therein.

¹²³ K.D. Ewing & J. Hendy QC, 'The Dramatic Implications of Demir and Baykara' (2010) 39 *Industrial Law Journal* 1-51, 21.

¹²⁴ Partnership here is used as denoting mutual agreement as articulated in T. Novitz & C. Villiers, 'The 2006 higher education pay dispute: the reality of partnership rhetoric?' (2007) 27 *Legal Studies* 286-510. The term, though, has many connotations such as partnership in production and partnership in income distribution: S. Fredman, 'The Ideology of New Labour Law' in *The Future of Labour Law: Liber Amoricum Bob Hepple Q.C.*, C. Barnard, S. Deakin & G.S. Morris eds. (Oxford: Hart, 2004) 9-39, 26.

¹²⁵ R.S.B.C. 1996, chapter 382, Part 2.

¹²⁶ 2007 SCC 27 [*Health Services*].

¹²⁷ *BC Public School Employers Assoc. v. BC Teachers Federation*, 2005 BCSC 1446.

British Columbia and Ontario evidence a shift promulgated by economic pressures to reduce public service costs.

Anticipating the final section of this article, the comparison between England and Ontario highlights the significance of the Coalition Government's reforms of education law. It is a monumental shift in the structuring of education regulation. Moreover, the Coalition's plan stands out as a model for education governance responding directly to the financial constraints stemming from the economic crisis of 2008.

VII. Investing in local control

2010 was the first year of the Coalition Government mandate; a partnership between the Conservatives and the Liberal Democrats. For education, it was a monumental time because the Coalition put forward its new schools plan, which actively promoted academies and initiated the idea of free schools. Their agenda extended an intriguing lineage in the management of education. The theme of individual responsibility advocated by Labour's Third Way sees its successor in the Coalition's plan. The Third Way stressed that 'individuals should take primary responsibility for themselves and their children.'¹²⁸ More than Labour, current Prime Minister David Cameron's 'Big Society' relies on communities volunteering to direct their local schools. It recalled the efforts under John Major to distance government from direct, day-to-day control over education. As noted, Blair engaged with this to some extent. It would be inaccurate, however, to describe the Coalition plan simply as the next step in a sequence of methods for education management because the unequivocal advocacy of academies and free schools is monumental.

The decision to take this next step remains a fundamental shift. Access to quality, non-specialised education is put in question by this plan: will these reforms suitably pave the way for improved education and positive social change. Regulating for local control emerged as a significant part of the Coalition's overall method of governance. Aside from education, it can be viewed in employment regulation where the Coalition has brought in many reforms (for example under the Enterprise and Regulatory Reform Act 2013). These changes have been particularly directed at the small to medium sized businesses (SMEs)¹²⁹ (a significant part of private sector employment).¹³⁰

Though it is outside the focus of this piece, the Coalition Government's actions on Higher Education should be briefly noted for their contrast with its management of primary and secondary matters. Looking at the Coalition's plans as a complete body of education reforms, one is struck by the extensive work undertaken by this Government. It is no small feat to restructure education at all levels simultaneously. This bold agenda discloses an intriguing perspective on education in which primary and secondary education are both matters of local interest but Higher Education is one requiring national regulation. The *PISA 2012- Country Note* on the UK found that forty-three percent of 35-44 year old individuals have a tertiary level qualification which is well above the OECD average of thirty-four percent.¹³¹ The

¹²⁸ Fredman, 12.

¹²⁹ On this point, see D. Mangan, 'Employment Tribunal Procedure Reforms to Boost the Economy' (2013) 42 *Industrial Law Journal* 409-421.

¹³⁰ 59.3% of the workforce is employed by the private sector: BIS, *Business Population Estimates for the UK and Regions 2013* (23 October 2013).

¹³¹ OECD, *PISA 2012: Country Note – United Kingdom* (Paris: OECD Publishing, 2013) [*PISA 2012 – Country Note*], 3.

*Browne Report*¹³² set out reasons for emphasising Higher Education based on financial evidence. If there was vocabulary to absorb from the report it was ‘outputs’. The attempts to regulate tuition fees in Higher Education indicated the Coalition believed it could generate greater output potential in higher education.¹³³ Early on there is a contrapuntal movement: while decentralisation headlines the focus for primary and secondary schools, efforts to more centrally control Higher Education have developed since the Coalition came to power.

(i) A new school system

Based on comments in the White Paper, *The Importance of Teaching*,¹³⁴ the Coalition’s main focus has been on reducing the bureaucracy built-up through the preceding years of education regulation; though goal-oriented phrases regarding student achievement like ‘chronic, ingrained educational failure’ persist in speeches.¹³⁵ *The Importance of Teaching* outlined plans to reduce much of the regulation developed since Thatcher and up to Labour’s election defeat in 2010: ‘the National Curriculum includes too much that is not essential knowledge, and there is too much prescription about how to teach.’¹³⁶ Underlying this message was the informing ethos that not only will the level of centralised direction be reduced but so too will the role of government in order to ‘allow schools to decide how to teach while refocusing on the core subject knowledge that every child and young person should gain at each stage of their education.’¹³⁷ Though autonomy constitutes the aim, the thinking behind *The Importance of Teaching* discloses a different meaning: through autonomy¹³⁸ the ‘best performing and fastest improving education systems in the world show us what is possible.’¹³⁹ Here there are distinct echoes of so-called ‘Third Way’ thought which influenced Blair’s Labour.¹⁴⁰

The Coalition’s plans (and one of two options it has put forward) have focused on academies. Not a new idea, academies were introduced by the Labour Government in 2000 and carried forward in 2002,¹⁴¹ a point admitted by the Secretary of State for Education.¹⁴² Two hundred

¹³²Lord Browne (Chair), *Securing a Sustainable Future for Higher Education: An Independent Review of Higher Education Funding and Student Finance* (12 October 2010) [Browne Report].

¹³³The focus on higher education may also support the idea that the UK’s competitive advantage is its university level education. Referring to the same point for the United States, former Chief Economist of the World Bank, Joseph Stiglitz wrote ‘... the long-run competitive advantage lies in America’s higher-education institutions and the advances in technology that derive from the advantages that those institutions provide. No other sector in the economy has had a greater market share of global leaders; U.S. universities have attracted the best talent from around the world, many of whom stay to make American their home’: J. Stiglitz, *Freefall: Free Markets and the Sinking of the Global Economy* (London: Penguin, 2010), 194.

¹³⁴Department of Education, *The Importance of Teaching* (London: TSO, 2010) [*The Importance of Teaching*].

¹³⁵M. Gove, Speech on Academies, 11 January 2012.

<http://www.education.gov.uk/inthenews/inthenews/a00201425/michael-gove-speech-on-academies>

¹³⁶*Ibid*, 10.

¹³⁷*The Importance of Teaching*, 10-11.

¹³⁸It is worth noting a kinship between this document and *Choice and Diversity* (of the Major era) which also spoke favourably of autonomy being the way to improved schools. The earlier paper commented with reference to grant maintained schools which the Major Government hoped all schools would become: *Choice and Diversity*, 19.

¹³⁹*The Importance of Teaching*, 18.

¹⁴⁰See for example, A. Giddens (now Lord Giddens), *The Third Way and Its Critics* (Cambridge: Polity, 2000), 73.

¹⁴¹Brought into effect by the Learning and Skills Act 2000; Education Act 2002. Academies and free schools are similar in principle to the grant maintained schools of the 1980s.

¹⁴²M. Gove, Speech on Academies, 11 January 2012.

<http://www.education.gov.uk/inthenews/inthenews/a00201425/michael-gove-speech-on-academies>: ‘The

and two schools had been granted this status under Labour. To reinforce the decision to pursue academies in such a vigorous manner, the current government has even taken to recalling the origins of academies by quoting from former Prime Minister Blair's autobiography.¹⁴³ According to the Department of Education (formed in 2010), academies provide 'freedom'. The Academies Act 2010 contained benefits for those schools 'converting' into an academy:

- freedom from local authority control
- ability to set your own pay and conditions for staff
- freedom from following the National Curriculum
- ability to change the lengths of terms and school days.¹⁴⁴

These pillars summarised a plan for monumental change. The Department also identified a shift from central – a dynamic since the installation of the National Curriculum – to local control: decisions regarding how teachers will conduct their work will now be made at the local level rather than central government. As of December 2011, the Department of Education estimated close to 1000 academies had opened since September 2010.¹⁴⁵ As of December 2012, there were 2543 open academies (with more schools expected to convert to academy status in 2013).¹⁴⁶ Figures published in January 2014 found 3613 academies open in England with 2509 of these being 'converter academies' (the Government's term to distinguish academies opened under the Academies Act 2010 from those opened before its coming into force).¹⁴⁷ Academies have become the desired route for schools.¹⁴⁸

Oversight: this is one way to characterise the shift endorsed by the Coalition Government. Instead of a national government, the local community will take on the role of supervising teachers directly and managing the finances of the school. The plan is about autonomy; empowering communities to seek out desired results in the ways they see fit. Management of academies is undertaken through the power of sponsors who oversee the school. Sponsors delegate the day-to-day running of the institution to a board of governors who are charged with administration of staffing issues. Though hinted at already, the Coalition Government's proposals are proximate to grant maintained schools (initiated by the Education Reform Act 1988) which also received money directly from government. Of note, the Local Management System of Schools (LMS) created by the 1988 Act proved to be useful for current plans. The

Academies programme is not about ideology. It's an evidence-based, practical solution built on by successive governments – both Labour and Conservative.'

¹⁴³ 'In his memoirs, Tony Blair describes why academies proved so effective:

[An academy] belongs not to some remote bureaucracy, not to the rulers of government, local or national, but to itself, for itself. The school is in charge of its own destiny. This gives it pride and purpose. And most of all, freed from the extraordinarily debilitating and often, in the worst sense, politically correct interference from state or municipality, academies have just one thing in mind, something shaped not by political prejudice but by common sense: what will make the school excellent': M. Gove, Speech on Academies, 11 January 2012.

<http://www.education.gov.uk/inthenews/inthenews/a00201425/michael-gove-speech-on-academies>

¹⁴⁴ Department of Education, 'About academies' <http://www.education.gov.uk/academies/whatareacademies>, 20 July 2011.

¹⁴⁵ <http://www.education.gov.uk/schools/leadership/typesofschools/academies/b0069811/open-academies-and-academy-projects-in-development>

¹⁴⁶ <http://www.education.gov.uk/schools/leadership/typesofschools/academies/b00208569/open-academies>

¹⁴⁷ Department for Education, *Performance of converter academies: an analysis of inspection outcomes 2012 to 2013 DFE-RR322* (January 2014), 5.

¹⁴⁸ '45 per cent of all maintained secondary schools are either open or in the pipeline to become academies.': M. Gove, Speech on Academies, 11 January 2012.

<http://www.education.gov.uk/inthenews/inthenews/a00201425/michael-gove-speech-on-academies>

LMS established a per capita weighted formula for school funding¹⁴⁹ and this framework has made it simpler for schools to be funded either through a Local Authority or centrally from the Department of Education. For the Coalition Government, those who have a direct interest in the outcome will be best placed to create success. This leads to a simple strategy: if the public school system is not achieving the results of an academy, the public school will be compelled to better itself.

An early assessment of academies has been positive, but it predictably also raises some questions. Machin and Veniot studied the conversion of schools into academies, measuring the impact of the change on pupil intake and pupil performance during a period beginning in the 2001/02 school year and ending in 2008/09. The authors identified an immediate increase in the ‘quality’ of the students the academy accepted.¹⁵⁰ It may be wondered if this improvement is the result of an academy having control over intake and being in a position to select or reject certain types of students. Only 10% of the intake, however, may be selected in this manner. Pupil performance also increased, but the upward trend is limited to the first cohort entering the academy.¹⁵¹ This study affirmed conversion to an academy and yet suggested that sustained improvement will remain an area of continual focus. The authors concluded:

we also find that it is possible for neighbouring schools to experience significant improvements in their pupil performance despite the reduction in the ‘quality’ of their pupil intake. This seems to occur (mainly) in the neighbours of academy schools that experience large significant improvements in their pupil performance. We do not believe that this is a coincidence: it suggests that it is possible for performance improvements in an academy to generate significant beneficial external effects on their neighbouring schools.¹⁵²

This offshoot effect is a desired outcome for the Coalition Government. Again, though, continued amelioration may need constant stimulus. Sustaining positive effects of conversion to an academy remain in question.

*Performance of converter academies*¹⁵³ contains the Department of Education’s analysis of inspections of academies as compared to schools still under local authority direction based on Ofsted inspections. The conclusion of this report that achievement in converter academies ‘is, on average, higher than that in local authority mainstream schools, reflecting their origin as predominantly higher performing schools (since high performers were eligible to convert earliest)’¹⁵⁴ is a statement requiring unpacking. Consistently, primary and secondary converter schools show greater improvement than their local authority comparators. Referring back to the last phrase of the above quotation, this study takes into consideration what would likely be the highest performing grouping of schools converting to academy status. And so, it brings into question whether a part of this analysis is a bit of a shell argument. For example, nineteen of the fifty-seven converter academies (33%) which had been previously rated as outstanding maintained that rating as compared to twenty-five percent of local authority schools falling into the same category.¹⁵⁵ The difference between the two groupings falls short of evidencing a monumental shift when one considers that the schools in the converter

¹⁴⁹ Chitty, 52.

¹⁵⁰ S. Machin & J. Veniot, *Changing School Autonomy: Academy Schools and their Introduction to England’s Education* CEE DP 123 (London: Centre for the Economics of Education, 2011) [Machin & Veniot (2011)], 45.

¹⁵¹ *Ibid*, 46.

¹⁵² *Ibid*.

¹⁵³ Department for Education, *Performance of converter academies: an analysis of inspection outcomes 2012 to 2013 DFE-RR322* (January 2014) [*Performance of converter academies*].

¹⁵⁴ *Ibid*, 5.

¹⁵⁵ *Ibid*, 7.

academy group were the best-performing. The point here is not to deny improvement, but to raise attention to the fact that these statistics are supposed to reinforce a shift from local authority control to academy status. Machin and Veniot's research, furthermore, predicted an immediate increase in achievement. The question remains whether increases or outstanding status can be maintained. *Performance of converter academies* shows improvements as compared to local authority schools. It also demonstrates that conversion to this status does not guarantee ameliorated levels of achievement.

There is some early indication that where academies are falling below standards the Department for Education will intervene. The extent of this intervention, given the early stage of academies, continues to unfold. Since 8th November 2013, the Department for Education has issued pre-warning letters to 40 academies. In these letters, the Parliamentary Under Secretary of State for Schools, Lord Nash, outlined the Department's authority (which is specified in the relevant academy's articles of association) to intervene in the school based on 'unacceptably low' standards of performance (specific indications of this characterization, including reference to the relevant Ofsted report, are provided to each school). The pre-warning letter's purpose was to alert the administration of the academy in question to official notice being taken of poor results and to require the school to improve its education standards. Schools are then given fifteen days to respond with its plan of action. Since 8th November 2013, three warning notices have been delivered. These are the next stage of intervention by the Department for Education. These letters are sent out, it seems, as a last resort before the Secretary of State exercises his authority to appoint additional directors to improve the academy's work (which the letter warns could be the next step taken).

A continuation from previous strategies, The absence of a formative role for teachers within these reforms continues to display distrust of teachers. Though questions would likely arise in the consultation process for establishing an academy as set out in s.5 of the Act, there was no explicit obligation in the Act requiring local communities to consult school staff other than to 'consult such persons as they [thought] appropriate'.¹⁵⁶ The scope of the consultation defined by the Act focussed solely on 'the question of whether the school should be converted into an Academy'. Clearly there were further questions. The Education Act 2011 contained an amendment to the Academies Act 2010 which provided for the transfer of 'rights and liabilities (including rights and liabilities in relation to staff) of the local authority or the governing body which were acquired or incurred for the purposes of the school'.¹⁵⁷ Statements by the Secretary for Education indicate that academies offer better remuneration for teachers,¹⁵⁸ but evidence is not readily discernible.

The second option is free schools.¹⁵⁹ The Department of Education defined free schools (the second component of reforms) as 'independent state schools run by teachers not bureaucrats

¹⁵⁶ The Act's explanatory notes specifically excluded any obligation to consult with local authorities, thereby making explicit the move away from local authority control: 'Academies Act 2010 – Explanatory Notes' http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100032_en.pdf.

¹⁵⁷ Education Act 2011, s. 56 amending s.8 of the Academies Act 2010.

¹⁵⁸ 'And becoming an academy is a liberation. It gives heads real freedom to make a difference. Longer school days; better paid teachers; remedial classes; more personalised learning; improved discipline; innovative curricula – these are just a few of the things that academy heads are doing to give the children in their care the best possible education': M. Gove, Speech on Academies, 11 January 2012.

<http://www.education.gov.uk/inthenews/inthenews/a00201425/michael-gove-speech-on-academies>

¹⁵⁹ It is worth noting that free schools have developed in Sweden as private alternatives to public schooling which compete with public schools for students. Both private and public schools compete on equal financial standing.

or politicians and accountable to parents.¹⁶⁰ The plan does not exclude other groups such as parents or charities.¹⁶¹ If a school opted for the free school (or academy) route, funding would come directly from the government and not the government via the local authority. Once the option was selected, there seems to be no opportunity to opt back into local authority control.¹⁶² Steeped in concerns over the social fabric, however, English teachers' unions have contended that free schools will only deepen already existing disparities between affluent and underprivileged communities.¹⁶³ In 2014, much attention was drawn to the Al-Madinah free school for its poor quality of secondary level education. As of September 2014, secondary students at this school have been enrolled in schools other than Al-Madinah. The reason for the Department of Education's decision was: 'the poor quality of secondary teaching and the lack of breadth in secondary curriculum.'¹⁶⁴ Primary level education will continue. At present, academies are far more popular than free schools and so it would seem that the latter will constitute a minority of the selected new schooling options.

(ii) Abandoning centralised for local control: a model for a globalised world?

Set against the background of globalisation, the need in education has become more prominent but also more difficult to provide. The questions raised in the previous section regarding local control are intended to highlight the significance of the changes promulgated by the Coalition Government. The wholesale abandonment of centralised control absence clear evidence of failure is noteworthy. There is no middle step evident. The government has attempted to download much of the responsibility for schools directly onto local communities, asking them to become direct stakeholders. This is likely to result in increased expectations regarding the work of teachers in that they will be called upon to bridge the gaps created. It may be said that the Coalition is returning education to the days of more localised control. While this may be, the 21st century presents vastly different challenges from those of 1944 in relation to education.

The reforms compel consideration of access to a full curriculum public education. Earlier in this piece, it was contended that in the Thatcher era teachers' work was regulated as a means of raising the quality of teaching while simultaneously trying to constrain expenditure. After Blair's Labour came to power, this method was continued insofar as the regulation of teachers was intensified.¹⁶⁵ At that time, government was open to spending more in order to improve

¹⁶⁰ Department of Education, 'Gove: 'Free Schools will enable excellent teachers to create new schools and improve standards for all children.' <http://www.education.gov.uk/news/press-notices-new/freeschools>, 18 June 2010.

¹⁶¹ 'Q & A: Academies and free school' <http://news.bbc.co.uk/1/hi/education/10161371.stm> 26 May 2010.

¹⁶² The New Schools Network has been empowered to provide advice to the Department and to those proposing free schools. The Network has taken a large role in this transition.

¹⁶³ A study found that 'schools expressing an interest in becoming Academies have significantly lower percentages of pupils entitled to free school meals, special educational need, and from other ethnic backgrounds': S. Machin & J. Verniot, 'A Note on Academy School Policy' (London: Centre for Economic Performance, London School of Economics, 2010), 3. There is a *caveat*. Free school meals have been a common means of assessing class disparities in education, but there are difficulties in the accuracy of these findings as other factors may influence: S. Robertson & H. Lauder, 'Restructuring the education/social class relation: A class choice?' in R. Phillips & J. Furlong eds. *Education, Reform and the State: Twenty-Give Years of Politics, Policy and Practice* (Routledge: Abingdon 2001) 222-236 [Robertson & Lauder].

¹⁶⁴ Letter from Lord Nash, Parliamentary Under Secretary of State for Schools, to Barry Day, Chair of the Al-Madinah Education Trust, dated 7 February 2014.

¹⁶⁵ It is noteworthy that the has criticized the level of prescription of teachers' work which remains – 'we believe there is a need to move away from a system where every last detail is prescribed in the STPCD, towards a more autonomous system where professionals exercise judgement and discretion, taking account of individual school circumstances and the interests of pupils: Dame Patricia Hodgson (Chair), *School Teachers' Review Body* –

the quality of education. With the Coalition, the same aims have been maintained as in the Thatcher era and indeed teachers' work remains a focus of reform. Use of academies and free schools, with their emphasis on direct local control, is a variation of cajoling: with constant oversight at the school level, so the thinking appears to be, teachers will perform better and student scores will increase.

As a response to globalisation, the Coalition Government plan evidences a truth: globalisation increases the demand for social spending, but simultaneously decreases the means by which government may meet this call. The management of English public education has been and continues to be through a legislated policy of control and cajole. The policy started to develop in the 1960s when English governments became increasingly concerned with expenditure in the education portfolio. By the 1970s, the management of education had started to intensify with a greater focus on what occurred in the classroom: what was being taught and how effective such instruction had been.¹⁶⁶ These dual concerns were focal points for the education reforms of the government in the 1980s (the Conservatives led by Margaret Thatcher) who implemented a unitary vision of education. Consolidation of control became the means of realising this singular vision. This mode reached its height under the Blair Labour Government. Labour believed in putting money into education to improve results but would not rely on education personnel to achieve this aim. By the early part of the 21st century a new path has been charted. For the most part, government has been singular in its management of English education since the 1980s: following one model without reserve;¹⁶⁷ a method repeated by the Coalition Government. Now, market and society have been melded together. While the creativity theoretically found in entrepreneurial activity remains an ideal to which we may strive, the present plan pits communities against each other, thereby undercutting the social cooperation necessary to bring about desired results.

The Coalition's plan also presents the opportunity for government to constrain expenditure by outsourcing the day-to-day control of education. According to *PISA 2012 – Country Note* on the UK, the jurisdiction spends approximately \$98,032 (USD) per student between six and fifteen years old where the OECD average is \$83,382 (USD).¹⁶⁸ It is argued that the present reforms constitute a first step towards capping money available for education; continuing a trend of increasing the role of the market and correspondingly reducing that of the state with the effect of decreasing government spending. The Coalition Government's decisive action represents a means of addressing expenditure and quality issues where the slogan 'Big Society' is instructive. Instead of prescription, the government believes handing control to local communities (not local authorities) who volunteer to do so will achieve better results. Reform in this manner achieves two key goals for the Coalition. Government may step out of direct control of local education and focus its role on oversight. It may also provide a means by which government may constrain public expenditure on education. The implications for access to a full curriculum education begin here: legal reform is forcing a discussion and defining its parameters. This is the first step towards a debate regarding funding in education centring on a segregation of items into two categories: areas which government will fund and

Twenty-Third Report 2014 (Cm 8813) (London: TSO, 2014), X.

¹⁶⁶ The significant shift from grammar to comprehensive schools in this period is noted. Discussion will not focus on this as it is contended that the notions of cost and quality control may be traced from that time to the present.

¹⁶⁷ Efforts by the Labour Government regarding the implementation of academies, use of performance pay and efforts to bring teachers' unions into line with government aims form a notable exception.

¹⁶⁸ *PISA 2012 – Country Note*, 3. It was also noted here that six percent of students in the UK had a low score on the PISA index of socio-economic background versus an OECD average of fifteen percent.

programmes outside of that classification to be otherwise funded. The Coalition reforms query the interaction between education as a service (and therefore freely offered by any individual or group) and as a matter managed by the state.

The Coalition plan departs from the Thatcher legacy of education governance; a break which appears to date back to the creation of the Education Reform Act 1988. In an interview with Chitty, Stuart Sexton (one of the architects of the Act) contended that the National Curriculum diverted attention away from the important part of the legislation which was grant-maintained schools. Anticipating the Coalition Government, Sexton advanced a secondary role for curriculum in education reform: ‘the curriculum should be one of the school’s selling-points with its own particular consumer … Schools should be able to respond to what they perceive the market is looking for.’¹⁶⁹ It is posited that the current plans for education have returned to the underlying proposition in 1988 of specialisation through meeting market needs. Moreover, a by-product of consistent reforms has been the critical questions regarding the content and method of teachers’ work.¹⁷⁰ The accumulation of negative commentary has taken a toll on the standing of teachers as autonomous professionals. Underlying the commentary here is the fact that confidence in teachers and the system in general has fallen to a perilous level; reaching a point when desire to reform outstrips the patience required to properly assess the effect of recently implemented changes. With the Coalition’s desire to move away from central control, teachers’ work remains under scrutiny. The difference now will likely be much more individualised prescription of teachers’ work at the local level.

Further questions which touch on the topic of local control arise. For example, will these institutions compete for the services of the ‘best graduates’¹⁷¹ or others considered highly proficient in teaching? There could only be a modest market for such teachers because under any system there would be a finite amount of money allowed for school expenditure; unless a school had the capacity to raise further funds.¹⁷² It may be wondered if schools were to assume the management of teachers’ pension plans. This in itself would be a significant undertaking and one which may well be beyond the capacity of a local community. A further query is whether there is a succession plan regarding school leadership. *The Importance of Teaching* called on the local community to lead these schools and this raises the point of continuity. Reforms’ continued success relies heavily on local support; likely from those parents whose children attend the school. Once a parent’s child left the school would that parent continue on in a leadership role? It may be conjectured that teachers will naturally take leadership roles. The White Paper suggested this – ‘the most important factor in determining the effectiveness of a school system is the quality of its teachers.’¹⁷³ However, *The Importance of Teaching* and the aforementioned legislation indicate that teachers are more likely to be viewed as the staff which will carry out directions provided by the local community. Despite these questions, the movement to academies has been profound.

Another means of critically viewing these plans is to ask: to where does this freedom lead? The free school and academy options recall a theme evident throughout the period under

¹⁶⁹ Chitty, 54.

¹⁷⁰ The dwindling influence of teachers’ unions may have played a role as well: a phenomenon not unique to this cadre of public sector representation. See for example the contributions in P. Fairbrother & C. Yates (eds) *Trade Unions in Renewal: A Comparative Study* (London: Routledge, 2003).

¹⁷¹ *The Importance of Teaching*, 22.

¹⁷² In 1987 Kenneth Baker suggested that grant maintained schools could raise further money from parents to, among other things, pay successful teachers extra. This suggestion caused a serious uproar at the time: Chitty, 52.

¹⁷³ *The Importance of Teaching*, 19.

study: competition in education will improve results dramatically. Competition density, though, will increase as the number of individually governed schools rises. This is autonomy as defined by the market for education. To adapt to the market of education, schools will recognise the benefit of specialising in some manner in order to maintain a consistent flow of students.¹⁷⁴ As a result of competition, the freedom to run a school without regard to specialisation can be hampered.¹⁷⁵ This would also put into question the viability of comprehensive schools since these institutions are ranked according to a broader range of criteria.¹⁷⁶ Freedom carries the potential for diverse schooling experiences, but it necessitates consideration of whether or not there will be a standard base of learning amongst graduates of these schools. Freedom in fact rests with the school to target a market. This can be quite different from providing quality education.

The *PISA 2012* report supports the idea of competition: ‘the competition for schools creates incentives for institutions to organize programmes and teaching in ways that better meet diverse student requirements and interests, thus reducing the cost of failure and mismatches.’¹⁷⁷ There is an important pre-condition in this report: ‘On the premise that students and parents have adequate information and choose schools based on academic criteria or programme quality’.¹⁷⁸ The Coalition plan of academies precipitates a level of specialization which does not happily coincide with the consideration outlined in the quotation. The difficulty is that school competition (and the corollary of school selection) is a multi-faceted concept, affected by such factors as ‘local school markets, school performance, affordability, capacity and enrolment patterns’.¹⁷⁹ The single indicator of competitiveness which informs the Coalition education reforms overlooks that parental choice is not itself a singular consideration: ‘in nine of the [participating countries] over 50% of parents reported that a safe school environment is a very important criterion when choosing a school for their child. In four [of the participating countries], over 50% of parents reported that a school’s good reputation is a very important criterion for choosing a school for their child.’ Furthermore, this package of reforms requires an activist community to become involved. OECD figures (as reported by school principals) indicate that parents need teachers’ prompting to be involved in childrens’ schooling.¹⁸⁰ Academies, as one example, require those with initiative.

If PISA is increasingly relied upon as a measurement, localisation situates individual schools within a more international market. Local communities have been invited to establish academies or free schools with the chance of creating *their* school; deviation from the National Curriculum stands out as one example of the freedom presented by the opportunity. There are more profound challenges nonetheless. Specialisation in itself limits access to a comprehensive curriculum. A highly localised plan of study may dubiously serve immediate desires for education because it often differs across the country. The National Curriculum in 1988 (the matter eschewed by Sexton above) established a benchmark of achievement for each student regardless of locale. The lack of a student benchmark would strain the regulatory

¹⁷⁴ Specialisation was endorsed by the Major Government as a means to address local needs: *Choice and Diversity*, 10.

¹⁷⁵ This is to put aside the criticisms of these independent schools as areas which lack diversity: noted throughout in Robertson & Lauder though the article predates the Coalition.

¹⁷⁶ It is worth noting that the comprehensive system was castigated by Major in *Choice and Diversity*, iii.

¹⁷⁷ *PISA 2012*, 133.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*, 139.

¹⁸⁰ *PISA 2012*, 142.

authority of the Office for Standards in Education (Ofsted) to assess these schools.¹⁸¹ How can assessments be made regarding: ‘how far the education provided in the school meets the needs of the range of pupils at the school’; the school’s education standards; and whether financial resources are managed effectively?¹⁸² The current plan has the potential for a return to the fragmentation in learning of just a few decades ago without further guidance regarding common standards to be met.

Given the significance of the move to local control, there are a surprising number of uncertainties which remain. Downloading responsibility for education to local communities is a bold decision for England where there has been a strong history of government management of such a large portfolio. There is great potential for significant negative repercussions. Education comes at a cost and this fact should not militate against government involvement in the area. The cost will consistently fluctuate. Under the proposed new system, a perennial lack of certainty can emerge and from these initial cracks daunting challenges can fill the expanse created.

VIII. Conclusion

The history of the management of education through this period has been highlighted by significant and relatively rapid reforms: from the mid-1970s through the centralised control of the Thatcher era to the intensive and detailed regulation of teachers’ work in the Blair Labour years to the present when one history ceased and another era has begun. The aim has been to outline the English example for the purpose of demonstrating the bold step recently taken in the former jurisdiction. A comparison with Canada demonstrates not only symmetry between the two jurisdictions but may also suggest a path to be adopted in that country. Beyond Canada, recent events in England may be of benefit as case studies in legislative management of education.

The Coalition plans break from the consolidated management of education administered by its predecessors. Both methods seek cost certainty and improved work from teachers, but the Coalition’s proposal is more idea than reform. Through the idea of freedom, communities are invited to run their schools. This shift places the local community at the forefront of education change. Little is known about how this new method will be undertaken; as it stands localised control without centralised aims beyond expenditure restraint and compelling better results from teaching personnel. Whether the desired results will be achieved remains unclear; what is more apparent is this is a means to displace government’s central role in the portfolio. In so doing, access to a full curriculum education has become a marketing strategy as opposed to the aim of all schools

The basis of the Coalition plan should be viewed as a means towards limiting expenditure. One must query whether this is a suitable premise considering a longer-term projection of this agenda. Once local control is established there is an opportunity to slowly siphon off percentage points of public money from these schools. These reforms signal a movement towards needs only government funding. Under the rubric of ‘Big Society’, government has ostensibly invited the public to become directly involved in a matter which was long held to be largely the domain of government; with the exception of private schools which always operated in a distinct realm. Although government will provide money to these academies and

¹⁸¹ The working assumption is that free schools would be included in the list found at section 5(2) of the Education Act 2005.

¹⁸² Section 5(5)(b)-(d) of the Education Act 2005.

free schools, the question will be how much. As has been mentioned by different governments, the costs of education continue to rise. Establishing academies and free schools will not curb that rise but it provides a means for government to limit education-related expenditures. At this fledgling stage, the expansion of local community control of schools initiates a debate about what are the standard items expected to be provided by schools and which are electives. ‘Big Society’ would be the inverse of ‘Big Government’: society will absorb more of the costs of what were previously exclusively public sector services. ‘Big Society’ represents the next generation of restraint in education expenditure. There is a direct correlation between the shrinking role of government and the increasing part for the community. Government becomes a more distant overseer of education, essentially funding education in a capped-expenditure system. The options for future governments in relation to managing public sector spending in education open up under this system. For example, the circumstance may be that government will fund so-called standard parts of education and the local community will be required to fund elective services (or some percentage of the overall cost). Another form of restraint may come in the form of capping certain parts of the delivery of education: the government may decide that it will fund a standard average teachers’ salary at a rate which itself would necessitate reductions in staffing.