Governance: myths and mysteries

# Reflections from experience

This presentation is a reflection on long experience. The analytical devices assembled here find their way into the presentation because experience suggests to me that they are too often neglected.

The exercise is ‘educational about governance’. It encourages careful thought rather than reliance on simple formulae. As in most such things, there are some clear (often legal) rules. You picnic on my front drive: that’s trespass. The principal appoints his/her spouse to a senior post without external advertisement or a proper interview panel: that’s misconduct. The board introduces academic selection when the charitable objects state expressly that ‘admission is to be open to pupils from all backgrounds and abilities’: that’s *ultra vires*.

But there are many, many issues that are not so clear cut, where different perspectives might lead to different answers.[[1]](#footnote-1) All I can do tonight is to illuminate some of these—and encourage careful reflection.

## Outline of relevant experience

I make no claim to conspicuous success, but I do claim exceptional length and breadth of experience.[[2]](#footnote-2)

During my career, I have experienced (I’m tempted to say, been a victim of) many consultants and too many away days that raise hopes with earnest words on flip charts but rarely produce significant improvement.

In the spirit of openness, I must confess to plying the consultant’s trade—but only very occasionally. I take it that all here appreciate that such events are often, if not mostly, arranged to enable those at the top of the organisation to implement their own proposals, securing validation through ventilation and the imprimatur of external independence.

# Modus Operandi

This evening, I’m not going to describe any particular structures (or their operations) in any detail.

Instead, I offer some analytical tools, which, I believe, can usefully illuminate many issues about governance and which, I further believe, too often go unrealised and unconsidered.

Seeking metaphors, I thought of inserting grit into oysters. But, in lunchtime conversation with my former vice-chair (now one of my successors as chair), I arrived at alerting you to several elephants in the room, that most do not see. The point is that, because their existence is not realised, these elephants cannot be deliberately ‘ignored’ as so many other elephants are.

* I’ll try to present my case in the space of about 40 minutes.
* At various points in the presentation, I will identify questions.
* At the end of the presentation, I’ll show a complete list of the questions. It will be up to you how far you want to discuss them. You might want to answer some of them. Or you might think some of the questions illegitimate. Or you might want to add to the list.

# Hard and soft focus



The picture on the left has a hard focus (f1.8) on the acer sapling’s trunk. Consequently, the viewer pays little attention to the green leaves behind the sapling. By contrast, the leaves cannot be ignored in the picture on the right, which has a greater depth of field (f22).

Governance and management can and—because of institutional insularity (whether based on fear or pride)—mostly do take place ‘organisation-centrically’. In other words, the organisation itself is in sharp focus and all else is a blur.

But, within the field of sharp clarity, the classic examination of mission, strategy-formation and operational planning proceeds. Sometimes, the fads and fashions that are peddled by governments and the educational press influence these processes. But we see the opposite—where the wider context is also brought into focus—less often.

The principal effect is that competitor analysis and long-term scenario planning are too often ignored. Fifteen years ago, we would regard as too far-fetched or as simply alarmist, a scenario planning exercise for universities that included:

* no *per capita* funding for students studying the disciplines that do not require major investment in equipment;
* university status opened to private and foreign capital; and
* MOOCS (massive on-line open courses) easily available on line.

But all that has already happened.

1. QUESTION: Is the *Mission → Strategy → Operating Plan* model sufficient for Governance purposes? Can, and should, it be stretched to include competitor analysis—as distinct from presentational panache and competitive bribery with iPhones and iPads—and scenario planning?[[3]](#footnote-3)

# Conceptions of ‘authority’ and of ‘organisations’

Max Weber made extensive use of what he called ‘ideal-types’. We might call them ‘models’. They are not accurate descriptions but comprise abstractions or distillations of certain features. Think of them as templates that we can offer up to untidy reality and notice convergences and divergences.[[4]](#footnote-4)

## Models of Authority

## (i) Charismatic authority

Here’s a snippet from Weber:

‘The bearer of charisma assumes the tasks appropriate to him and requires obedience and a following in virtue of his mission…[I]t is the duty of those to whom he is sent to recognise his charismatic qualification.”[[5]](#footnote-5)

1. QUESTION: Consider the way in which we nowadays think of ‘leaders’ in education. Are there similarities? Strengths? Weaknesses?

Does Jim Collins get it right in *Good to Great* (London: Random House, 2001, 22): ‘Every time we attribute everything to “Leadership” we’re no different from the people in the 1500s. We are simply admitting our ignorance…[and] we prevent ourselves from gaining deeper, more scientific understanding about what makes great [organisations] tick.’?

On this theme, see also Nancy Cartwright’s and James Hardie’s emphasis on understanding how outcomes are **caused.[[6]](#footnote-6)**. Copying another organisation’s approach without understanding the ‘how?’ of its success there, can be disastrous.[[7]](#footnote-7)

## (ii) Traditional practices

Typically, charismatic authority establishes patterns of behaviour that become ‘the way we do things around here’. But, according to Weber, it does not depend ‘on planned and purposeful rules or the knowledge of such rules’.

1. QUESTION: How far is tradition an advantage? Is it grounded in the complexity of experience and thus more sophisticated and fitter for purpose than simple nostra? Or is a way in which the organisational ostrich can put its head in the sand?

## (iii) Bureaucracy

‘Bureaucracy’ did not carry for Weber the overtones that it has since acquired—like the ‘men from the BBC who would prefer it if there were not programmes, just administration’ For Weber, bureaucracy was an instrument of progress.

‘[B]ureaucratic rationalisation can also be, and often has been, a revolutionary force of the first order in its relation to tradition. But its revolution is carried out by technical means, basically ‘from the outside’ (as is especially true of all economic reorganisation); first it revolutionises things and organisations, and then, in consequence, it changes people, in the sense that it alters the conditions to which they must adapt and in some cases increases their chances of adapting to the external world by rational determination of means and ends.”[[8]](#footnote-8)

1. QUESTION: Are Governors ‘bureaucrats’ and, to what extent, is their business ‘bureaucracy’? Do they know enough about their organisation and the context in which it operates to be sure that the changes and disciplines they impose will be beneficial?

## Models of organisations

Weber also modelled organisations (as distinct from modes of authority).

### Gemeinschaft

Literally translated, *Gemienschaft* is ‘fellowship’. Think of a reasonably happy family, or a really good ‘team’, or a guild or livery company. This conception is rooted in the consonance of its members’ subjective feelings.

### Gesellshaft

Put simply, this is based on ‘contracts’ and ‘property’—impersonal ties. The organisation exists and therefore tends to operate for the benefit of its owners, whoever they might be. This model is, of course, the one that best lends itself to marketisation.

### Bureaucratic-administrative

We have already touched on this. Note however that Weber was also concerned that bureaucracy could stifle individuality.

1. QUESTION: Must Governors plump for one of the three models? Or can they combine the models’ various virtues and controls for their disadvantages?

## The classical organisational pyramid

Here’s how we mostly think of our organisations:

### The obvious weaknesses

1. There is no mention of students, parents, etc.

By contrast, here is the principal charitable object of a leading independent school:

[T]he advancement of education of children, principally for the benefit of those families in social, financial or other specific need, by provision of a school for boys and girls as boarders, with such day pupils as the Board shall decide.

Note that:

1. there is nothing market oriented about this object;
2. the beneficiaries are families that include children.

But who decides what will advance children’s education? It is not clear from the extract.

Here’s another extract from the governing document of a preparatory school.

‘[T]o advance education, including, without limitation, by conducting the school …and any other school or schools, for girls or boys, as the Governors may think fit.’

Here it is clear that it is the governors who decide the nature of the education to be offered. It follows that parental wishes will be considered only if the governors deem it appropriate to do so.[[9]](#footnote-9)

1. QUESTION: A school set up by a benefactor to ‘provide a broadly-based and well-rounded education’ has become successful and sought-after by parents. The majority of parents of present pupils now want earlier and greater specialisation.
	1. Who is the guardian of the benefactor’s purposes?
	2. What weight should be given to the parental pressure?
	3. Do all parents speak with the same voice? Is there discernible, coherent ‘will of the parents’?
	4. How much account should be taken of the interests of future students and parents?
2. The ownership/financial dimension is not well-captured. I’ll list some aspects of it here but will address them later under the heading of ‘accountability’ (which might be the sharpest of the analytical tools assembled in this presentation).
	1. Through holding the purse strings, government will impose itself on the consciousness of organisations that are dependent directly or indirectly (e.g. student loans) on public funds.
	2. Similarly, the interests of owners will be considered in private/commercially funded organisations.
	3. Organisations operating as charitable trusts might be, in the terms being used here, self-perpetuating oligarchies.
3. External stake holders are not represented. Here I have in mind the employers and professions who will want competent employees, and universities who rely on their entrants having reached a threshold of relevant competence. And, in discussion on 20 March 2017, Sir Roderick Floud broadened the point to include ‘the public interest’. Is this, so far as we can discern it, always best served by the continued independence of undercapitalised organisations? (see the earlier reference to organisation-centricity). Of course, the influence noted at 2)a above can be brought to bear. See for example the current pressure on Further Education Colleges to merge—as Hackney and Tower Hamlets Colleges have recently.
4. A further omission from the classical organisational pyramid, pointed out in discussion, is the special powers that are vested in Senates and Academic Boards. Vice-chancellors of chartered universities will not be inclined to forget their traditional and purportedly *Gemeinschaft* senates, much as they might wish to. The status of these bodies are mostly entrenched by governing instruments. But even Royal Charters can be overridden by a government with sufficient political will, as illustrated by the abolition of tenure.

## Inverting the pyramid

It is a simple matter to address the first weakness. We can just add another level at the base of the pyramid. However, we can then invert the pyramid, with the following result.

1. QUESTION: Is this representation (the inverted pyramid with students/parents/etc. added) more proper than the one first offered?
2. QUESTION: What are the utilities and disutilities of Board membership for: parent governors; student representatives; representatives from industry, commerce, etc.?

# Governance

‘Governance is…fundamentally concerned with the enhancement of corporate performance. It means adopting a modus operandi or a modus vivendi that will add value to your organisation. In other words, it’s a state of mind.’[[10]](#footnote-10)

Unexceptionable stuff from the Institute of Directors. However, it begs important questions.

1. QUESTION: Is it clear what should count as ‘value’? How will value be measured? Is the most significant value ‘corporate’? Or individual?

Then some questions triggered by Ludwig Wittgenstein’s famous puzzle.

‘Someone says to me “shew the children a game.” I teach them gaming with dice, and the other says “I didn’t mean that sort of game.”’[[11]](#footnote-11)

1. QUESTION: Is there a danger that boards and managers will ‘talk past each other’? Or that agreement will be at a level of abstraction that generates a warm feeling at the meeting, but fudges strategically and operationally significant issues?
2. QUESTION: How precise or fixed in their meaning are words like ‘excellence’, ‘diversity’, ‘balanced’?
3. QUESTION: Is a Board member from a business outwith education whose motivation is to ‘give something back’ well-placed to determine what should count as ‘value’? How transferable are professional skills acquired in other spheres?

Non-executives are necessarily and properly ‘distant’. That distance can give them perspective for which those involved day-to-day might struggle. They are often excellent members of the board—professionally conscientious, with a good nose for obfuscation and well-aware that the educational context differs from their own home territory. Here’s an extract from a recent OFSTED report.

‘Governors know their school. They use their time in school to talk with pupils and staff to get first-hand information about what is working well and what could be even better. Governors use what they know to challenge leaders effectively.’

But others can ‘hang their professional discipline up at the board room door’, or be insensitive to important differences from their day-to-day work, or be obsessed by one good but quite small point, etc.

# Management

How is ‘governance’ distinguished from ‘management’ when the board has responsibility for the whole organisation? In my view, there is no litmus test. If a board wishes to insist that only blue plastic covered paper clips are used, it has the power to do so. This suggests that it is ‘governance’ when the board chooses to intervene—and ‘management’ when it does not.

Similarly, if someone at the operational level is grossly negligent and a death results, the organisation can be liable for corporate manslaughter, under section 1 of Corporate Manslaughter and Corporate Homicide Act 2007, if:

1. *the way in which its activities are managed or organised—(a) causes a person’s death, and (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased…*
2. [provided that] *the way in which* [the organisation’s causally related] *activities are managed or organised by its senior management is a substantial element*’.

In a corporate manslaughter case, a board will want to say that:

* it expected management to take care of the risk
* it appointed management to take care of the risk
* it is entitled to rely in management to take care of the risk
* it cannot practically be expected to manage the risk itself

But the activity was ‘managed or organised by its senior management’ and that is sufficient to inculpate the board and thus to expose the organisation to the risk of an unlimited fine, a remedial order and a publicity order.

1. QUESTION: Does it make sense to say that ‘the board does strategy’ and ‘managers manage’? Can a board assure itself of the adequacy and safety of operational systems if it sees its role as ‘primarily strategic’? Or if it is concentrating on its mission ‘to drive change’?

These issues become more problematic, the larger and more complex the organisation in question is.[[12]](#footnote-12)Compare a small kindergarten—where anyone and everyone might claim sufficient knowledge to engage (or to meddle)—with a large university teaching and researching far more disciplines than any board could hope to have expertise in.

Consider the ambiguity of this statement:

‘The board must have close regard to the voice of its students and the quality of the student experience, which should be central to all board decisions.’[[13]](#footnote-13)

How close is ‘close enough’? How close is ‘too close’? These are analogue (how high do you want the volume control?)—and not binary (think of the on/off switch)—questions. Judgement is necessarily engaged.

Inevitably, we are driven to the concept of good systems—the board must assure itself that all the systems needed are in place, fit for purpose and operating well. It will want to console itself with the thought that that is governance—and the rest is for management.

However, that leads us to the key concept of ‘accountability’. Only when a board adequately discharges its responsibility to hold management to account is it doing its job. Concentrating on strategy is no defence. But is not ‘accountability’ just another weasel word?

# Accountability

‘As with all dysfunctional organisations, this episode was the result of a profound failure of governance and a failure to control chief executives.’[[14]](#footnote-14)

Some such failures are catastrophic—consider Kid’s Club and Enron. That these failures are preceded by the development of corporate cultures that stifle debate and criticism is well-illustrated by Margaret Hefferman’s podcast ‘Just Culture’ describing issues at General Motors.[[15]](#footnote-15) Education is not immune from this problem.

## Conceptions of accountability

Just as there are several conceptions of the concept of ‘a game’—and of authority, organisation, governance, management, strategy, value, excellence, diversity, balanced, etc.—so too there are differing conceptions of ‘accountability’ by which, following Jeremy Waldron,[[16]](#footnote-16) we can say that the ‘persons called to account are not laws unto themselves’.

Waldron identifies four distinct conceptions of accountability. Much like Weber’s ideal-types examined earlier, all three have some relevance to the governance of educational organisations.

### Forensic-accountability

‘[T]he liability of a person to have his actions assessed by a tribunal on the basis of some established norm’ (emphasis added). Most significantly, such accountability is ‘predicated on the availability of a process, formal or informal, to assess [the subject’s] actions in that way.’ Neither the standards nor the process are chosen by the person calling the other to account.

### Agent-accountability

‘[T]he duty owed by an agent to his principal, whereby the principal may demand from the agent an account of the work that the agent has been doing in the principal’s name or on the principal’s behalf, enabling the principal if she sees fit to sanction or replace the agent or terminate the agency relationship.’

This is the most powerful of the various conceptions examined. It involves a principal who is:

* *privileged* to call the agent to account,
* on terms and at times that that are of the principal’s choosing (and not of the agent’s choosing),
* in relations to standards that are not of the agent’s choosing but are chosen by the principal (or by some external power with which the principal chooses or is externally obliged to comply—we get close here to forensic-accountability with its externally-fixed standards).

Waldron makes several points that might be relevant in the context of educational organisations.

* Accountability is not intrinsically ‘democratic’ but can be used to further democratic objectives.
* *‘*[T]*he principal actively demands an account from the agent, as she is entitled to do, because it is her business that is being transacted by the agent…What is being done by the agent is being done in her name and she, the principal, may have to take responsibility for it.’*
* ‘*Even if the principal has the greatest confidence in her agent, even if that confidence is justified, and even if there is no question of gross mismanagement or abuse,* still *the principal is owed an account from the agent of what he (the agent) is doing with her resources, about her business, and in her name*.’
* The fact that agents will also have interests and views gives rise to what economists call ‘the agency problem’. And, if we take the board to be the ‘principal’ and the head to be the ‘agent’, we come to the ‘board-head’ and ‘chair-head’ issues.
* The principal (the board) might well itself be accountable to funders and their quality assurance agencies.
1. How far is the board an ‘agent’ of the funder or of the quality assurance agency?

*‘*[A]*gent-accountability may involve the principal dismissing the agent or seeking recompense from him. But the demands of agent-accountability are present even where there is no question of sanctions*…[The agent] *is about the principal’s business: he has to give an account when the principal demands it, and for whatever reason.’*

### Trust model accountability

Agents are often ‘entrusted’ but are not, in the strict sense, ‘trustees’. However, a strict and legal version of the trust model is quite common in education. Waldron identifies its basic features.

Waldron ‘distinguish[es] three roles: the settlor (who sets up the trust), the beneficiary (for whose benefit the trust is set up), and the trustee (the person empowered by the settlor to act for the benefit of the beneficiary). Lines of accountability are much more rigid in this relationship than they are in the agency-model. The beneficiary is mostly passive. The conditions under which the beneficiary (or anyone else) can hold the trustee to account are quite limited and the terms of reference for accountability are those laid down by the settlor’.

1. Question: assuming that the settlor is deceased, where is the motive power to call the trustee to account? Who is the trustee in this model? Is it the board? Do market forces exert pressure upon trustees?
2. Question: who are the beneficiaries? Are they ‘mostly passive’?

### Consumer-accountability

‘[D]enotes the fact that it is deemed desirable for an organization to take the views or preferences of specified others into account in deciding how to act… It definitely does not embrace the point—common to [forensic and agent accountability] conceptions—that consequences may follow from the assessment of the conduct of the person or organization said to be accountable’.

Consumer-accountability can easily degenerate into what Amitai Etzioni calls ‘symbolic accountability’ or ‘accountability as gesture’.[[17]](#footnote-17)

‘The hallmark of accountability as gesture is that it is pure norm with little or no instrumentality attached.’ [Those] ‘advocating accountability fail…to follow up the use of the term by outlining specific arrangements’.

He calls this toothless or vacuous approach,

‘a “Sunday only” value mechanically acknowledged in a secular form of lip service…easily and vociferously endorsed by boards of trustees…in positions of power whose recitations of the phrase serve as a substitute for actual accountability.’[[18]](#footnote-18)

But Etzioni also recognises that accountability can also be a rallying cry for action or a banner for moral re-education or persuasion to the interests of its advocates. In that last sense, it can be a form of ‘Realpolitik’.

### Formal, legal approach

Etzioni explores such devices as representatives on boards and other structural ‘checks and balances’. This is similar to, but not the same as, Waldron’s forensic-accountability. Etzioni is somewhat sceptical of such arrangements.

For example,

‘In the health care system the consumer representative often turns out to be not “the people’s’’ representative, but a businessman rather similar to the other board members in background and outlook.’

He also points to ‘the aura of expertise’ that the professional staff and other board members might have—or might appear to have.

Nevertheless, he also recognises that formal legal structures do matter to the development of useful accountability, ‘especially when coupled with efforts to build consensus around values and to mobilize power through coalition building.’ Etzioni concludes that,

‘without fixed ‘‘institutionalized’’ opportunities for communication [that formal accountability provides] regularized interaction is unlikely to occur with sufficient frequency…[and that the] mechanisms of institutional communication constitute a vital element of any effective accountability system.’

## Conditions for effective accountability

### Information

The Institute of Directors tells us, uncontroversially, that,

‘the board needs the right information at the right time if it’s to do its job properly. The timely flow of clear, useful and accurate information is a governance tool. It enables the board to understand and monitor progress towards strategic objectives and to assess, identify and anticipate risks.‘[[19]](#footnote-19)

Jeremy Waldron puts the point more bluntly.

‘Confronted with the demand for…an account, the agent may not say: “Well, it is up to you to find out what I have been doing, and then you see if you can understand it and if you are in a position to assess it.” …. not only [does] the agent [have] an obligation to faithfully render his account of what he has been doing, but…he must [also] find a way of doing so in a form that can be understood by the principal (if that is at all possible).’

Information is a key condition for effective accountability. Let’s imagine that:

1. the agent (the head) is minded to operate with complete openness; and
2. the principal (meaning here the board members) is
	1. open-minded; and
	2. utterly conscientious, prepared to wade through the massive piles of papers for each of the frequent meetings.

Is that sufficient to ensure that effective accountability will flourish? In my view, not.

Beyond openness, open-mindedness and conscientiousness, there are further necessary conditions:

1. Knowledge and experience that enables the principal (board members) to:
	1. comprehend the information received;
	2. compare the performance with that of other comparable organisations—which begs the questions, ‘how does one know which are properly comparable?’ and what is ‘proper comparability?’;
	3. ask challenging questions and know enough to spot an inadequate or misleading answer.

### Trust

As a governor and as a manager, I have been deeply impressed by the fact that boards are heavily dependent on management to provide the necessary information and to educate board members but not to indoctrinate them. Another legal concept fits well—this principal-agent relationship is fiduciary (just as a solicitor owes a fiduciary duty to the client[[20]](#footnote-20)). The agent (head) is under a duty of good faith to the principal (board).

### Learning from mistakes

The flow and constructive discussion of information will flourish better if the organisation as a whole values the ability to reflect upon and learn from mistakes (rather than simply to sanction and/or replace the individuals involved).

In a similar spirit, organisations should recognise that ‘Devil’s Advocates’ are useful. The notion that asking the question an outsider or opponent would or should ask is a form of disloyalty or the source of time-wasting complication is, in my experience, too often prevalent—as, I might add, is an exaggerated view of the organisation’ distinctiveness.

Chair-Head relationship

It is impractical that the agent (head) reports always to the whole principal (board). Consequently, it is conventional that, on the board’s behalf, the chair builds a close relationship with the head. The points I have made about the board-head relationship apply (*mutatis mutandis*) to the chair-head relationship.

Two further points are apposite. First, under most constitutions, the chair is not vested with special powers. The chair is simply a governor with additional responsibilities either expressed in the governing document or by express and specific delegation by the board as a whole. In relating to the head, the chair is simply the board’s agent.

Secondly, although pleasantness and good humour are helpful—even essential—things go wrong when chair and head are too close. A head who too readily follows the chair’s wishes will not be doing enough to inform the board’s decision-making. And a chair who out of ignorance or admiration does not challenge the head is failing the board and the head.[[21]](#footnote-21)

1. QUESTION: *Quis custodiet ipsos custodes*? In matters in which the board is not regularly subject to some external accountability, how should board members call themselves to account?
2. QUESTION: Who is the ‘principal’ (as opposed to the agent) in:
	1. a privately-funded university?
	2. a free school?
	3. a multi academy trust?
	4. a state funded primary school?

# Questions

1. Is the Mission → Strategy → Operating Plan model sufficient for Governance purposes? Can, and should, it be stretched to include competitor analysis—as distinct from presentational panache and competitive bribery with iPhones and iPads—and scenario planning?
2. Consider the way in which we nowadays think of ‘leaders’ in education. Are there similarities? Strengths? Weaknesses?
3. How far is tradition an advantage? Is it grounded in the complexity of experience and thus more sophisticated and fitter for purpose than simple nostra? Or is a way in which the organisational ostrich can put its head in the sand?
4. Must Governors plump for one of the three models? Or can they combine the models’ various virtues and controls for their disadvantages?
5. Are Governors ‘bureaucrats’ and, to what extent, is their business ‘bureaucracy’? Do they know enough about their organisation and the context in which it operates to be sure that the changes and disciplines they impose will be beneficial?
6. A school set up by a benefactor to ‘provide a broadly-based and well-rounded education’ has become successful and sought-after by parents. The majority of parents of present pupils now want earlier and greater specialisation.
	1. Who is the guardian of the benefactor’s purposes?
	2. What weight should be given to the parental pressure?
	3. Do all parents speak with the same voice? Is there discernible, coherent ‘will of the parents’?
7. Is this representation (the inverted pyramid with students/parents/etc. added) more proper than the one first offered?
8. What are the utilities and disutilities of Board membership for: parent governors; student representatives; representatives from industry, commerce, etc.?
9. Is it clear what should count as ‘value’? How will value be measured? Is the most significant value ‘corporate’? Or individual?
10. Is there a danger that boards and managers will ‘talk past each other’? Or that agreement will be at a level of abstraction that generates a warm feeling at the meeting, but fudges strategically and operationally significant issues?
11. How precise or fixed in their meaning are words like ‘excellence’, ‘diversity’, ‘balanced’?
12. Is a Board member from a business outwith education whose motivation is to ‘give something back’ well-placed to determine what should count as ‘value’? How transferable are professional skills acquired in other spheres?
13. Does it make sense to say that ‘the board does strategy’ and ‘managers manage’? Can a board assure itself of the adequacy and safety of operational systems if it sees its role as ‘primarily strategic’? Or if it is concentrating on its mission ‘to drive change’?
14. How far is the board an ‘agent’ of the funder or of the quality assurance agency?
15. Assuming that the settlor is deceased, where is the motive power to call the trustee to account? Who is the trustee in this model? Is it the board? Do market forces exert pressure upon trustees? Who are the beneficiaries? Are they ‘mostly passive’?
16. *Quis custodiet ipsos custodes*? In matters in which the board is not regularly subject to some external accountability, how should board members call themselves to account?
17. Who is the ‘principal’ (as opposed to the agent) in:
	1. a privately-funded university?
	2. a free school?
	3. a multi academy trust?
	4. a state funded primary school?

*Max Weaver, 19 March 2017*

1. For example, we all recognise ‘justice’ as a good, but we do not all agree on its foundation in: property rights; human rights; desert, or need. For a brief elucidation, see Armatya Sen, *The Idea of Justice,* (London: Allen Lane, 2007) 12-15 (‘Three Children and a Flute’). For more complex explorations, see Ronald Dworkin, *Justice for Hedgehogs* (Cambridge MA: Belknap Press, 2011) 123-188 and, at 120, ‘Kindness and honesty [two principles that often conflict] cannot *just* have one content or another, because moral claims cannot be barely true….No moral particles fix what these virtues just are….[They] are *interpretive concepts*: their correct use is a matter of interpretation, and people who use them disagree about what the best interpretation is’ (emphasis added). Dworkin’s approach draws on a strong philosophical tradition. In his *Taking Rights Seriously* (London: Duckworth, 1977) 103, he cites W B Gallie ‘Essentially Contested Concepts’, (1965) 56 Proceedings of the Aristotelian Society 167-198. In *JfH* at 60, 124 and 160 there are explicit references to Ludwig Wittgenstein, *Philosophical Investigations* (Oxford: Blackwell, 1953, 1958 and 1963). [↑](#footnote-ref-1)
2. Employed for 50 years, mainly in higher education: Lecturer, Course Leader, Head of Department (x 2), Dean (x 2), Pro Vice-Provost, Deputy Provost, Deputy Vice-Chancellor, CEO (in charity sector: turnover ~£10M p.a.), [last 7 years, back, as visiting professor, to lecturing part-time]. At various times, all major academic and support functions have reported to me. Particular longevity in responsibility for: academic quality assurance; property strategy; corporate strategy. Quality Assurance: CNAA and HEQC (20+ years). Chair of Legal Studies Board for ~5 years. External examinerships both sides of the old binary line. Trusteeships (over 25 years) in 4 organisations. Chair of Finance (x 2). Directorships of trading subsidiary companies (x3). [↑](#footnote-ref-2)
3. An ex-chair comments,‘[F]orecasting the whim of the next Secretary of State is virtually impossible—year on year or even month on month. Broad scenarios can be envisaged (continuous curriculum churn, less money) but given governance and management resources, anything more specific is very difficult. Speaking as ex-chair of a state-funded local authority/Church of England primary, the Local Authority, which might be in a position to do wider planning, is poor at doing this. In particular, their demographic planning is atrocious, and that should be within their sphere of competence.’ [↑](#footnote-ref-3)
4. Weberian ‘pure’ or ‘ideal’ types ‘exhibit the internal unity which belongs to the most complete possible adequacy on the level of *meaning*.’ They are not descriptions of reality: ‘Just because of its internal coherence, this ideal pure form is perhaps as little likely to be found in the real world as a physical reaction calculated on the assumption of an absolute vacuum.’ However, ‘[i]t is only with such pure or ‘ideal’ types that the more subtle sociological distinctions can be drawn. It goes without saying that the sociologist may also, on occasion, make use of *average* types, of the kind found in empirical statistics: such constructions, however, do not clarification.’ (Runciman, *Selections from Weber* (Cambridge; CUP, 1978) 23-24. [↑](#footnote-ref-4)
5. *Op. cit.* note 4 above, 227. [↑](#footnote-ref-5)
6. Nancy Cartwright and James Hardie, *Evidence-Based Policy: A Practical Guide to Doing it Better* (Oxford: OUP, 2012) [↑](#footnote-ref-6)
7. An ex-chair comments, that ‘The Secretary of State is particularly resistant to evidence-based policy in education. There are some green shoots–schools such as [hers] co-operating with [local] universities on very small scale research projects to find out what works in our context.’ [↑](#footnote-ref-7)
8. [Runciman (1973) page 231]. See also Weber, Economy and Society, (University of California Press 1978, first published 1922) 975, ‘Bureaucracy develops the more perfectly, the more it is "dehumanized," the more completely it succeeds in eliminating from official business love, hatred, and all purely personal, irrational, and emotional elements which escape calculation.’ [↑](#footnote-ref-8)
9. This extract from a recent OFSTED report is worth looking at carefully. ‘The Christian values of the school are known and understood by pupils. Pupils are clear about their rights and their responsibilities both within the school and in wider society. As a result, pupils are very well prepared for life in modern Britain. Pupils take huge pride in their work. They are instantly able to recall key facts they have learned over time because the learning experiences the school provides leave a lasting impression on pupils.’ [↑](#footnote-ref-9)
10. Neville Baine and Roger Barker, *The Effective Board* (London: Institute of Directors, 2010) page 40. [↑](#footnote-ref-10)
11. Wittgenstein, note 1above at 33e. Wittgenstein continues, ‘Must the exclusion of the game of dice have come before [the speaker’s] mind when he gave me the order?’ One might also ask whether the hearer must have that exclusion in mind when hearing the word ‘game’? Is it only in subsequent activity that the divergence emerges? See also note 1 above. [↑](#footnote-ref-11)
12. On valuing organisations, see: Max Weaver, ‘Valuing Complex Third Sector Organisations’ (working paper available on request)**;** andAlice Sampson and Max Weaver, ‘Community Anchors: securing their position’in *Rising East* Vol 2, Series 1, No 3 February 24th 2010 (available on request). [↑](#footnote-ref-12)
13. *Code of Good Governance for English Colleges*, page 8, §3.5 (London: Association of Colleges, 2015). [↑](#footnote-ref-13)
14. Comment from a Law Society insider on the £3.3 million failure of Veyo, the Society’s large IT project (*The Times*, 10 December 2015). [↑](#footnote-ref-14)
15. <http://www.bbc.co.uk/programmes/b04n31d2> (visited 19 March 2017) [↑](#footnote-ref-15)
16. Jeremy Waldron, ‘Accountability: Fundamental to Democracy’ (April 1, 2014). NYU School of Law, Public Law Research Paper No. 14-13. Available at SSRN: [https://ssrn.com/abstract=2410812](https://ssrn.com/abstract%3D2410812); <http://dx.doi.org/10.2139/ssrn.2410812>; or <http://www.law.nyu.edu/sites/default/files/upload_documents/Accountability.pdf>. [↑](#footnote-ref-16)
17. Amitai Etzioni, ‘Alternative Conceptions of Accountability: The Example of Health Administration’ (1975) May/June *Public Administration Review* 279-286. [↑](#footnote-ref-17)
18. Waldron comments, ‘A business that receives feedback from its customers itself decides what to do with that feedback; the gathering of that feedback does not empower the customers nor does it represent any sort of genuine vulnerability on the part of the business…..’ [↑](#footnote-ref-18)
19. Baine and Barker, note 10 above, page 42. [↑](#footnote-ref-19)
20. *Nocton* v. *Lord Ashburton* [1914] AC 932. [↑](#footnote-ref-20)
21. See Ruth Lesirge and Rosalind Oakley, *A Question of Balance* (Association of Chairs, 2015). [↑](#footnote-ref-21)