

Accountability and the role of the Scottish Parliament

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Professional background and role

I was a class-committed head teacher of a small Scottish rural primary school from 2001 to 2016 which followed on from working as a class teacher for ten years. This was not continuous. I also worked as a social researcher for eight years, during which time I wrote a sole author book for the Open University Press¹ and held three research council grants working for five years for an independent research institute, the Arkleton Trust. With colleagues in my school headship role I/we carried out extensive practitioner research and action implementation case studies as part of incoming policies and initiatives in which I was responsible for holding bid-for grant awards and with extensive external publications. The then Scottish curriculum agency, Learning and Teaching Scotland, sought publications of our work, which occurred. Our work also formed the basis of published case studies for educational publishers and external bodies – Scotland, UK and international – with whom we collaborated. Our innovatory practice also formed the basis of academic papers and conference presentations, again including international (eg MacKinnon 2014a,d, 2015a,c,d).

Power, influence and the framing lens

State power in Scotland is primarily wielded by quasi-autonomous non-governmental organisations, QUANGOs, and governmental agencies. I state this from my personal experience, as I have perceived power to operate from direct personal experience, as it impinged on my professional and personal roles. These bodies also wield a powerful influencing role on Government, particularly in a policy framing role, and then steering the direction of policy and legislative proposals. They do not just steer specific initiatives but determine the underlying suppositions of policy, mandating certain ways-of-seeing and obliterating others (see MacKinnon 2011e,f, 2012, 2014c, 2015b,d, 2016). I find that their role conflicts with mine, as one so recently at the front line of the service-client interface. The knowledge which is derived there, or rather here, currently undergoing immense change, and contingent on immense diversity and variation (= variety), is not driving or even underlying policy. That has set up a conflict, and it is one which I found to become professionally insupportable, leading to my voluntary resignation last year. I left a job which I loved, and at which I with colleagues were so successful, because the policy, regulatory and initiative frameworks engulfing it made the job undoable, through enforced standardisation, bureaucratic overload, audit-practice mismatch and mandated, bloated, ill-matched change. Often, one body would countermand another at the same time. They came to distort the work, diverting it away from its purpose, forcing us to undertake tasks which I considered to be wrong, and others as unnecessary, and draining morale through overload and erroneous commentary. All-in-all they prevented me and colleagues from doing that which was necessary and urgent, and desirable. I have written extensively on this, outlining the mechanisms (see especially MacKinnon 2011b), which have been well received, but not by those who most need to hear it, and heed it; that is, by those causing the problem (see MacKinnon 2011a,c,d,e,f, Accountability Scotland 2013).

Two halves of the same problem

One half of the problem lies in regulation and audit, and all the other names by which these functions are known: evaluation, scrutiny, inspection, 'quality assurance', review and accountability. The other half of the problem lies in mandated diktat – a blither of initiatives through command-and-control modes of governance with one-size-fits-all mandated modes of imposition, as characterise the Scottish public sector. Much of the diktat derives from audit, as those applying very specific audit assumptions, without operational knowledge, often to superseded policy imperatives, then mandate practice alterations, without dialogue. These assumptions have very specific, yet non-articulated, theoretical underpinnings. Public services do not operate, or develop and evolve through those central mechanisms, well certainly not

1 <https://www.amazon.co.uk/d/Books/British-Folk-Scene-Musical-Performance-Identity-Popular/0335097731>

effectively. But those are the dominant policy and initiative framing lenses. They certainly are for schools in Scotland and it is set to get much worse.

How can a single set of imposed graded operational descriptors – misleadingly called ‘quality indicators’ – be applied to every school in Scotland, from the smallest rural primary school with a class-committed headteacher, to the largest urban high school with senior management teams outnumbering the pupil roll of some of the former, in all socio-economic, operational and cultural contexts, through idealised, universalist, grade level descriptors? They cannot, though purport to do so. Through enforced application, in so doing, those seeking to apply these then misunderstand quality, failing to grasp local operational functioning and constructed meaning in context, particularly at the individual pupil level. In so doing, they fail to notice that the abstracted indicators framing their task and thinking processes do not *indicate* anything. What the auditors record in their reports then has no meaning, and serves no function, other than to demoralise, demotivate and undermine, through misunderstanding process, function and purpose, situated in local contexts, thereby failing to ‘absorb variety’ (Seddon 2008). This has come about through the Scottish Parliament giving far too much power to the bodies under its jurisdiction, without due oversight, checks and balances. The worst of it all, is that the graded matrix – Scotland’s edumometer (Corbett 2008) – with added textual reporting clichés – negates accountability, whilst proclaiming otherwise. How so?

Accountability

It shall suffice for me to state here that accountability within the governance of public services in Scotland, and throughout the UK, has a dominant meaning: to hold to account, closely linked to another: to impose an account. Thereby it is framed as something that is done by one body to another, or one person to another. It imposes an interpretation. It is unidirectional. This is what auditors do. The call for written views of this commission explicitly uses the term in this way: “holding the Scottish Government to account”. But I primarily view, and apply the term, in another sense, framing another process entirely, that of ‘account ability’. ‘Account ability’ is the process whereby a body becomes “account able” (see MacKinnon 2010, 2011, discussed in MacBeath and Moos 2011). It develops the capacity to become *able* to give an account, and, more to the point, give and receive accounts, which are evidential, and conceptual, promoting understanding and thereby enhancing organisational effectiveness. There is not just one way-of-seeing, for any organisation or service, and its clients; there are many, and these frame the diversity of theoretical positions within policy and practice. Those (should) derive from frontline understanding of what is going on. What is the nature of demand? What is its variety? How may the work meet that demand and its variety? External contact may enhance these aspects, depending on how it functions. The processes may become transformed as one of organisational understanding, with an emphasis on mutuality and support, and systemic cohesion. Holding to account, or being held to account, does something entirely different; it sets up distance, confrontation and misunderstanding. It becomes a hostile process, and as the proportion of judgement increases, and mutuality decreases, so dysfunction increases. The client perception of a service becomes an irrelevance, except as aggregated questionnaire responses, to imposed and unsuitable questions, which further demoralise and confuse. Such notions of accountability utterly frustrate ‘account ability’, and thereby hamper organisational functioning, often severely. What is needed is much more ‘account ability’, indeed often to initiate any at all, even to grasp what it is, which I contend most official regulators and inspection agencies do not grasp. And there needs to be a lot less ‘accountability’, perhaps down to none at all, once the concept of ‘account ability’ is grasped, and applied.

Law and the Scottish Parliament

This is where I see the Scottish Parliament’s role as central to good governance, including government, but extending far beyond that. My professional roles, and citizen roles are framed by law. For those aspects of government within the remit of the Scottish Parliament, which includes my profession of school education, those laws are made by the Scottish Parliament. But I am not only subject to those. They are also mediated through other bodies, and their regulations, who acquire their legitimacy, roles and function from the Scottish Parliament, framed in legislation. This is where the going gets tough. As I see it, and experienced it, those other bodies wield a lot of power. They have the power to determine, and to denounce. Those are mighty powers. But what of method? That is vague. What of checks and balances? Those

are even more vague. What of rights of complaint and appeal? Those are yet more vague. Within delegated remits, formed of the legislation of the Scottish Parliament, their methods and accountability are shrouded in haze. Worse, they are determined by themselves. How has this come to be? Ask the legislators. Who are they? The Scottish Parliament. However, in effect, laws are not made by the parliamentarians, but by the drafters of legislation. Those drafters work within assumptions – conceptual assumptions operating with given ways-of-seeing. They do the bidding of Government. Only then does the Parliament become involved. It is largely as an afterthought. The structuring of institutions, and of roles and of laws does not derive from careful organic consideration of the frontline function, which has been studied. It derives from Government decisions, often emerging abruptly from a change of personnel; a whim. Worse, this is compounded by the emanations of universalist audit idealisations; again a whim.

For an example, this is as the Scottish Attainment Challenge abruptly altered the school education policy landscape, and eliminated the Four Capacities approach of the curriculum review of 2004, enacted to 2014. It did not say that is what it was doing; it just did it. That is for failing to see the conceptual premises of practice. See the paper which I gave at the Knowledge Building Summer Institute in Trieste in 2015 (MacKinnon 2015c), where I made this distinction explicit, based on our innovations which frame the very different modes of practice which form the basis of the paper. The national policy change did not come about by stealth. It did so almost immediately upon a change of First Minister and Education Cabinet Secretary in 2014. Deep concepts, such as the Four Capacities, were not understood, because those making the decisions did not possess, nor acquire, the deep theoretical conceptual basis and operational underlay of what makes policy work in situ. Those making policy did not 'study the work' (Seddon 2008).

This is perhaps a long-winded way for me to get to the heart of this consultation. But it gets to the heart of what I am trying to convey, which otherwise I could not. I see the Scottish Parliament as weak, functioning as a nodding-through chamber. Through legislation it has created powers, given without checks and balances to public bodies, also creating them, without grasping how those powers may be utilised, nor grasp how those bodies may come to function in operational reality. It has also not grasped the magnitude of those delegated powers, which have become absolutist; that means operating without checks and balances, without rights of complaint and appeal and without external oversight. It has also given operational space for those bodies to change their remits, outwith governmental and parliamentary processes. I state this for the role of the Scottish Public Services Ombudsman in overseeing the operational probity of the Scottish schools' inspectorate, now operating within the Scottish Government agency Education Scotland. They also unilaterally abolished independent review of complaints in 2012. Did anyone notice, apart from complainants?

A stark prompt

I found myself having cause to place complaints of the Scottish schools' inspectorate, then HM Inspectorate for Education. This submission does not present those complaints, for that is not its role. But, in taking the complaints on to the Scottish Public Services Ombudsman, the trajectory of the complaints were altered by the ombudsman. I am not stating the substance of the complaints, but write here concerning jurisdiction, which altered. I wrote a report of these contradictions, including of what I analysed as errors in the drafting of legislation, which gave rise to this, and subsequent in 2010 of which I was aware and made representation. I presented this to the Scottish Parliamentary Corporate Body in January 2011, who were the body then recommending the appointment of the ombudsman. The then presiding officer, and chair of the SPCB, wrote to me in reply on 3 March 2011, to which I replied on 16 March 2011. I had pointed out flaws in the drafting of legislation to those responsible for advising on drafting it, at the time it was being drafted, yet nothing was done (MacKinnon 2011a, see also Accountability Scotland 2013). It is as if the legislation drafting process is opaque. The same is true for the functions of bodies under the jurisdiction of the Scottish Parliament, created through its legislation. They have been enabled to function beyond and outwith accountability (and 'account ability') through lack of attention to the mechanisms of oversight.

An example of parliamentary process

I would like to give a specific example. One of the rare opportunities for direct scrutiny of government agencies and quangos, and with public input into the process, is where such a body gives evidence to a parliamentary committee and is subject to questioning. I presented such a question to the Local Government and Regeneration Committee, who would be questioning the ombudsman, following an invitation from members of the public to do so. My question was as follows:

Question

The Education Scotland inspection complaints procedure states, "If... you remain unhappy, you can ask the Scottish Public Services Ombudsman to consider your complaint." But the ombudsman has written, "My view is that the substance of complaints about HMIE/Education Scotland inspection reports is not within my office's jurisdiction". Which is right?

My question was precise, for it had to be. I was aware of this very specific contradiction, with far reaching implications, and wanted an answer from the ombudsman, to resolve the contradiction. The second quote in the question was from a reply of the ombudsman of 23 March 2012 to another complainant of an HMIE school inspection report, who had taken the complaint to the SPSO. I was dismayed that a clerk to the committee, having selected my question as one which would be placed by an MSP in person, should alter the question. The alteration altered the meaning and turned the question into a vague generality, destroying its meaning and precision, as follows:

LOCAL GOVERNMENT AND REGENERATION COMMITTEE, 7 January 2015

Anne McTaggart: I will move on to one of the questions that was submitted. Can the SPSO investigate complaints about Education Scotland inspection reports?

Jim Martin: Yes, but my favourite answer to *Sunday Post* quizzes when I was wee used to be "sometimes, but not always", which is the answer in this case. We can investigate some things and not others, depending on who brings the complaint and what it is about... (Scottish Parliament 2015)

Because of the alteration to my question the principal substantive content of the reply of the ombudsman, Jim Martin, was to inform the committee, and me, that he answered *Sunday Post* quizzes as a child. I place that as very poor parliamentary procedure, dumbing down instead of wising up. Effective parliamentary scrutiny could have revealed, and set about resolving, a major contradiction. The question was placed to do so. As it is, the ombudsman's reply enlarged the contradiction. The committee were then none the wiser. They could and should have been, and then so would the wider public, and government itself, had the question as placed been asked, particularly when the public were invited to submit questions, as was the case here. That was my question, but voided through alteration. Precision matters, and should form the essence of parliamentary scrutiny.

Role of MSPs in scrutiny of public agencies

Certain MSPs, and UK parliamentarians in regard of UK aspects of roles and remits, gave me a lot of help, and themselves put in considerable efforts to garner straightforward answers and require certain agencies of the Scottish Government, whose remits and powers derive from the Scottish Parliament, to reply. This was particularly in regard of reporting conclusions for which no evidence was referenced and no indication of process presented. They got nowhere. One MSP, who put in an immense amount of effort on my behalf, but more specifically on the wider underlying issues which my efforts had unearthed, and who got nowhere, told me that she came to regard that her powers, responsibility and right to demand appropriate substantive reply of a Scottish public agency, as an MSP, was no greater than mine as a private citizen. That is evidence of something 'not right' in Scottish parliamentary scrutiny and accountability.

Conclusion

I wish to see a more powerful Scottish Parliament, not necessarily arising through additional powers, but using the powers that it has more effectively, deploying them more selectively and robustly. I urge far less legislation, but more carefully drafted. Bodies whose existence derives from Scottish legislation require far closer scrutiny from the Scottish Parliament. It should act far more as an independent entity, not as an executive arm of the Scottish Government. It

needs to challenge, with precision, opening up power and meaning, to enhance the governance of Scotland, noting a central distinction between governance and government. For both, the task is to further understand and enable, not further mandate and control.

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