
Regulating teachers

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Abstract

The British Government's recent imposition of performance-related pay for teachers is the latest in a host of unpopular regulatory measures. In this paper, I examine the philosophical basis of regulation as a means of achieving higher educational standards and offer an analysis of the contradictions involved in regulating the teaching profession. I argue that regulatory measures alone are not equal to the problems they seek to rectify. An autonomous profession is morally self-regulating; professionals internalise purposes, values and performance expectations. The present regulatory regime is likely to undermine teacher commitment to underachieving pupils. It is likely to increase rather than decrease the number of poorly educated and disaffected individuals.

Regulating teachers

The British Government's recent introduction of performance management of teachers and the introduction of performance-related pay (PRP) are the latest in a host of unpopular regulatory measures. Underlying these initiatives is the assumption that schooling is essentially a preparation for work and that the best way of ensuring Britain's international competitiveness is through a more qualified workforce.

New Labour's Third Way attempts to avoid excessive state domination over social and economic life in achieving this aim for education, but at the same time it does not favour a thoroughgoing free-market approach (Giddens 2000). The Third Way has therefore resulted in measures designed to provide incentives, rewards and punishments in pursuit of its primary aim for education. In this paper, I examine the philosophical basis of regulation as a means of achieving higher educational standards - and by implication - a better-educated workforce.

Regulation may be defined as a contract negotiated and enforced by a regulator, between the public and a supplier. The regulator specifies the quality and

type of services to be delivered to the public. Failure to comply leads to financial penalties. A regulator should normally be independent of the regulated body in order to maintain impartiality. Autonomous professions regulate themselves. This entails the regulated body electing or in some way appointing the regulator, as in the case of the Medical Practitioners in Britain, and ensures that the values of the profession are entrusted to people who have won the profession's confidence.

British teachers are not self-regulating in that the regulatory body, the Office for Standards in Education (OfSTED), is not elected by teachers. OfSTED is a state-appointed and financed regulator responsible for enforcing standards. The operation of the regulator may be direct as in the case of the supply of teachers. Suppliers, such as Higher Education Institutions or the Schools Consortia for Initial Teacher Training, are contracted to deliver a certain number of teachers to a certain standard. Failure to do so involves financial penalties. Regulation need not, however, be this direct.

League tables, whereby UK school examination results are published and compared to the performance of other schools, are an example of an 'indirect' regulatory measure. There are no direct penalties for doing badly, but poor results affect recruitment levels and therefore funding. Direct and indirect regulatory measures share a common feature: they impose and enforce requirements that schools and individuals may not agree with, and the price of non-compliance is high. In these respects, the teaching profession is subjected to external regulation.

The recently proposed introduction of performance management (Department for Education and Employment 2000) in Britain and its link to PRP for teachers is only the latest deeply resented regulatory move in a series of policy initiatives designed to improve the standards of measurable educational achievement in schools. Performance management was scheduled to begin in Autumn 2000. Its introduction has been postponed because of a legal challenge to its legitimacy brought by a major teacher union. This measure has been preceded by an invitation to all eligible teachers to apply to cross a performance threshold. In order to compete for extra pay, teachers have been required to produce evidence of (among other things) effective teaching, proving that they have personally been responsible for their pupils' learning gain.

Teachers should demonstrate that, as a result of their teaching, their pupils achieve well relative to the pupils' prior attainment, making progress as good or better than similar pupils nationally. This should be shown in marks or grades in any relevant national tests or examinations, or school based assessment for pupils where national tests and examinations are not taken. (Department for Education and Employment 2000, p 4)

The public are beginning to voice their disquiet about the tendency of such regulatory measures to produce distorted or perverse outcomes (eg Times Educational Supplement 2000a). For example, league tables have been blamed for the increase in school exclusions, and OfSTED inspections for teacher stress and suicides (eg Times Educational Supplement 2000b; 2000c). The harsh regulatory regime is thought to be partly responsible for the difficulty in recruiting new

trainees. Some parents have questioned the need for tests at entry and at seven years and the competitive ethos this introduces. Further, more regulations have brought standardisation in education and an intolerance of alternative forms of education. The famous independent Summerhill School recently and successfully brought a court case against OFSTED (Times Educational Supplement 2000d).

Opposition to rewarding effective teachers has concentrated on the predicted divisiveness of PRP and the harm it could do to professional relationships in schools. Delegates to the recent National Union of Teachers (NUT) conference claimed that it would lead to an atmosphere of suspicion and destroy trust and team work, as teachers would be required to judge one another's performance. It would be a 'snoop's charter' (Barnard & Henry 2000).

Furthermore, there are doubts that improvement in pupil results may not be directly attributable to a given teacher's competence but partly influenced by the efforts of parents and other teachers. This worry is exacerbated by the British Government's failure to publish as promised valid value-added measures of school performance. The benchmarking of schools of similar social intake, as indicated by the uptake of free school meals, is popularly thought to be unreliable, since there are proliferate examples of eligible parents not wishing to be socially stigmatised.

The educational press has been fulsome in predicting the likelihood of perverse effects. Some have predicted even more testing of pupils as teachers strive to 'prove effectiveness' (Henry 2000). Handley (2000) has commented that British teachers' strengths in creativity, pastoral care and extra-curricular activities will be politically unacknowledged and consequently devalued.

Simon Jenkins (2000) surmises that if teachers' pay depends on pupil examination results, the relationship between teachers and pupils will become strained, because the value of the pedagogic relationship becomes located on that which can be measured. One commentator has pointed out that PRP could lead to teachers not wanting 'their colleagues to progress too quickly' (Forbat 2000).

This really would be a perverse outcome, as the Department for Education and Employment (DfEE) wishes teachers to share good practice, and may eventually reward them for doing so through a School Performance Award Scheme first mooted in 1998 (Department for Education and Employment 1988). Jenkins echoes the feeling of many teachers when he asks 'Who will save education from this fiasco?'

Objections to regulatory measures should not be lightly dismissed. League tables, while raising the number of pupils gaining 5 A*-Cs in the General Certificate of Secondary Education, has dominated school policies (Gillborn & Youdell 1999) and contributed to an increase in school exclusions. The effect of this particular regulatory measure was to undermine the British Government's social inclusion agenda. In this case, head teachers have aimed to boost their league table positions, and therefore the viability of their schools, by ignoring a key government value.

Attempts to reduce exclusions by imposing targets have led to confrontation between heads of schools and appeal panels.

Regulatory measures are deeply unpopular because they seem crude in their design, unfair in their application, and - in some cases - inhumane in their consequences. However, the political discourse of regulatory measures always *seems* reasonable and fair. For example, the Performance Management Initiative talks about the support and development of teachers. As the Education Minister, David Blunkett, has said: why shouldn't good teachers be rewarded for teaching well?

Estelle Morris, the Minister for Schools, has claimed that PRP is an opportunity and not a threat; it should be seen as a reward for those who stay in the classroom. At the NUT Annual conference, she commented that she must be the only minister heckled for offering teachers £2000 more pay. This common sense understanding of politicians conflicts with the intuition of many teachers, parents and commentators. While those who have predicted perverse effects can only wait for empirical evidence, can anything be said *a priori*? In the following section, I set out the case for regulation and offer a critique of the assumptions that underlie it.

The case for regulatory measures

The imposition of direct and indirect regulatory measures can be justified by the following argument. Regulatory measures seek to ensure the common good and to protect the interests of the most disadvantaged. Looking at the wider picture, regulation can serve to correct imbalances, injustices and inefficiency in the overall provision of societal goods.

League tables, for instance, can be justified on the grounds that they foreground problems in achievement by comparing schools with similar intakes. Indeed, although teachers believe that they are acting in the best interests of their pupils, they may be mistaken. There is research evidence to suggest that in some schools, for example, low teacher expectations are leading to poor academic achievements (Woods 1990).

It is very easy, without external monitoring and comparisons, to believe that situations are inevitable and even to believe that the best is being done. Complacency is partly a lack of comparative information but also a product of poor accountability. External regulation may be necessary to foreground underperformance, which places certain children at a disadvantage when compared to other schools or areas. Similarly, PRP can be seen as a way of encouraging people into the profession and motivating them to stay and develop, by providing additional career steps and encouraging a focus on pupil achievement. Put like this - and disregarding the 'naming and shaming' that has accompanied inspections - why is regulation objectionable?

Assumptions of regulation

There are five fundamental problems with regulation. These are related to concerns expressed in the educational press, but which I suspect have little meaning except for those in the practice of educating.

The first is the complexity of the teaching task as it is understood in the UK. What this means is that it is a mistake to suggest that there is a simple connection between teaching input and output. Teaching situations are complex social interactions, where the idea of a simple connection between the actions of a teacher and responses of the pupils cannot and should not be characterised as a straight forward matter of cause and effect, as in the relationship in a game of tennis, for example, between hitting a ball and its resultant trajectory.

This relationship is not simple for at least three reasons concerned with human interaction. Firstly, the same words produced by a teacher may have different connotations for pupils and they will therefore respond in different ways. Secondly, differential responses depend on previous learning and experiences, the majority of which the teacher will not be privy to. Finally, the way in which pupils interpret a teacher's meanings will alter that teacher's plan of action if they differ significantly from what she/he expected.

All this leaves out of account the complexity of the way in which pupils interact with one another and how this affects group dynamics. It is well known to teachers that an approach that works well in one school may not transfer well to another. A teacher must be extraordinarily alert to individual responses and group dynamics in order to tailor his/her actions in the service of learning. This model of teaching, usually called reflective practice, is the dominant model in the UK. This is a high-order skill that cannot be modelled as a simple matter of 'right' input causing right outputs, as encouraged by regulatory measures.

The second problem is the nature of professional knowledge. This is often represented as a matter of subject knowledge and professional skills, such as classroom management, recording etc. However, this does not account for the way in which teachers regulate their own actions. I have argued elsewhere that teachers do this by filtering information, evidence and ideas through moral and pedagogic imperatives learnt in the process of becoming reflective teachers, from more experienced teachers and significant others and from training and self-study (Foreman-Peck 2000).

Such moral imperatives, observed from my own practice of teaching adults, include 'observe and get to know the capacity of your learners as individuals'; 'be accepting of your learners however inadequate they may seem'; and 'gather evidence of where learning is failing.' These imperatives form the common norms of a profession, and are often tacitly learnt but necessary for a teacher to engage with the learning achievements of her/his learners. Regulatory measures do not acknowledge the normative nature of teaching.

A third problem for regulation follows. The above norms are learnt in a spirit of shared practice and open dialogue with other teachers and teacher educators. By the logic of the situation, however, regulation encourages a competitive ethos, since educators must better national standards, benchmark schools and - in the case of secondary schools - departments within the same school (Fitz-Gibbon 1992). This ethos seems to privilege measurable indicators (examination results) and monetary rewards as the most important self-regulating imperative. This is rightly viewed with dismay, since it is in conflict with more humane imperatives such as 'be accepting of your learners however inadequate they seem'.

A fourth point concerns the accumulative nature of learning and time; it seems that something taught at time X by teacher Z may only become understood at time Y. Time Y may of course occur after any formal assessments have linked the learning to teacher Z. Furthermore, teaching and learning that has occurred in the class of one teacher is often a necessary prerequisite for further learning to occur. Poor achievement at an earlier stage generally means poorer relative achievement at a later stage - as anyone faced with a class of 11 year-olds with below-average reading ages will know.

These are obvious points, to teachers at least, but they highlight the unfairness of a regulatory regime that places the responsibility for the learning achievement of the class on one teacher. PRP guidance seems to acknowledge these complexities by setting differential learning targets for pupils. However, this involves measures of progress towards national averages. It seems likely, therefore, that in the current punitive climate, measures will be read negatively, ie focused on *failure* to achieve national average scores, rather than read positively as measures of added value.

One final point needs to be made. Learning is not something done to people. It is an interaction based on cooperation, understanding and mutual respect. Teachers will be familiar with the disaffected, uncooperative, unruly, depressed and de-motivated pupil. In the independent sector, such pupils are not generally tolerated and usually end up in state schools. The regulatory regime does not acknowledge the fact that a whole group's learning can be completely disrupted by uncooperative pupils (Owl 2001). Even seemingly compliant pupils can subvert a teacher's best intentions by refusing to do homework or engage wholeheartedly with the subject matter. Responsibility for learning is a shared responsibility and this is not captured by the present regulatory regime.

As I have said, these objections to regulatory regimes are derived not so much from the empirical data but from considering the logic of the situation. To appreciate that logic, one needs to have been a teacher. However, teachers are rightly accountable to parents and the state for their actions. Given this obligation, the crucial question then becomes 'Can any system of regulation provide accountability and meet the objections identified above?'

Can regulation alone solve the problem of poor standards?

We have seen that some regulatory measures in education are perverse in that they discourage the very thing they were designed to encourage. This has also happened in another 'front-line' service: the (British) National Health Service. Here, the move to cut the number of patients on waiting lists has distorted clinical priorities so that less serious cases have been treated before more serious ones. Regulatory measures do not need to be perverse in order to be discredited. They can be criticised on the grounds of ineffectiveness. Easen (2000) gives examples of targets that are achievable without having any real impact on what they are intended to achieve.

Regulatory measures are clearly at an early stage of development. Targets and other regulatory measures need to be critically evaluated themselves. However, in order to do this, those who set targets need to be clear about the values and educational goals they are trying to promote.

The overriding government values seem to emphasise 'value for money', effectiveness and inclusion (Cabinet Office 1999). The overriding goal for education seems economic: to create wealth through a better-qualified workforce. These values and goals are too narrow. While no one would endorse wasting money, and the desire to be efficient is laudable, these values do not capture distinctive professional values. The desire for efficiency, for example, should not override professional judgements about the best interests of those in our care, either as patients or as learners.

Regulation at the moment seems corrosive of some key professional moral imperatives, since ethical concerns are only expressed in terms of 'inclusion'. Instrumental rationality seems the dominant thrust of the regulatory regime. The effect is to create tension between the self-interest of individuals and core professional values such as those expressed in the Code of Ethical Principles for the teaching profession of the Universities Council for the Education of Teachers (1997). The most obvious of these are: collegiality, humility and the responsibility of influence. The Council has explained this latter value thus: 'Exercise and accept responsibility for influence which may be long term; this means realising that experiences in classrooms are truly formative and taking care to leave a positive imprint on the lives of those taught' (1997, p 5).

Can regulation encourage high standards by promoting outstanding practice? Complexity of interaction in the teaching exchange needs to be encouraged and valued, since it is the source of professional values such as creativity and responsiveness. It is a major source of satisfaction for teachers who think for themselves. The Hey McBer Report (2000) into teaching effectiveness endorses this view. However, it is presently an open question whether or not measures of pupil achievement or any other formal performance objective will encourage this professional quality. The DfEE guidance for head teachers on Performance Management in Schools is unconvincing.

It is good practice for objectives to be clear and precise to allow progress to be measured. The exact form will vary: what is important is that the planning discussions are based on an understanding of pupils' prior attainment, that teacher and team leader agree how they will measure progress and that annual reviews involve an assessment of progress actually achieved in the circumstances.

Teachers should never be discouraged from setting challenging objectives that are not quite met for reasons outside the teachers' control. Meeting challenging objectives will be a good way for teachers to show the substantial and sustained performance and help develop their careers. When assessing overall performance, team leaders should consider how challenging the objectives have been. A teacher who has not quite achieved challenging objectives may have contributed as much as, or more than a teacher who has met less challenging objectives in full. (Department for Education and Employment 2000, p 14)

This is obviously an attempt by the DfEE to stop teachers playing safe by setting minimum objectives that will be easy to achieve. Nothing in the guidance, however, reassures teachers that failure to meet more challenging objectives will not be penalised when pay decisions are being made. How can we tell whether such failure is due to factors outside teachers' control? What evidence should teachers provide? A lack of trust in teachers' professionalism could be mirrored by a lack of teachers' trust in their managers. Timidity rather than creativity is seemingly encouraged. Learning from trying out new approaches no longer seems valued. Boredom rather than enthusiasm will hence be the likely outcome. Bored teachers do not raise standards: they leave the profession.

Can regulatory measures encourage teachers to cooperate to produce higher standards? I have also noted that such measures can be an unfair and further cause of resentment for teachers; worse still, although they are unreliable they cannot help to raise standards. Benchmarking schools, for example, is an inexact science, since using free school meals as a proxy variable for social disadvantage is believed to be unreliable. It has been claimed that many eligible families do not apply for free school meals because of the social stigma involved, and some culture-rich families apply because they are poor.

Against this is the accusation that teachers can become complacent and hold low academic expectations. However, these accusations date to a time when there was no data available on pupil underperformance within a school - let alone between schools. Providing that the information is trustworthy, there is no reason why teachers should not make good use of such data without a regulatory regime such as PRP, with its emphasis on the individual teacher. We have learnt that teamwork is essential in industry, business and the higher education curriculum - so why not in schools, especially given the idiosyncratic and accumulative nature of learning?

League tables should provide sufficient incentive for schools to improve levels of attainment. Indeed, league tables could be improved as a measure to stop the current injustice of concentrating teaching effort on borderline D/C grades, by shifting the emphasis from A*-Cs using the point system for all grades. This ensures that even the grades of underachievers count and schools can be compared on the basis of the attainment of all their pupils. PRP, with its emphasis on an individual's

teaching, does not encourage teachers to learn from one another, which is necessary to share and maintain good practice.

There is another potentially perverse regulatory measure in PRP in that it threatens to undermine the moral fabric of teaching as a social practice. Without a strong ethical basis to teaching there is nothing to keep a teacher persevering, except in our most privileged and highly selective schools. The problem of monitoring, policing and directing the teaching workforce will become more necessary and arduous, as an intrinsic sense of professional ethics becomes eroded.

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