Table of contents
Sumario

Testing and proposals
Investigaciones y propuestas

Book reviews
Reseñas bibliográficas

This is the English version of the research articles and book reviews published originally in the Spanish printed version of issue 281 of the **revista española de pedagogía**. The full Spanish version of this issue can also be found on the journal's website http://revistadepedagogia.org.

The LOMLOE amidst the challenges of the Spanish education system in the 21st century

Francisco López Rupérez

Introduction: The LOMLOE amidst the challenges of the Spanish education system in the 21st century

Presentation: The LOMLOE amidst the challenges of the Spanish education system in the 21st century

The rapid pace of social and economic development has increased countries' expectations of their education and training systems like never before. Governments, multilateral bodies, business organisations, think-tanks, and foundations — from both the educational sector and the wider fabric of society — as well as academics from a range of fields have underlined the critical importance of the challenges associated with improving the quality of education, developing young peoples' personalities in the new circumstances, and joint cooperation in the task of readying individuals and society for a future shaped by globalisation, technological revolutions, and the interactions between them.

There has also been reflection and analysis of the dire consequences of the Covid-19 pandemic for societies and economies all over the world, the effects of which will be felt everywhere, with varying levels of intensity, in the short, medium, and long terms.

Now well into the twenty-first century and fully immersed in the context of the pandemic, Spain has set in motion an educational reform, passing Organic Law 3/2020, of 29 December, amending Organic Law 2/2006, of 3 de May, regarding Education (LOMLOE).

Obviously, reforms to education laws in a democratic system must focus on changing policies, so that the educational system meets the needs of the times. Therefore, it is to be expected that the legislative power will turn to numerous social partners to make the reforms as advantageous as possible.

For their part, academics and others who dedicate themselves to reflecting on education should have the opportunity to exercise their social responsibility and contribute to this task by analysing the foundations of the educational reforms, studying them in

the light of the purposes of education, the challenges of the future, and the available evidence.

This is the aim of this monographic issue which, in a constructive spirit, is an exercise in the social transfer of academic work relating to the LOMLOE. And, as corresponds to academia, it does so with a vocation of objectivity and analytical rigour based on a substantial critical apparatus, all of which facilitate rational debate and reflection on a key question for the future of individuals and of our society.

This monographic issue comprises two large sections, which group together a total of ten contributions, as well as this Presentation. The Studies and essays section contains six contributions, which consider the educational reform of the LOMLOE from a variety of perspectives and, at a methodological level, share an analytic, interpretative and evaluative approach. The Testing and proposals section contains another four contributions based on empirical evidence — whether created ex professo or collected from an international perspective — on other significant aspects of the reform.

The first article is written by Esteban Bara and Gil Cantero, from the Universitat de Barcelona and the Universidad Complutense de Madrid, respectively. They consider the issue of the purposes of education, presenting and analysing the questions that have inspired the most debate in society. Along with some of the virtues of the LOMLOE, they conclude that the presence of a wrongly political focus on pedagogy is a dominant feature of this law.

The second article is by José Luís Gaviria and David Reyero, from the Universidad Complutense de Madrid. These authors provide a thorough reflection on the place of results in the educational system and they consider its qualifying, socialising, and subjectivising function in the school setting in more depth. In view of these foundations, they criticise the gradual decline of knowledge transfer; a decline that affects these three functions and opens the door to a worrying change in the objectives of the educational system which, in their opinion, is reflected in the new law. The authors support a return to valuing the knowledge accumulated over the centuries as the best way of achieving socialisation, subjetivisation, and qualification at the same time and through schooling.

Francisco López Rupérez, from the Universidad Camilo José Cela de Madrid, centres the third article on the implementation of the LOMLOE in curriculum matters, contrasting it with a true approach to the competence-based curriculum focus, an approach that derives from the international frameworks of reference and from rational justification for this type of curriculum. In it he sets out the humanistic component of this curriculum reform movement, which maintains its link to "liberal education", even when explicitly broadening its perspective. He also describes elements of the ideological debate surround-

ing this new curriculum focus and its embodiment in the implementation of the new Law, and carries out a critical analysis of the conceptual basis of the new structure. Finally, he reflects on the problems of the evaluation focus, in view of the warnings derived from international analyses.

In the fourth article, José Luis Martínez López-Muñiz, of the Universidad de Valladolid, considers the issue of the low regulatory quality of laws and analyses its causes, then offers a detailed description of the remedies for this. This provides a basis for him to consider the specific question of Spain's educational legislation and to analyse in detail, from his position as a renowned specialist, its many and varied shortcomings. He concludes by calling for brevity, clarity, logical and conceptual rigour, and systematic order as essential elements of educational legislation that is of sufficient legal quality.

The fifth article is by Charles L. Glenn from Boston University (USA). In it he considers the fundamental question of educational pluralism in a free society. He first analyses the reach and limits of governments in the formation of citizens in times of cultural conflict. He then goes on to reflect on the types of schooling that are most appropriate for resolving these cultural conflicts while guaranteeing sufficient attention to the qualities citizens must posses. Finally, he examines in depth the implication of the above when properly attending to the demands of justice and liberty, in particular in the case of the most vulnerable children.

The Studies and essays section ends with the article by José Adolfo de Azcárraga, from the Universidad de Valencia. In the style of physics, of which he is a notable representative, he puts forward a prediction that public education will not improve with the new law, supporting it with rational arguments. To do so, the author writes a multifaceted essay in which he rigorously covers aspects as varied as regulatory hypertrophy, the case of mathematics, equality and effort, knowledge and merit, teacher recruitment, the Spanish Baccalaureate, and secondary education, before finally turning to the fledgling university reform. All of these topics are currently subjects of debate, not just in the world of education, but also in the public or social sphere represented in the media.

The second section — Testing and proposals — starts with an article by María Teresa Ballestar, Jorge Sainz, and Ismael Sanz, from the Universidad Rey Juan Carlos de Madrid. In this research about the economy of education, the authors apply innovative methods to the analysis of educational data that are important for setting policies. They are based on artificial intelligence through machine learning models and artificial neural networks. The results provide a robust foundation that enables the authors to argue for the implementation of educational reinforcement programmes for low-performing and socially disadvantaged students, and to argue for the need to assess the LOMLOE with

this type of method, especially given the major investment that the allocation of the Next Generation funds from the European Union will entail.

The second article in this section is by Francisco López Rupérez, of the Universidad Camilo José Cela de Madrid. The author focusses on the quality of governance in the educational system. He starts with an analytical framework for evaluation, empirically validated through a Delphi process of consultation of experts and a comparative international analysis, and on the basis of this framework, he analyses and evaluates the LOMLOE's reform process in light of the criteria derived from this conceptual model. The main conclusion that emerges from these empirical results is that Spain's educational system has a long way to go to improve the quality of governance.

In her article, Inmaculada Egido Gálvez, from the Universidad Complutense de Madrid, analyses Spain's curriculum reform from a comparative perspective. She does this using an analytic framework she developed on the basis of publications relating to this topic by UNESCO, the OECD, and the EU, as well as a variety of comparative studies of recent curriculum reforms from around the world. She identifies similarities in the focus and architecture of the curriculum model, but she also detects significant differences regarding the strategy adopted for the change and the agents involved in it.

This issue ends with an article by Samuel Gento Palacios, Raúl González-Fernández, and Ernesto López-Gómez, from the Universidad Nacional de Educación a Distancia. These authors take a critical approach to three key aspects for the success of the reforms and the good functioning of educational centres: leadership by school management, the autonomy of centres, and accountability. A variety of different observations derive from this analytical framework, which translate into proposals for improving the functioning of educational centres in the context of the educational reform of the LOMLOE.

When reflecting carefully on these ten contributions from eight different universities, we can see an underlying message which, in one way or another, connects all of them: a call for rationality in educational reforms, understanding rationality as "the ability to use knowledge to attain goals"[1].

Two important features characterise successful educational reforms: firstly, successful formulation; and, secondly, stability. And rationality plays an essential role in achieving both of these attributes. For successful formulation, because basing educational reforms on knowledge is an instrument whose efficacy has repeatedly been proven in high-performing educational systems. For stability, because rational foundations for reforms facilitate explaining and justifying them, and their subsequent acceptance by society.

But also because it makes it enables them to be shared by different political positions, thus making it less likely that they will be undone as soon as changes in political fortunes allow or permit it.

As the evidence shows, Spain's education system is in need of both of these elements; and it is in the elucidation and building of these rational foundations that academia can and should be of particular use, contributing to rational debate and restricting the ideological domain to a vision of society, the individual, and his or her mutual relations that is consolidated and so widely shared. In short, this is the last aim of this monographic issue.

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Notes
[1] Pinker, S. (2021). *Rationality. What it is, why it seems scarce, why it matters.* Penguin.

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Studies and essays

Francisco Esteban Bara y Fernando Gil Cantero
The purposes of education and Spain's LOMLOE educational legislation:
Controversial questions in educational action

José Luis Gaviria y David Reyero
The transmission of cultural content and its evaluation among
the ends of the education system: An analysis of the LOMLOE

Francisco López Rupérez
The competency-based curriculum approach. An analysis of the LOMLOE

José Luis Martínez López-Muñiz
The regulatory quality of legal frameworks: A critical approach

Charles L. Glenn
Educational pluralism and vulnerable children

José Adolfo de Azcárraga
The new Spanish educational legislation: Why public education will not improve

The purposes of education and Spain's LOMLOE* educational legislation: Controversial questions in educational action

Las finalidades de la educación y la LOMLOE: cuestiones controvertidas en la acción educativa

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Abstract:

The LOMLOE, like any other law concerning education in an advanced democratic society, puts in place a new system to achieve the aims of education. However, as with any other education law, its wording and implementation raise contentious issues. Some are political in nature while others are more specific to the pedagogical field. In any case, they all relate to the purposes of education. This paper presents some of these controversial issues, perhaps the ones that are causing the most debate at a social level, especially in the field of education. These issues are: the idea of educational and social inclusion and how it is managed with regard to state-funded private centres, in particular ones that follow a single-gender education model and ones that cater for special educational needs; the competence-based curriculum and all that this entails; the objective of educational success and the role of evaluation in achieving it; and finally, the question of religion. This article does not set out to criticise the new education law. Instead, it seeks to consider how these controversial issues relate to the purposes of education. It concludes that the LOMLOE has some good points but that at the same time a political approach to the pedagogical predominates, which instead of integrating and opening itself to freedom and plurality, eliminates options without considering pedagogical arguments.

Keywords: LOMLOE, purposes of education, inclusion, competence-based curriculum, assessment, religion.

Resumen:

La LOMLOE (Ley Orgánica 3/2020, de 29 de diciembre de 2020, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación), como cualquier otra ley educativa de una sociedad democrática, formaliza un nuevo escenario para alcanzar las finalidades de la educación. Sin embargo, y también sucede con el resto de las leyes educativas, su redactado y concreciones presentan cuestiones controvertidas. Unas son de orden político y otras son más propias del ámbito pedagógico, en cualquier caso, todas ellas atañen a las finalidades de la educación. En este trabajo se presentan algunas de esas controversias, acaso las que más debate están ocasionando a nivel social, especialmente, en el ámbito educativo. Esas cuestiones son: la idea de inclusión educativa y social y cómo se gestiona cuando se habla de los centros concertados, sobre todo de los de educación diferenciada y de las necesidades educativas especiales; el currículo competencial y todo lo que ello conlleva; el objetivo de éxito escolar y el papel que la evaluación tiene en ese logro; y, por último, el asunto de la religión. Se concluye que la LOMLOE presenta ciertas virtudes, pero, al mismo tiempo, predomina erróneamente un enfoque político de lo pedagógico que, en vez de integrar y abrirse a la libertad y pluralidad, clausura opciones sin atender a razones pedagógicas.

Descriptores: LOMLOE, finalidades de la educación, inclusión, currículo competencial, evaluación, religión.

1. The purposes of education, education laws and the LOMLOE

While Socrates was in prison waiting for his death sentence to be carried out, he had an interesting dialogue with his friend Crito (Plato, 43a-54e) who tried to convince him to escape. However, the man who was known as the gadfly of Athens did not agree with this idea. We all know how this story ends. Their conversation covered justice, the law, civil disobedience, and the effects the opinion of a majority can have. Socrates also invites us to consider the following: if we believe that a law is unjust because it harms us, should we not believe the same when it benefits us? Over 2,000 years have now passed and Socrates' question reappears every time a new law is proposed or there is an attempt to reform one that already exists. There will be supporters and detractors of any rule issued by the competent authority that mandates or prohibits something, which is how *law* is defined in the dictionary of the Real Academia Española; but regardless of what position particular individuals adopt in line with their patterns of thought, interests or motives, we should consider whether the proposal is in accordance with justice and whether it backs the good of the people who are governed, ultimately, whether it will facilitate us doing what we should (Sandel, 2011).

Of course, education laws are not free from philosophical reflection. We know that: "Any people that reach a certain degree of development, finds itself naturally inclined to practice education" (Jaeger, 1957, p. 3). However, no people should content itself merely with guaranteeing the right to education. It must also consider whether the laws it passes do justice to the purposes of education since, in the words of Spinoza:

When we say that someone has done something by right, we're not saying he's done it in the best way. It's one thing to cultivate a field by right, and another to cultivate it in the best way. It's also, I say, one thing to defend oneself, preserve oneself, make a judgment, etc., by right, and another to defend oneself, preserve oneself, and make a judgment in the best way. So, it's one thing to command and have responsibility for the Public Affairs by right, and another to command and govern Public Affairs in the best way. (1986, p. 1)

These purposes have been the subject of debate since time immemorial, and it is fair to assume that every place, era, and intellectual current, with their highly regarded authors, will have focussed their attention on some more than others. This historical reality is of use when we consider certain aspects of human nature that must be encouraged and educated, but at the same time it can lead us towards a position of unilateralism or exclusivity or place fragmentary visions of the purposes of education before us (liberalism, communitarianism, Marxism, personalism, etc.).

It is, therefore, advisable to embrace integrating proposals that speak of well-lived lives (Llano, 2002), the cultivation of humanity (Nussbaum, 2005), or human fulfilment (Ibáñez-Martín, 2017). As well as not losing sight of the complexity and full meaning of the purposes of education, these proposals are in line with article 26.2 of the UDHR (Universal Declaration of Human Rights):

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.[1]

Of course, we could cite many other similar documents and declarations that follow the same lines, among which Agenda 2030, adopted by the United National General Assembly on 25 September 2015, stands out owing to its current relevance.[2] Spain's new education law, the Organic Law Modifying the Organic Education Law (LOMLOE), also known as the "Celaá Law", partly points in the direction discussed above. Its preamble refers to "integral education" organised around five focuses, namely: children's rights, in accordance with what is laid down in the United Nations Convention on the Rights of the Child[3]; gender equality; a transversal focus on ensuring that all students have guarantees of success in education; consideration of the Sustainable Development Objectives (SDO) as laid down in Agenda 2030; and finally, consideration of

the digital transformation that is happening in our societies (Organic Law 3/2020).

Although these general principals may well be shared by a majority of people, the law includes a series of implementations and features that have provoked a variety of opinions and deserve our attention. The aim of this work is to consider some of these contentious questions. Some are political in nature while others are more pedagogical, but they all relate to the purposes of education, to the development of the human personality we have been discussing. In relation to the political questions, we will focus on particular aspects that relate to the idea of inclusion promoted by the LOMLOE. And with regards to pedagogical ones, we first consider the support for a competence-based curriculum, then the proposal for defining educational success and its evaluation, and finally how religion is handled. Following the advice of Socrates and Spinoza, our intention is not to judge the LOMLOE on whether its effect on us is negative or positive, whether it acts against or in favour of our interests, whether or not it is well-drafted from a legal perspective. Instead, we intend to consider whether, from a pedagogical position, it does a good job of considering and channelling the purposes of education, that is to say, fully and integrally developing the personalities of future generations of citizens. We should note at the outset that in several aspects of this law, a political approach to pedagogy is wrongly dominant, and instead of integrating and opening itself to freedom and plurality, this closes off options without considering pedagogical arguments.

2. Contentious political issues regarding the purposes of education: the idea of inclusion

One of the questions the LOMLOE raises and which causes the most debate relates to inclusion. This word appears 17 times in the act, usually linked to "the effective equality of men and women". Its support for this is clear and, of course, is encouraging for a public that wishes to eradicate the scourge of gender-related violence and discrimination of any type, in other words, that wishes to live in a more fair and equal society. We should note some of the LOMLOE's proposals for fostering the inclusion of students, at least the three that to us seem most important and striking. The first of these calls for inclusion to be boosted through a public education service with a package of measures that try to regulate state-funded independent schools. The most notable of these measures are: prohibiting the transfer of public land to state-funded independent schools; the gradual creation of places in public schools instead of places in state-funded independent centres; and the requirement for state-funded independent schools to guarantee free provision "of access to complementary activities and school services" if they wish to continue receiving public funds (Organic Law 3/2020 sec. I/122916).

To achieve this objective of free provision, the current government has increased provision in the budget for state-funded independent schools by 5.6% compared to 2018. Having said all this, it may seem that there is the same or more demand for state-funded independent schools compared to public schools and

that it necessary to shift course, but reality shows us that this is not the case. Without going into too much detail, in recent years, as the Spanish Ministry of Education and Professional Training itself has reported[4], around 70% of ~~students in Barriga, mainstream~~ education are enrolled public centres, around 25% are enrolled in state-funded independent centres, and around 5% are enrolled in private centres. We might assume that many families that opt for public schools through ideological and/or pedagogical commitment, and that many others do not feel as drawn to this type of school but find that their socio-economic position gives them no other option. Whatever the case, real life tells us that there are families, and a good number of them, that choose to send their children to state-funded independent schools, without of course forgetting those that opt for private schools.

But beyond these figures, in-depth reflection is required. It is worth considering article 26.3 of the UDHR — "Parents have a prior right to choose the kind of education that shall be given to their children"[5] — or recalling the words of Francisco Tomás y Valiente who was President of Spain's Constitutional Court from 1986 to 1992 and was sadly assassinated by the terrorist organisation ETA in 1996. He was actually appointed by the left-of-centre PSOE (Spanish Socialist Workers Party), and he stated, in a dissenting vote on judgment 5/81, as a primary manifestation of freedom of teaching:

> The absence of a state monopoly on education and, in a positive sense, the existence of institutionalised educational pluralism. As has recently been stated in France, educational freedom is a form of equilibrium. It means that neither the state nor any other collective, for example a religious one, can imperiously dominate young people. It also means that the head of the family is not stripped of the rights he possesses by the very nature of things, concerning the formation of the spirit of his children[6].

Supporting a free public education system, a position surely held by anyone who believes in the UDHR and defends human dignity, is a good way to back inclusion, and so the aim of the LOMLOE is worthy. However, should this support include a reconfiguration of state-funded independent schools so that they can be turned into public schools? It is hard to believe that the public school is the only flagship of inclusion or that it is the sole model capable of developing students' personalities well. Ultimately, it is an ideological bias to believe that only the public educational centres can guarantee per se the formation of citizens committed to democratic values and the common good. Guaranteeing the educational character of what we all share as human beings in order to achieve the fulfilment of our development within the community is more a problem of pedagogical commitment to the greater good of future generations than commitment to the hand that controls the purse strings (Gil Cantero, 2022). In fact, as Higgins and Knight-Abowitz have already shown (2011, p. 386 and passim), there can be greater comprehension and moral sensitivity towards the values of coexistence in a fully private centre than in a publicly run one.

Furthermore, the LOMLOE focusses special attention on state-funded independent centres that opt for single-gender education as, in the words of the minister Celaá, it considers that they "contravene the general principles of inclusive education and co-education"[7].

The controversy about single-gender education has been a feature of educational debates for years.[8] It is good to know that this is not an exclusively Spanish concern. The USA, UK, Australia and South Korea, among other countries, also have single-gender educational centres, and it is worth noting that in the USA, for example, there is a strong trend towards the creation of this type of centre (Calvo, 2013). Of course, it is not a religious question, and the countries mentioned are not majority Catholic. Whatever the case, if the LOMLOE upholds that it is necessary to persuade, and even penalise, centres that dedicate themselves to shaping personalities but do not believe in gender equality or similar things, we could not agree more; there is no place for such centres in a democratic society. The controversy lies in deciding whether they exist on the basis of whether they practise co-education, or to put it in simpler terms, whether or not boys and girls share classrooms and breaks at all times in these centres. It is true that societies function best when men and women are together and respect and value one another as they should (Sennet, 2012). However, this is not the result of spending time together, but instead of receiving a good education (Gurian, 2010; Gordillo, 2017; Camps & Vierheller, 2018; Ibáñez-Martín, 2007). To put it another

way, it is hard to say that sexist patterns of thought and behaviour are the result of a lack of co-education. Instead, it seems more reasonable to attribute them to poor education. Without going further, the report on gender-based violence in schools published by UNESCO and UN Women (2016) supports what we have been saying: single-gender education does not appear to be the cause of the problem and co-education has not so far shown itself to be the best possible system for tackling this social scourge.

Finally, and in relation to students with special educational needs, supplementary provision four of the LOMLOE allows a period of ten years for "ordinary centres to put in place the necessary resources to be able to meet the needs of students with disabilities in the best conditions"[9]. The social inclusion of people with special educational needs is one of the best things a society can achieve, and it enables us to gauge the human and humanising quality of the society. However, intentions must take into account the educational reality. Students who have some type of disability, especially if these are severe, need personalised attention from specialised professionals, that is to say, from teachers who not only want to collaborate and help, but also know how to do so. In general, teachers in ordinary schools do not have this type of training, and it is important to recognise that while diversity in the classroom can be a good thing, it can also be harmful for the students who need the most help, as some international studies argue (Messiou, 2017; Boynton Hauerwas & Mahon, 2018). In the case of special edu-

cational needs, it is necessary to tread very carefully and do things very well. This means having special educational centres that do more than support mainstream centres.

In short, the purposes of education come to nothing if inclusion is not integrated into them, because a human personality is complete and integral if it firmly backs the inclusion of all people, whatever their needs. However, it is desirable to note some controversies caused by the type of inclusion the LOMLOE promotes or, as some have rightly noted, an inclusiveness that is the mask that promotes other ideas (Ibáñez-Martín, 2020). A mask that is removed when we recognise that education is intrinsically essentially inclusive but at the same time differentiates (Del Pozo Armentia et al., 2020; Meirieu, 2022).

3. Contentious pedagogical questions for the purposes of education

3.1. The competence-based curriculum

The LOMLOE includes a competence-based curriculum. It argues that this will make it possible to offer personalised teaching and will result in students learning significantly and meaningfully, and, above all, will result in what this law calls "educational success". Among other measures it eliminates the classification of subjects into core, specialised and elective ones; it promotes the connection and complementarity between formal and non-formal education; it implements new organisational and methodological measures that are adapted to the present time; and

it strengthens coordination between the different educational stages with the aim of ensuring continuity in learning. This is no minor change. Instead, it is an in-depth modification of the teaching, learning, and evaluation process, and this surely justifies the proposed creation of a "unit within the Ministry of Evaluation and Professional Training" that, in collaboration with Spain's Autonomous Regions, will review and update the curriculum.[10]

The competence-based model is novel in many ways, but in the way it is implemented, we can identify the principles of the constructivist educational paradigm that was the basis of the LOGSE, the education law that the PSOE implemented in the early 1990s (Coll et al., 1990). The LOMLOE more decidedly pursues a competence-based curriculum, leaving to one side the content-based curriculum. Of course, at no point does this law state that content must disappear from the curriculum, but we can conclude that its position does not support it: content becomes part of the competences and must be adapted to them. As an example, one of the co-authors of the new model of learning at school speaks of "vital and desirable" learning, suggesting that we are moving away from a curriculum filled with superfluous content that should make way for content that is truly necessary (Coll, 2021).

The situation described above raises a number of questions. Firstly, and perhaps most obviously, it gives the feeling that there is a desire to take a firm step away from an education that is often described as classical or traditional. No education is

perfect, but it would perhaps be a mistake to change all of that education; in the end, many citizens and professionals who have proven themselves to be competent in many areas ranging from involvement in social causes to the invention of technological devices we all use today have emerged from those traditional schools. A growing body of literature from recent years refers to something like this when lamenting the dismantling of the school of content (Moreno, 2006; Pericay, 2007; Luri, 2020; Bellamy, 2021), and there is also literature that calls for the recovery of the heartbeat of school education, that human activity par excellence that readies people to wonder before culture and science (L'Ecuyer, 2013; Balduzzi, 2021; Fuentes, 2021).

The second question relates to how the word competence is conceived. This term, on the one hand, derives from linguistics, more specifically from the "linguistic competence" construct that Noam Chomsky developed (1977) to explain the natural processes on which study in that discipline is based. This term has become widespread and is now familiar to us in communicative, digital, and emotional competence for example. Competence also comes from the professional or working world. In this field, competence helps to identify the stages or phases of the training of a technician in whichever area; or to put it another way, it is a means of dividing and classifying the skills or abilities necessary for the efficient discharge of a given profession. A competence is: "*the detailed elaboration of the aspects on which 'training' or 'teaching' should be concentrated*" (Díaz Barriga, 2006, p. 14; italics added).

The competence-based educational focus can be regarded as useful and appropriate, firstly because it is the reflection of personal development (in the Chomskyan sense), and secondly, because it makes it possible to solve problems and act with ease in particular specific circumstances (in the professional and employment sense). However, it is important to ask whether this approach, all things considered, "is an outfit one puts on, whether this be the oldest faculties of intelligence, or erudite knowledge" (Perrenaud, 1999, p. 61). The competence-based curriculum could give many teachers and educational administrators the feeling that they are renaming old terms, and also the sensation of having to fit what was already being done into a new mould while important questions do not fit into the new competence-based model. In effect, this model prioritises the question of how over the question of what and, therefore, things: it conveys a strategic, instrumental, utilitarian image of education. Is there room in this competence-based model for flourishing through theoretical knowledge, the vision of the ultimate purposes of life, or the idea of being a good person? It does not seem to leave space for in-depth understanding of the value of wisdom, nor what supports a good will, not indeed the effort — hard work — that makes it possible to achieve any competence.

The third question relates to the issue of educational content, those questions, which, as Sánchez Ferlosio said (2002), are in no-man's land and belong to all. People search out these questions, commit to getting hold of them, and with care and effort

discover the pleasure and joy of grasping them. Here it is worth mentioning a topic that has been in the spotlight for years: memorisation. It is possible that in previous eras this mental faculty was overused, and we now have a vast virtual cloud with immediate access that knows everything, but none of this overrides the educational value of knowing content and of knowing that you are someone who is called upon to acquire it. In the contemporary valuation of content and the possible memorisation of it, which it must be said, does not only affect formal education,[11] we can identify among other currents: a utilitarianism that rejects anything that does not bear the stamp of efficiency and efficacy (Ordine, 2013); a moral liberalism that praises individuals, disconnecting their horizons from meaning and culture (Calvino, 2015); and an "ethics of domination" that puts freedom of choice at the gravitational centre of the development of human personality (Lears, 2003). Some would also say that it plays a part in the abandoning of common sense. It is worth recalling the episode years ago featuring Adolfo Muñoz Alonso (1915-1974), who was a professor of philosophy, politician and rector of the Universidad Complutense de Madrid, and José Solís Ruíz (1913-1990) who was a minister under the dictatorship of Franco. The latter championed a bill for a law in Spain's parliament that would dedicate more hours at school to sport, taking them away from classical languages. In part of his speech, the minister asked the audience a provocative question: what is the use of Latin? The professor, who was there, suggested an answer: "To give one example, señor minister, so that you, who was born in Cabra [a Spanish municipality in the province of Córdoba], are an *egabrense* and not anything else".

The fourth and final question points to a more serious absence as the discussion on any aspect of competences distracts us and even prevents us from considering the most radical purposes of education. In effect, they distract us because while we debate and expand the multiple and endless lists of competences, as effective causes, we stop considering the end goals… Competent at what? In early 1872, having recently turned 27, Nietzsche made a forecast that to some might recall the situation in which we are living:

In this quarter all culture is loathed which isolates, which sets goals beyond gold and gain, and which requires time. […] What is required above all is "rapid education", so that a money-earning creature may be produced with all speed; there is even a desire to make this education so thorough that a creature may be reared that will be able to earn a great deal of money. (Nietzsche, 2009)

Also, as we have said, the debate about competences carries us away from understanding what training good people comprises in the necessary depth and precision, as what is good is shown and recognised from a "given order" (Reyero & Gil Cantero, 2019, p. 220), while competences, like any case of utilitarian interest, are negotiated and managed from an "*accessible fund*" (Hadjadj, 2018, p. 40; italics in the original). Educating is not measuring or calculating (Gil Cantero, 2020). Educat-

ing is not just learning to manage which competences interest me depending on circumstances and objectives. Educating is not creating managers of competences. Educating is taking ownership of the call of the goods that resonate, that "ring", in some ends or limits.

3.2. Evaluating learning

The LOMLOE overturns the evaluation of learning. It eliminates the educational pathways that the previous law established, giving the impression that it is neither good nor ethical to divide students by academic ability and/or performance. It reintroduces curriculum diversification programmes to encourage equal conditions when, for example, obtaining the title of graduate in compulsory secondary education (ESO). The evaluable learning indicators also disappear and final assessments are eliminated from primary school, compulsory secondary education, and the baccalaureate. In short, evaluation becomes informative, formative, and indicative for the educational centres themselves, for families, and of course for students.

This proposal will not put an end to the debate about evaluation, which has been going on for years now and usually focusses on the advisability of moving up a year with failed subjects or of whether titles should be awarded to students who have not passed all subjects. This debate has also intensified with the Covid-19 pandemic, as teachers have found themselves having to evaluate through the computer screen, and logically, taking into account the technological resources of the students, in other words, the socio-economic

conditions of their families. Nonetheless, this type of discussion is the tip of an iceberg that suggests that evaluation is not a minor question but instead is something of supreme importance for the purposes of education. Evaluation, at least from our point of view, must take into account some of the important questions that are not fully presented in the proposal of the LOMLOE.

The first of these relates to the surreptitious message being transmitted to students, to new generations of citizens. Society can be seen as a showcase of people who make an effort to achieve their objectives or fulfil their dreams, and many of them can be held up as examples of strength and resilience when things do not turn out as hoped. Furthermore, there is frequently no need to turn on the television. It is enough to observe what is happening at home, parents' constant struggles to get by. That life is hard, at least for a great majority and especially in recent years, is an irrefutable truth however one looks at it. Evaluation may be one of the best educational strategies for starting to learn what a large part of the circumstances one will be involved in tomorrow will be like, or as Nicol said (1977), to realise we are not born whole and must go through life proving that we realise little by little what happens in reality. It is important to consider whether an evaluation that tends towards providing information and orientation, like the one proposed in the LOMLOE, fulfils this objective or whether it limits itself to making people aware, which is undoubtedly something other than what we have been describing.

The second question relates to the fostering of critical thinking. The fact this pair of words appears 10 times in the wording of the new educational law is to be celebrated. The "degree of development" of a people that Jaeger mentioned is not achieved with a citizenry that lacks the spirit that makes it possible to think differently (Llano, 2016) and escape from the scepticism that paralyses the mind and soul (Derrick, 1982), ultimately making it possible to go through life with good judgement (Balmes, 1964). Do we not need professionals who ask themselves how to do things better than they are currently done? Or perhaps we do not need new generations of citizens who continuously question things that are put in front of them, people who ask themselves good and very good questions? An evaluation formulated in terms of orientation and information could numb this critical spirit, or to put it another way, it could make students believe that any behaviour is acceptable because this has been decided by the person who sets their work and that any value judgement is inherently meaningful (Esteban Bara, 2019).

The third and final question relates to the famous expression social mobility. This is, undoubtedly, one of the main objectives of the educational system of any democratic society. In short, free access to the education system must be guaranteed for all people. In this way they will have the same opportunities to rise to wherever their personal effort and individual talents take them. We should recognise, however, that this issue is not so simple and that, of course, it cannot be the sole responsibility of education. Acclaimed studies have shown that a large part of the public in most European countries believe that social mobility or success, if we want to call it by that name, is decided by factors that are outside the control of individuals.[12] This could be a case of "what Plato called a 'double lie', a belief that despite not being true supports civic harmony because it encourages citizens to accept the legitimacy of certain inequalities" (Sandel, 2020, p. 102).

Whatever the case, we should be attentive to the little-studied but obvious feature of the human condition by which we limit ourselves to meeting the minimum requirements when there are no challenges in view; and, why not say it, before policies that foreground respect for people and with the best intentions smother them with attention, possibilities, and practicality, but leave doubts about whether they really respect them, insofar as they believe in the potentialities of the human personality (Sennet, 2003).

3.3. Education without religion

The LOMLOE repeals the articles of the previous law that made religion a specific subject in the two years of the Spanish Baccalaureate. From now, educational centres will be required to offer this subject but students will be free to decide whether to take it. The requirement for students who choose not to take religion to study an alternative subject is also abolished. Consequently, the article that specified the inclusion of religion in the average mark on the student transcript is also repealed. This subject ceases to have value, for example, for access to university or to obtain

state grants. To offset this, the LOMLOE makes education in civic and ethical values a specific area or subject with content referring to the Spanish Constitution, the UDHR and the Declaration on the Rights of the Child, sustainable development, global citizenship, equality of men and women, and values such as respect for diversity and the social importance of taxes. Admittedly, this new area meets important current social needs.

These new proposals are typical of a state that does not have any particular religious denomination. It is easy to think that in a non-denominational society, religion is not a matter for the public educational system, but rather belongs in the private or family sphere. Nonetheless, the matter deserves a serious debate when considering the purposes of education, in other words, the complete and integral development of the human personality. Without wishing to go into too much detail, spiritual, existential, or transcendent intelligence has been identified. This is a dimension of the human intellect and/or a set of knowledge that from many points of view has a direct relationship with religion. Authors of the standing of Maslow (1943), Victor E. Frankl (1966), and Gardner (1999) among others have referred to this, underlining the importance of developing the ability to ask oneself about questions such as the meaning of life and death, the final fate of the physical and psychological world, human love, and the contemplation of beauty. Furthermore, at the start of the 21st century, we are seeing considerable growth in research and literature that tries to delve into the psychological cartography of this

intelligence. Among many other proposals, that of Zohar and Marshall (2001) stands out. They coined the term spiritual intelligence and they identify in it traits such as self-knowledge, flexibility, resilience, inspiration in universal values, refusal to cause harm to others, questioning of one's own actions, and constant doubt of what is established or conventional. Similar things are said when this reflection comes from the field of philosophy (Torralba, 2010).

We insist that with the subject of civic and ethical values and the content mentioned above that the LOMLOE proposes, many problems might be solved that currently affect a large part of the public, but it is hard to see this area as a substitute for spiritual intelligence, if, of course, this is what is intended. And if this is not the case, how do we explain that new generations of citizens no longer have to cultivate this intelligence that is typically human and so necessary nowadays? If it is the word religion that causes problems, perhaps alternatives should be considered such as religious culture, history of religions, or religion and person, whatever it takes to be able to work on spiritual intelligence.

4. Conclusions

A law like the LOMLOE that supports the development of the human personality of students is, in principle, well directed. This objective brings together the principal purposes of education that comprise the history of pedagogical thought to the present day and the purposes reflected in the principal international documents relat-

ing to the question of education. Nonetheless, it is reasonable and normal, as in any other law, for some contentious issues to arise, such as the ones we have identified here. The first and most obvious one is that we are currently at a rate of a new education law every five years. This situation, in our view, is not good for anyone, neither students nor teachers, nor families nor society as a whole, and we understand that it is hard to embrace the purposes of education without ignoring the ideological and party interests of the moment.

In relation to the political questions, some controversies have been identified resulting from the idea of inclusion that the law upholds. This is the objective, clearly, but it can surely be achieved by different routes, and perhaps it would be good for such a thing to happen in a democratic society. The LOMLOE could suggest that the purposes of education can only be achieved through a public system and a co-educational mode and this raises serious doubts. In relation to the more pedagogical aspects of the law, attention has been paid to those curriculum aspects that could affect the integral development of the personality. We cannot see how curriculum content is treated as just another part of the competences as it seems too important to us, so much so that from many perspectives, it shapes the competences themselves. We also question the type of evaluation proposed by the LOMLOE. This seems to be based on guaranteeing educational success and not on the educational and philosophical missions of the evaluation activity. We have also considered the role of religion as a stimulus of spiritual intelligence. We are

beings with meaning, we constantly ask ourselves questions that transcend us, and the answers we give ourselves, at both an individual and a collective level, make a major contribution to the development of future personalities.

Finally, perhaps adopting a more combative tone, we would like to question an aspect hat runs through all aspects of this law, which we can very clearly find at the foundation of each of the controversial topics we have analysed. In effect, this new law, like previous ones, intrudes in the fields and positions chosen by teachers, pedagogues, and educators, thus going beyond its sphere of political influence. Education is, of course, a task for all, just like health and diet, but nobody would think to force a doctor to diagnose, prescribe, treat, and group patients in one single way. It should be assumed that educational professionals, like those from medicine, should learn all of possible solutions that have been proven to be effective at university so that they can flexibly propose what is best for each student and school. The problem, ultimately, continues to be the strong move towards making education an ideological question. It is enough to look at the famous commissions of specialists that have taken turns at advising the Ministry of Education: there is, of course, no pluralism and so while dialogue and debate are constantly mentioned, they are no more meaningful than discussions among between the fans of a football team. As Ibáñez-Martín has stated "the educational system cannot continue to be designed to promote the ideology of those who hold power, but instead

has much more profound responsibilities ahead of it" (2017, p. 15 and passim). There is a fear of pluralism. And there is no other way of curbing it or silencing it than by cutting off its source of meaning: liberty. There is a fear of true dialogue; a fear of opening up and listening sincerely, seeking truth, recognising the better argument, even from opposing positions, in search of agreements focussed on the good of the new generations as human beings in development. This fear of freedom, and consequently of pluralism, could result in totalitarian proposals like those we have already seen from some political groups in Spain that seek to assume the right to assess the veracity of information with a ministry of truth or to question the educational work of state-funded independent schools and private schools. Ceasing to put our political positions at the forefront is a way of respecting the profound nature of school as a school of liberty because "the truth of the political option (in education) is that of quality of teaching and that of the extent and depth of the knowledge we wish to transmit" (Lafforgue, 2019, p. 31).

In any case, Socrates' debate with *Crito* can be seen as an invitation to reflect on the LOMLOE, both for those who regard it as an unjust law for whatever reasons, and, perhaps more importantly, for those who believe it is the most just law of all, the best possible education law, and the one that is currently most appropriate for us.

Notes

[1] https://www.un.org/en/about-us/universal-declaration-of-human-rights

[2] https://www.agenda2030.gob.es

[3] https://www.un.org/es/events/childrenday/pdf/derechos.pdf

[4] https://www.educacionyfp.gob.es/servicios-al-ciudadano/estadisticas/no-universitaria/alumnado/matriculado/2019-2020-rd.html

[5] https://www.un.org/en/about-us/universal-declaration-of-human-rights

[6] http://hj.tribunalconstitucional.es/es/Resolucion/Show/5

[7] https://www.educacionyfp.gob.es/dam/jcr:3a9e-0faf-c60d-4f20-8dba-a7fd0a36f944/comparecencia--ntegra-de-la-ministra.pdf

[8] It might be interesting to recall briefing note 37/2018 of Spain's Constitutional Court, published on 19 April 2018, regarding Judgment 31/2018, of 10 April. This note summarises, for the interested reader, the principal arguments behind the different judgments, in all of which Spain's highest court "Finds that single-gender education constitutional and leaves the door open to its public funding if the centres comply with the law": The Constitutional Court finds that single-gender education is not an inherently discriminatory educational model; it is an expression of a pedagogical method that considers this educational option to be more effective than others; it respects Spain's constitution and the international treaties regarding discrimination to which Spain is a signatory; in the event of constitutionally prohibited differences in treatment, these cannot be attributed to the model itself but instead are attributable to the specific school. https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2018_037/NOTA%20INFORMATIVA%20N%C2%BA%2037-2018.pdf
Judgment 31/2018, of 10 April 2018. Review on grounds of unconstitutionality 1406-2014. https://www.boe.es/buscar/doc.php?id=BOE-A-2018-6823

[9] https://www.educacionyfp.gob.es/dam/jcr:f183be05-117d-4806-b24a-2f9f52d9b37f/loe-con-lomloe-texto.pdf

[10] https://www.educacionyfp.gob.es/dam/jcr:cbc8947e-5105-4dd1-853b-dd398cf6d696/cambios-respecto-al-curriculo.jpg

[11] The possibility of modifying certain competitive exams has also been raised as they are thought to focus too much on memorisation and are poorly adapted to the present time. This has inspired a lively debate among professionals from

various fields. https://www.elconfidencial.com/espana/2021-05-07/oposiciones-pecados-sistema-desfasado-fin_3067688/

[12] https://www.pewresearch.org/global/2014/10/09/emerging-and-developing-economies-much-more-optimistic-than-rich-countries-about-the-future/

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The transmission of cultural content and its evaluation among the ends of the education system: An analysis of the LOMLOE*

La transmisión de los contenidos culturales y su evaluación entre los fines del sistema educativo, según la LOMLOE

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Abstract:

This article seeks to reflect on the place that school results or outcomes have among the rest of the education system's objectives, on the understanding that alongside its traditional qualification function, an education system also has a socialisation and subjectification function. Yet, none of these three functions can be considered independent of the other two. If the qualification function is centred exclusively on certain areas and chooses to neglect all others, the consequences of this will be reflected in the other two domains. If we drain the socialisation and subjectification functions of any relationship with the transmission of cultural knowledge or if this

knowledge is unrelated to either of these two functions, it will gradually lose all meaning and we will find ourselves left with a certain type of disinherited citizen, equipped with no other arms to interpret the world than that of a decontextualized, dominant way of thinking. In recent years, we have been witnesses to the progressive deterioration of the role that the transmission of knowledge plays in school. This transmission is the education system's particular way of contributing to the social and subjective training of citizens, and the crisis it is undergoing opens the door to a change in the system's objectives. This change in the consideration of the role to be played by content is reflected in Spain's new education law,

the LOMLOE, in which the way teachers teach is given more importance than what they teach. This shift in direction is also reflected in the way this Law considers the evaluation of performance and in the increasing weight it assigns to other different criteria when determining whether a student can move up to the next grade. Here, we argue for a return to the measurement of school results and student performance in their most basic summative sense, in order that we might once more value the knowledge accumulated over the centuries as the best source of socialisation, subjectification and qualification.

Keywords: educational legislation, curriculum, performance evaluation, cultural transmission.

Resumen:

La intención de este artículo es reflexionar sobre el lugar que los resultados escolares tienen entre el resto de los objetivos del sistema educativo. Así, junto a la función cualificadora, más o menos tradicional, los sistemas educativos tienen también una función socializadora y otra subjetivadora. Ninguna de esas tres funciones es independiente de las otras dos. Si la función cualificadora se centra en unas determinadas áreas y olvida las demás, las consecuencias se reflejarán en las otras dos. Si vaciamos las funciones socializadora o subjetivadora de cualquier relación con la transmisión de conocimientos culturales o si dichos conocimientos no tienen relación con nin-

guna de esas funciones, irán perdiendo sentido y darán lugar a un determinado tipo de ciudadano desheredado, sin más armas para interpretar el mundo que el pensamiento dominante descontextualizado. Durante los últimos años hemos asistido a un progresivo deterioro del sentido que la transmisión de conocimientos tiene en la escuela. Esa transmisión es la forma peculiar del sistema educativo de contribuir a la formación de los ciudadanos en su dimensión también social y subjetiva, y su crisis abre la puerta a un cambio de objetivos del sistema. Este cambio en la consideración del papel de los contenidos se ve reflejado en la nueva ley de educación, LOMLOE (Ley Orgánica 3/2020, de 29 de diciembre de 2020, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación), en la que el modo de enseñar se vuelve más importante que el qué enseñar. Esa pérdida de sentido ha tenido su reflejo también en la consideración que esta ley hace de la evaluación del rendimiento y en el peso creciente que la LOMLOE asigna a otros criterios distintos para la promoción. Reivindicamos una vuelta a la consideración de la medida de los resultados escolares, el rendimiento, en su sentido sumativo más básico con el fin de volver a valorar el conocimiento acumulado a lo largo de los siglos como la mejor fuente de socialización, subjetivación y cualificación.

Descriptores: legislación educativa, currículo, evaluación del rendimiento, transmisión cultura.

1. Introduction

Our goal in the present article is to determine how what we traditionally refer to as 'school results' or 'academic perfor-

mance' are conceived in Spain's recently published law on education, henceforth, the LOMLOE. In so doing, we seek to answer two questions. First, what are, or

should be, the primary concerns of the education system? And, closely related to this, are the transmission of cultural content and the evaluation of school results primary concerns of the education system?

In an effort to answer the first question, we must first address the more fundamental matter regarding the kind of ends of education that can be deemed essential in human life. The answer to this question inevitably leads us to the conclusion that many different personal and collective objectives coexist within the education system. Biesta has sought to capture them in his three domains of purpose: *qualification*, *socialisation* and *subjectification* (Biesta, 2004, 2009, 2020b). Qualification is concerned with acquiring the cultural resources necessary to ensure our existence. Human life is a cultural life that requires we know many things in order first to understand it and then to act in it. We shall return to this domain later on. Socialisation is concerned with the internalisation of the rules that ensure our peaceful coexistence and provide us with a certain idea of the common good. Socialising is not solely our life in common — a life like the one that bees might lead — but it also involves the learning of the roles and ways of participating in public life. Being socialised in a slave culture is not the same as being socialised in a democratic culture. We shall also come back to this discussion later. Finally, education is also related to the process of subjectification. We learn to be in the world and we also learn the way of being of a culture, which recognises that individuality also has a number of requirements. None of these three great goals is just a goal of schooling; they are also to some extent the goals of

both the family and the wider society. But the weight and educational functions of each of the different institutions and agents of social life are different.

Underlying many of the controversies surrounding education is the idea that, in relation to these goals, the zero-sum game is at play. As more importance is assigned to certain objectives in terms of time, effort and resources, this is necessarily at the expense of the time, effort and resources dedicated to the other goals. This explains why there has always been a degree of confrontation between those who believe school should be a place where things are learned and those who want school to be a place where attitudes are developed and values learned. But, ultimately, this is something of a spurious debate, since what tends to pit these goals against other is the way we approach them.

Here, we argue that the primary goal of the school is and must continue to be that of transmission, a purpose that we can recognise in Biesta's *domain* of qualification. Not because the other objectives are not important, but because the way to achieve a better socialisation or subjectification — that is, the school's way — is by means of cultural transmission. The school contributes to the development of the other ends as the indirect outcome of a way of understanding this transmission and of the specific content that is transmitted. It is, for example, in completing their school exercises, in the subjects that are taught, in their internal structure, that the student learns the need to submit to rhythms and demands that are not their own. It is a way of learning a set of

rules that will also apply to their life in society. In both cases there is a need, for example, to adhere to rules that students do not set themselves. In addition, it is by studying certain characters of renown and certain concrete actions that we learn the exemplary nature of a life well led and, hence, the idea that there is a better way to live.

Suspicions about the school's primary activity, about its main purpose, about its value — that is, the transmission of cultural content — has two consequences. First, it causes legislators to focus their attention on other ends, and by seeking them directly to drain the school of its historical meaning, and second, especially as regards the crisis of humanism, it reaffirms the idea that we live immersed in an enormous crisis of meaning that incapacitates us to read the past, and the humanistic tradition in general, in terms of its greatness and exemplary nature. We show in the way that Spain's new education act, the LOMLOE, understands evaluation and describes the ends of education the nature of this change in course.

2. The nature of the ends of the school system

A good understanding of the nature of the interrelationships of the ends of education requires, first and foremost, a geographical description of the conceptual field. Here, an initial guiding idea is that the objectives of the system respond, to a greater or lesser degree, to the satisfaction of the rights of a rights holder. This being the case, we can say that educational goals are characterised by two main dimensions or axes. One dimension corresponds to the nature (individual or collective) of the subject of the right while the other corresponds to the nature of the right that it is to be satisfied. In the case of this second dimension, we adopt Biesta's classification of the functions of the system as listed above: qualification, socialisation and subjectification.

At the individual level — the first category in this first dimension — the education system is a social institution, whose existence is justified by guaranteeing the fulfilment of a fundamental human right, that is, the right to education. Education allows the complete humanisation of the individual. Integration in the life of society is the final phase of entering upon life. That is why the right to education is a complement, if not a continuation of the right to life.

At this individual level, qualification requires that the school system offer the basic skills and knowledge to ensure subjects can fully integrate into working life, as well as into civic and political life for which knowledge and skills are also needed. For individuals, this function is a response to the right that subjects have to be able to earn a living, participate as citizens with full rights in political life, and integrate into social institutions in a way that is profitable for them. The socialising function of education provides the set of skills and values by means of which individuals assimilate the social order, its norms and what is expected of them as a member of these orders. At the individual level, this function responds to the subjects' right to

integrate themselves in an active and participatory way in the culture. To integrate oneself into the culture is for the human being to 'finish being born'.

At the collective or social level, the education system should guarantee that the individuals who are to be integrated into the life of society are capable of doing so in a way that is profitable and that they do not constitute a threat or any kind of detriment to society as a whole. This is what we could call a 'preventive' function of the education system. At the social level, the qualification function, as described by Biesta, would serve to satisfy the right of other members of society that those who are to be integrated into their society are adequate for that purpose, with no other limitations than those insurmountable conditions with which nature has burdened them.

At this same collective level, the socialising function responds to the social right that all new members will assume the values and rules that safeguard peaceful coexistence. The correct functioning of the education system thus avoids the appearance of social problems and dysfunctions, ensuring that all individuals internalise a set of values that are understood as common and a set of operating rules that are objectively expressed in the law. Indeed, respect for the law is not guaranteed by a literal learning of their content, but rather, indirectly, via the internalisation of the values that underpin them and, in this sense, education is the fundamental process that guarantees the continuity of social life in peace.

Education has notable externalities linked to its collective benefits. A society with educated citizens is a society with fewer interpersonal conflicts, with lower crime rates (Lochner, 2020), and with better general health, and is more flexible and adaptable to the changing conditions of the economic and social environment. It is also a society in which each of its members is more productive and more efficient from an economic point of view, with an enhanced capacity to generate wealth for the whole of society and for themselves individually. As a result, each member of society benefits from the fact that their fellow citizens are people with high levels of knowledge and skills.

As for the education system's subjectification function, the following observations are worth making. By subjectification we understand the training that is linked with the domain of freedom. In Biesta's words, "The *subjectification function* might perhaps best be understood as the opposite of the socialisation function" (Biesta, 2009). It is the learning that we are different from the orders in which the educational system integrates us through its socialising function and that this consciousness brings us face to face with the problem of freedom. From an individual point of view, this function responds to the right of every individual to fully develop all their potential and differentiating personal traits. The right to be oneself, to be different, original and unique. But this subjectification has to be subject to some limits to ensure we do not end up finding a justification for any eccentricity or quirk, because as Gil Cantero says:

I believe that the unlimited thirst for freedom, which typifies the human condition, draws on the idea of education and mistakenly converts it, on occasions, into a process not of learning what is human about the limits, but rather, for some, into a process of learning how dehumanising it is to establish any limits. (Gil Cantero, 2018, p. 44)

We believe that this is not the goal of the school — the training of an individuality without judgment — but rather that it is in the defence of the primacy of the transmission of a concrete, shared cultural heritage where the school can, in an indirect even desirable way, by means of the appropria-tion of this cultural heritage, give rise to a process of discovery of the self.

The subjectification function at this collective level responds to the right of society to be able to count on the original and creative contributions of all its members. In Table 1 below, we provide a summary of the functions of the education system and of the rights that they satisfy at the individual and collective levels. All three functions are related to each other in complex ways. It is not possible to conceive of any one of the functions in isolation without considering its interactions with the other two. They may appear to be three clearly differentiat-

TABLE 1. Summary of the functions of the education system and the rights they satisfy according to level.

Levels/ Functions	Qualification	Socialisation	Subjectification
Individual	Right to earn a living	Right to integrate in the culture	Right to fully develop one's personal potential, to be 'oneself'
Social	Right of those that integrate the society to be productive people	Right to assume the values and rules of coexistence	Right to count on the creative skills of all members.

Source: Own elaboration.

ed domains, but we shall see that when we place the focus on one of them — and especially in the way that this focus is placed — we provide elements with which to rethink the other two. There is a dialectical relationship between the three functions, and we cannot say that the way of approaching each does not affect the other two.

For example, at the individual level, students should not only be able to integrate into collective life in a profitable way and participate in the culture of their society, enjoying all the rights that correspond to them — something that would be guaranteed by the socialising function at this individual level — but the greatest number of options should also be opened up to them for their futures — what Feinberg (1986) refers to as the "right to an open future". The existence of these options has implications both in the amount of content learning a school ought to offer and in the type of content,

which must necessarily be forward look-ing, in the sense of being both useful for the subject's future life and serving as a foundation for other learning that can allow each student to expand the range of options open to them. That is why the qualification function, at this individual level, is intimately linked with the subjec-tification function. It is not possible to be oneself and to develop all one's personal potential without producing learning that qualifies the subject for different activi-ties. Therefore, a school that provides a poor or inadequate education in terms of content is a school that does not guaran-tee an open future for each student or, at least, it is renouncing its specific his-torical role in this mission. If a student cannot be something concrete, then that student cannot be 'herself'. In this sense, if a school does not fulfil the role that is expected of it as regards its qualification function, then it cannot fulfil its limited and concrete role in the closely related subjectification function either and, as a consequence, it would also fail in its so-cialisation function.

So, what role do these ends play in the LOMLOE? How are these three great ends addressed? The Law appears to be charac-terised by two, apparently contradictory, phenomena typical of our time. The first concerns the importance attached to those variables related to civic values, forms of treatment, and the consideration of dif-ference in education systems today. It ap-pears that these ends lie at the heart of the school and not the preservation of the cul-tural heritage and its transmission. Thus, in the preamble to the LOMLOE (Organic

Law 3/2020), five reasons can be adduced to justify the present Law:

First, a specific vision of the rights of the child, which is subsequently used to justify the need to reduce special education, that is, an ethical, moral type of reasoning.

Second, the need to introduce a gender equality perspective. Here, it would be in-teresting to study in what sense this per-spective was not included in earlier edu-cational legislation. Likewise, this consti-tutes an ethical, moral type of reasoning aimed at correcting a socialisation func-tion that perpetuates gender differences.

Third, the need to ensure that all stu-dents succeed in learning, a process, more-over, that ought to be as personalised as possible. How is this need specified in the preamble to the Law? Well, without going into an explanation that veers too far from the text itself, by making it easier for a student to pass from one school year to the next, permitting a student to obtain the *baccalaureate* even if they fail to meet the grade in one subject, and by promoting the use — without offering any specific details — of the language of inclusion, understood in an excessively vague way and, there-fore, open to totalitarian interpretations with all the risks that this entails (Pozo Armentia et al., 2020).

Fourth, the need to introduce the so-called goals of the 2030 Agenda into the education system, which can also be seen as moral concepts of a civic nature, i.e., sus-tainable development, global citizenship, human rights, ecology, immigration, etc.

year 80, n. 281, January-April 2022, 31-53
revista española de pedagogía
37 EV

Fifth, and finally, the need to promote digital competence, understood not solely in a technical sense, but also moral. The preamble speaks of both the digital gap and the gender gap and claims that this is the "new habitat in which our children and youth increasingly live their lives: in it they learn, interact with each other, consume and spend their free time" (Organic Law 3/2020).

The five reasons speak to us of that moral civic environment in which certain competences necessary for life are to be developed. But what place does transmission have in this? And what role does cultural content play? How is this content used? Evidently, only in an instrumental fashion, as something that is necessary for the training in the competences that help us achieve the type of society outlined in the preamble — that is, an inclusive, democratic society that seeks gender equality and has a concern for eco-sustainability, etc.

It would seem that this new Law has taken on board the criticisms that Biesta (2009) and others (Larrosa, 2021) have been making of the more technical approaches that have guided education policy over the last 20 years. These authors have provided two types of closely related criticism. First, they hold that in modern education systems concerns have focused almost exclusively on the domain of *qualification* and, moreover, on a very specific type of *qualification*, namely, that related to evaluations of reading, science and mathematics conducted via the standardised tests of PISA, PIRLS and TIMSS. Such a focus leads us to the conclusion that the ends of the school are reduced to these specific competences, measured in the case of reading, mathematics and science in a predetermined way, but this obviates, or attaches much less importance, to those aspects that the standardised tests cannot measure. And, in so doing, everything that is not related to the direct training of qualified workers is left out of the ends of education. Thus, we convert the least controversial aspects into fundamental goals and we overlook all matters that give rise to controversy, perhaps because we think that, to a large extent, they belong to the realm of personal beliefs. And when we enter the moral realm, subjective values reign and it becomes impossible to reach any substantial agreements. The outcome is that when we try to reach an agreement on how they ought to be measured, we can do little more than give voice to some largely superficial, politically correct opinions. In an era such as the one we live in today, agreements do not run very deep. As MacIntyre claimed in his inaugural address on taking up his chair at the University of Notre Dame:

> (…) there is a consensus of platitudes in our moral culture, but that this belongs to the rhetorical surface of that culture, and not to its substance. The rhetoric of shared values is of great ideological importance, but it disguises the truth about how action is guided and directed. For what we genuinely share in the way of moral maxims, precepts and principles is insufficiently determinate to guide action and what is sufficiently determinate to guide action is not shared. (MacIntyre, 1990, p. 349)

The second of the criticisms (Biesta, 2009; Larrosa 2021) concerns the change in *lingo* imposed by evaluations conducted by means of standardised tests. We have stopped talking about *education* and prefer now to talk about *learning*. Learning is an eminently individualistic process while the word education always implies a relationship. The emphasis on learning reaffirms the individualistic nature of our societies and the economic system that dominates them. It is also a term linked to a process, but one that is morally empty. A student can learn anything, but nothing that he or she learns can explain what it has been learned for. In contrast, the term education is loaded with value and refers clearly to a moral value or direction. With the emergence of the new language of learning it has become more difficult to ask questions about the purpose and ends of education, focused as we are on academic outcomes measured in a very concrete way and taking the other ends for granted in an implicit reliance on a common-sense view.

The language of *learnification* returns us to the old dichotomy of education vs. instruction, relegating the school to that world of instruction and turning instruction into a means for denying the goal of subjectification as understood by Biesta (2020b). Indeed, for Biesta the domain of subjectification is central and also the most difficult to grasp. We have already mentioned how it can be linked to the development of freedom, though not, that is, the freedom to choose goods in the market place. What's more, subjectivity, is unrelated to the notion of identity and wondering about *who* I am, but rather about *how* I am in the world. Nor should it be confused with personality or individuation. For Biesta, freedom is a dimension that takes into consideration the real and other human beings in each and every choice, it takes into consideration the world understood as the complex network of relationships and contexts in which we act. In this sense, it is a dimension open to failure in an essential, non-incidental, way.

> But as soon as we acknowledge that education is also about subjectification, then the subject-ness of the student is not a problem that needs to be overcome in order to make the educational machine more predictable and effective, but it is actually the very point of our endeavors. This means, however, that there always is a possibility, and there always should be a possibility, that our students take their freedom and then turn back to us and say that they don't want — or, perhaps more importantly, don't need — our intentions. This risk is always there in education as well, and if we see this as a risk that needs to be overcome, a problem that needs to be "solved," we actually eradicate education itself. Klaus Mollenhauer has captured this idea very well by arguing that although education always needs intentions, such intentions have to be understood as structurally *broken* intentions. (Biesta, 2020b, p. 103)

These two discourses, both the criticism made of the current process of *learnification* and the moralising discourse that permeates the Law, have aspects in common. For both, the cultural content and the learning of this content have lost any real value. In Biesta's discourse, which we can place in the framework of neo-exist-

39 EV

entialism (Oliverio, 2021), this is because he believes that subjectivation is what happens when *interruptions* occur in the learning processes, which function as a way of socialisation, in our specific case, in the type of individualistic society that has come to typify our times (Biesta, 2020a, 2013). These desirable interruptions that cannot occur in planned or scheduled time, or which can only be achieved with great difficulty, call for attention and judgement and allow spaces of self-awareness to emerge.

From our point of view, discourses of this type, which do not deny the value of cognitive development, nevertheless ignore or underrate the value of objective cultural knowledge from which such development can be achieved. In the case of the essentially moralising discourse of the Law this is because it only attaches value to that content which can be used instrumentally or as the basis for developing competences, that is, for something that lies beyond the content itself, but neither the content nor the learning of this content is valued in its own right.

There are two fundamental errors in these two discourses. First, the confusion between means and ends and, second, the confusion between final end and procedural end and the role that the school plays in these relationships. We shall attempt to provide a brief explanation of these errors.

Aristotle drew a distinction between the final or perfect end and the imperfect or intermediate end. We should stress that, although the preamble to the Law speaks of final ends, understood as a specific type of desirable society, they do not contain within them the means to achieve that end. A complex competence — for example, "being able to solve unforeseen problems in situations of uncertainty" — may seem like a good end for an education system, but just how one gets to that point is a different matter altogether. Thinking that the concrete knowledge provided by the different disciplines taught at school is not necessary means going beyond what the final objective requires. As Luri claims,

> I very much doubt that a teacher can teach a student real world competences. The most he or she can do is teach knowledge. Competence is a specific appropriation of knowledge that permits its practical use. But just how much knowledge permits this use? We cannot answer this question because we can never be sure how much knowledge has intervened in the acquisition of a skill (or a habit) in any given student. It also happens that the more competent we are at doing something, the less aware we are that we have that competence. (Luri, 2020, p. 252)

The desirable end, identified by a type of person, does not immediately tell us how it might be achieved. It is certainly difficult to see a great mathematical thinker in the mechanical way a child goes about learning her multiplication tables, but it is impossible to imagine a mathematician that does not master the basics of arithmetic. Expert knowledge is not the direct objective of teaching but rather the fruit of a practice that begins with simple, well-defined questions. If we seek expert knowledge from the outset, complex competences that obviate the most elementary

mechanizations, we will achieve neither one nor the other.

3. School results in the education system

To answer the second question that we posed at the beginning of this article — is the transmission of cultural content and the evaluation of school outcomes a primary concern of the education system? — requires we undertake a specific analysis of the Law. What we measure and how we measure it are in essence indicative of the value we attach to the educational content of the school curriculum regulated by the educational act and the subsequent Royal Decrees that emanate from it. This is why we must analyse, however briefly, the relationship between what is measured and how we measure it and what we hope to achieve by so doing.

What is measured is never the sole decision of a ministry or a government, but it also includes those requirements that are present at any one time in a society's immediate cultural environment. In the case of education, the requirements of international organisations, the OECD, the European Commission, etc. all have an undoubted influence. Indeed, the preamble to the Law states:

The years that have elapsed since the approval of the LOE advise that some of its measures be reviewed and that they be accommodated to meet the current challenges of education, which we share with the objectives set by the European Union and UNESCO for the decade 2020/2030. (Organic Law 3/2020)

What are these objectives? Can we find any clues in these organisations as to how to measure the objectives proposed? To answer these questions, we can turn to the PISA 2018 report, in which the OECD added a new competence for measurement known as "global competence" and which it defines as follows:

Global competence is a multidimensional, life-long learning goal. Globally competent individuals can examine local, global and intercultural issues, understand and appreciate different perspectives and worldviews, interact successfully and respectfully with others, and take responsible action toward sustainability and collective well-being. (OECD, 2019)

This competence is in perfect keeping, as the report itself recognises, with the Goals for Sustainable Development and the Agenda 2030 Goals, also included in the Law.

How does PISA evaluate this competence? Essentially by employing questionnaires that record responses to hypothetical situations and certain practices of daily life. Two relevant insights emerge in relation to this PISA report. The first concerns the value of the measurement instruments it has developed for this purpose. Until it occurred to the assessment experts to measure this competence, the evaluation of content had been approached through the testing of universal basic skills, which, despite multiple problems, were at least partially measurable. We know, in a fairly simple way, if a 15-year-old boy or girl understands what is written in a text and whether he or she

is able to interpret a graph correctly. Furthermore, and this is relevant, it is difficult for them to deceive us about just how much they understand and about their ability to apply knowledge to a given situation. In short, as long as the reports continued to operate within this framework, they had some value. But things don't work the same way in the realm of ethics. As children learn from a young age, and adolescents know full well, saying that you have been studying when you have in fact been playing on your mobile phone is not only possible, it is also an easy and effective response; it can save you from being punished. A questionnaire, therefore, does not seem like a good method for measuring a competence that is essentially attitudinal. We might perhaps think that we are at least measuring whether the respondents say what they ought to say, even if it is not what they in fact do. We could find out if they have at least internalised the ideal. But this says nothing about their actual behaviour.

The second of the insights concerns the actual learning of what is needed to answer the questionnaire. Yet, the test questions and exercises do not require, nor do they have any relation to, the cultural knowledge transmitted at school. Students do not need to have *more* knowledge of history or *more* knowledge of literature to provide better solutions to any of the scenarios posed. With tests of this type, all current efforts to slim down the curriculum suddenly make sense, especially in the humanities, since it is of little use for solving the problems that arise in the students' social or personal lives. This renun-

ciation of the *powerful knowledge* of which Luri (2020) speaks deprives students of the tools they need to be able to interpret social reality, robbing them of their cultural heritage and ultimately leaving them without any cultural roots (Bellamy, 2018). It abandons them to the fate of uncritical, politically correct thinking.

But criticisms of the PISA global competence test point to a problem that is more general and that impacts the very root of Spain's education law and which, as a result, reveals an obvious paradox. This paradox arises when the Law, which has eliminated any trace of the relationship between cultural content and competence and which is, therefore, only capable of defining the goals of education in an abstract way, determines in a fairly explicit way how these goals are to be achieved. It is the equivalent of saying that we don't understand very well the value of what we are transmitting and, therefore, we have opted to place greater emphasis on the way we teach. Indeed, the teaching method has become the core of the process because the way of teaching contains a personal end. The type of person we want to forge is already inscribed in the ways of educating, although the ends themselves are not clearly defined.

If we examine the part of this claim that speaks of the indeterminate nature of the ends of education, we find what the Law has to say that is very much in keeping with UNESCO's proposals: education should develop the capacities of 'learning to be', 'learning to know', 'learning to do' and 'learning to live together'. In its dec-

larations, what is important is the ability to learn, rather than the act of learning itself. Learning to know is more important than knowing something; learning to do is more important than knowing how to do something. And the same goes for learning to live together. It seems that there is a dissociation between the development of a capacity and the actual content that this capacity allows us to put into action. As if we could learn to do without having to do anything specific. As if learning specific content impeded the acquisition of superior mental ability. As if this superior mental ability could only be acquired if the learning did not remain attached to the specific content, like some kind of sticky magma from which one would have to flee at the risk of being trapped like flies in a honeycomb. The statements contained in the Law that address the objectives of compulsory secondary education can be interpreted in this same way: "During this stage, competence-based, autonomous, meaningful and reflective learning should be promoted in all the subjects included in the article, and should be integrated into the different ambits of activity" (Organic Law 3/2020, p. 122874). Or in point 8 of article twenty-one, "Likewise, special attention will be paid to the protection of learning of a meaningful nature for the development of the competences that promote autonomy and reflection" (Organic Law 3/2020, p. 122890).

That learning is competence-based can be interpreted either as what is learned are competences or that in learning something in particular competences are developed. The question is whether or not in all

the processes of learning completed before the publication of the Law, competences of any kind were developed while learning something else. For example, is it possible to learn to play the piano without learning to play a particular musical score in the most mechanical way imaginable? In the case of the child that is learning the *Adagio* from the *Moonlight Sonata*: Is she learning a piece by Beethoven or is she acquiring the competence to play the piano? Is the latter possible without the former?

And what about the other terms in the preamble? Autonomous, meaningful, and reflective? Should learning be autonomous, that is, without external guidance, or as a result of this approach to learning should the student be able to learn autonomously in the future? And what about the automations required for subsequent learning? Are reflection and meaning always the means of learning or are they, in fact, the results of successful learning? When a child learns the multiplication tables by heart, is she undertaking non-reflective, non-meaningful and heteronomous learning or is she making it possible to subsequently learn content in a reflective, meaningful and autonomous way?[1]

The Law gives the impression that it is seeking to put an end to those exercises of repetitive rote learning that were typical of the traditional school. But it is absurd to try to put an end to something that ceased to exist long ago. The Law is slaying monsters that are long dead. Once again what is made manifest is the confusion that exists between the ends and the means.

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And at the opposite extreme of the terms in this paradox, we find, in the same Law, a greater concern for the *how* than for the *what*. The goal is to force social agents to pursue certain ends, the *what* of the educational action, but given that this *what* is expressed in such an indeterminate way, it seems more important that what they do they do in the specific way determined by the Law.

A couple of examples can serve to illustrate this: namely, what the Law has to say about coeducation and the Universal Design for Learning (UDL).

In the case of coeducation, the Law contains a number of ideas about the kind of education required to achieve the society desired, rather than specifically about what it is students ought to be learning. Society is not expected to conform indeterminately as the result of the free interaction of individuals. The Law has a predetermined image of what interindividual relationships should be like; but, as it is very difficult to express this image in concrete learning goals, it instead specifies how these vague goals should be achieved. For example, it sets as one of its objectives:

I) (…) the promotion of the effective equality of women and men through a consideration of a system of coeducation for boys and girls (…). (Organic Law 3/2020, p. 122881)

The end sought is the *effective* equality of women and men, not simply the equality of their rights and duties. We understand that a society in which the rights and duties of men and women are equal would not be acceptable if this outcome represented anything other than the *effective* equality of the sexes. Naturally, just what criteria should be employed to determine whether or not effective equality has been achieved is not specified. Anyway, the assumption is made that this equality can only be achieved through the coeducation of boys and girls.

But while the declaration of the objective is a question of principle (men and women ought to be equal), the statement that this goal can only be achieved by means of promoting coeducation is an empirical statement and, as such, evidence is required to support the claim. If the latter were a value statement, it would be equivalent to saying that the goal is the achievement of equality through coeducation. In other words, if equality were achieved by means other than coeducation, it would be a failure. Clearly, this is absurd, and means the demand for empirical evidence is decisive in order to be able to validate this legal principle. Otherwise it becomes an unjustified imposition. If equality can be achieved by modes of action other than coeducation and yet despite this coeducation is imposed, we would find ourselves faced with an authoritarian determination of acceptable modes of action.

The second example concerns attention to diversity. Point 3 of the sole article of the LOMLOE states, in relation to compulsory education:

(…) when [achieving] such diversity so requires, the pertinent organisational, me-

thodological and curricular measures shall be adopted, in accordance with the provisions of this law, in accordance with the principles of Universal Design for Learning (…). (Organic Law 3/2020, p. 122882)

Once again, the Law lays down quite clearly how teaching professionals should perform their work. Here is not the place to debate the appropriateness of UDL, but it is questionable that a solution which might be superseded and disappear at any time should be sanctified by a law that should have a vocation of permanence. It is as if Spain's 1970 General Education Act had established that all compulsory education be organised according to the principles of programmed teaching. This disproportionate use of a law to establish how professional teachers should carry out their work is made perfectly evident if we imagine the same situation applied to a different field, let's say healthcare. Healthcare legislation can determine the structure and organisation of the national health system, its healthcare areas, the assignment of the population to reference hospitals, its financing, its institutional hierarchy, in short, a vast array of aspects that have nothing to do with the daily activity of the doctors and their consultations with their patients. But it would be bizarre, to say the least, for a law to determine whether kidney stones should be removed by lithotripsy or laparoscopy, and more bizarre still, how each of these techniques should be performed.

This concern for the way in which the educational process should unfold in the classroom is transferred, in what is almost a carbon copy, to the way in which the evaluation of educational outcomes should be conducted.

School performance, that is, student learning, can be evaluated at two distinct levels. On the one hand, there is the individual level, where the learning acquired by the students determines whether they pass to the next grade and can eventually graduate. On the other hand, there is the level of the system itself, where the evaluation of student learning serves to determine whether or not the system has achieved its objectives and, in this way, it can be held accountable to society. In both cases, the approach adopted is based on preconceptions whose origins can be traced to two elements: the belief that evaluation can eliminate its summative component without losing its ability to act as an incentive for change and an incomplete understanding of Campbell's law.

At the first level — that of the evaluation of students, the first element that acts is a preconception which basically constitutes an attempt to *tone down* student evaluation. It originates in the belief that evaluation has to be formative to be good, and that it should only be summative when there is no other choice, because summative evaluation is inherently *bad*.

The distinction between formative and summative evaluation was first proposed by Scriven (1967) in the broader context of curricular assessment. The two concepts were rapidly accepted and

incorporated into the standard terminology of evaluations of all types, including the evaluation of students. The concept of evaluation conducted during the development of the process already existed, and some authors, including Cronbach, considered this type of evaluation to be superior to that carried out once the process being evaluated had finished. "Evaluation, used to improve the course while it is still fluid, contributes more to improvements of education than evaluation used to appraise a product already placed on the market" (Cronbach, 1963, p. 236). But Scriven deemed this assessment of the final evaluation inappropriate and claimed: "It (…) seems a little excessive to refer to this as simply 'a menial role', as Cronbach does" (Scriven, 1967, p. 5). And, moreover,

> Thus there seem to be a number of qualifications that would have to be made before one could accept a statement asserting the greater importance of formative evaluation by comparison with summative. (…) Fortunately we do not have to make this choice. Educational projects, particularly curricular ones, clearly must attempt to make best use of evaluation in both these roles. (Scriven, 1967, p. 5-6)

But despite Scriven's doubts, the supposed supremacy of formative evaluation over summative evaluation is widespread among many authors of what we can consider to be progressive pedagogy. Martínez Rizo (2013), for example, says: "Today, it is also recognised that, if the teacher adopts the formative approach, the impact of her evaluations can be more positive than those achieved adopting a summative approach" (p. 129).

In reality, this way of considering evaluation, in which all consequences are eliminated, serves to deactivate its potential incentives for change. In the case of evaluation with consequences, it is the subject under evaluation that has the most to gain from doing what lies within her powers to avoid the negative consequences of an unfavourable evaluation. Evaluation instigates change by its sole existence. This is its greatest potential. Eliminating it is to place all one's trust in the intrinsic motivation of learning, which, while it might sound *beautiful*, is quite unrealistic. If evaluation were solely formative, all responsibility for improving results would fall on the teachers and their ability to ensure that their students were highly motivated. So, when a student fails, the teacher is to blame as she has failed to motivate the student's desire for self-improvement.

All this is reflected in the preamble to the Law, when the legislator addresses the regulation of evaluation. Emphasis is placed on what is essentially the formative approach. But, of course, it is impossible to eliminate summative evaluation altogether, given that the State opts not to abandon its monopoly over the granting of qualifications and the certification of results. This summative function is closely tied to the responsibility of certification that the State assumes as its own. The monopoly of issuing certificates is linked to the need

to carry out, at some key moments, the corresponding summative evaluation, in which it is determined if the students have acquired the minimum required content. But, without actually abandoning its certification role, certain conditions are placed on the summative evaluation, in the sense of limiting its overall control. The preamble to the Law indicates that the evaluation of students in compulsory secondary education shall be "continuous, formative and inclusive" (p.122874). No direct reference is ever made to summative evaluation, although decisions as to whether a student should pass to the next grade are discussed. As if this were not summative evaluation. It is therefore something of a contradiction to claim that evaluation will be formative, but at the same time not to renounce decisions about students having to repeat a school year and the consequences this can have on their graduating. The Law states that evaluation in primary education is "to be based on the achievement of pre-established objectives and competences", and that these will serve as the criteria for passing to the next stage in their schooling (p. 122873). But it then immediately specifies that if the teachers agree that a student has not achieved the pre-established competences, she will have to repeat the last year of primary education. This, however, should in all circumstances be an exceptional measure and one that can only be taken once during primary education. This would be reasonable if and when curricular alternatives were specified for cases in which these objectives

had not been achieved. The elimination of repetition is a frequently expressed aspiration of some currents of pedagogical thinking. Yet, its elimination does not solve the problem; it simply eliminates a symptom. It seems that creating curricular alternatives would be like opening the door to the elimination of this main itinerary for students with special learning needs. And, so, to guarantee the effective equality of the education system, the decision has been taken to keep all students in the 'mainstream', taking for granted the ability of teachers and schools to cater for them at the same time as they cater for all the other students. But are teachers and schools capable of effectively serving students with special learning needs at the same time as they serve the majority of the class? Once again, this is an empirical question, which is resolved in the Law by adopting an a priori ideological stance, and so it considers it unnecessary to support this decision with any type of evidence.

The supposed superiority of formative evaluation goes hand in hand with another strongly held idea, that of the collateral or unwanted effects of evaluation in general, but especially of evaluation with consequences. This idea was first proposed by Campbell in the context of education, and has generated similar versions in other fields (Goodhart, 1975).

Campbell's law states that the use of an indicator for taking administrative measures corrupts the very process that it is intended to control:

The more any quantitative social indicator is used for social decision making, the more subject it will be to corruption pressures and the more apt it will be to distort and corrupt the social processes it is intended to monitor. (Campbell, 1976, p. 49)

But the negative effects of evaluation with consequences have been extended to evaluations of any kind as long as their results are made public. Indeed, many studies — for example, Popham (1999) and Resnick & Resnick (1992) — highlight the negative effects of evaluation when linked to accountability. Recently, these negative effects have been reported to be inherent to large-scale assessments (Emler et al., 2019). And this is so because the very mechanism that ensures the effectiveness of the evaluation provokes the unwanted side-effects of the evaluation. Any system involving monitoring and control produces a reaction among the agents involved. In itself, this reaction need not be adverse. The fundamental goal of the evaluation is to bring about changes in the agents or entities being evaluated so as to optimise the system. Evaluation as one of the most powerful levers for change in the education system is stressed on numerous occasions in the work of de la Orden (2009). But it is precisely this capacity of evaluation to provoke reactions in those being evaluated that makes it such a powerful instrument for optimising systems and institutions.

Clearly, some reactions to evaluation may be negative, in the sense of the corrupting effect of the indicators identified by Campbell. Here, Espeland & Sauder (2007) describe two mechanisms that can account for the *reactivity* of systems to the use of monitoring measures: 'self-fulfilling prophecies' and 'commensuration'. 'Self-fulfilling prophecies', on the one hand, correspond to positive feedback from the system. If a school has a reputation for getting good results, it will attract students from families who are looking for precisely that, feeding the school with students and families who want to obtain those good results. In contrast, a school with a reputation for getting poor results will drive away potentially successful students, causing it to perform even worse. 'Commensuration', on the other hand, is the phenomenon by which the activities that are evaluated end up mimicking the evaluation procedure: Students are taught to pass the test; the school's behaviour is dictated by the evaluation.

Thus, the reasoning goes that if we can remove the element of control, the perverse effect will be eliminated. This is in keeping with the idea of the superiority of formative evaluation. If we eliminate the definitive, sanctioning effect that summative evaluation has, we avoid the perverse effect of the evaluation. But by changing the essence of evaluation so radically, we run the risk of throwing the baby out with the bathwater. And this is precisely what the Law does. It assumes that the negative effects of evaluation far outweigh the positive, both as regards the evaluation of individual students and the large-scale evaluation of the system.

As regards this second level of evaluation, that of the system, the preamble to the Law explicitly establishes that the results of these evaluations cannot be used to draw up league tables of schools. The purpose of these diagnostic evaluations based on the students' learning outcomes is to determine whether it is necessary to adopt ordinary or extraordinary measures. But what is the point of a general evaluation of the education system?

In the absence of an intrinsic feedback mechanism, the education system requires certain processes that allow it to adapt to social demands. The evaluation of the education system could be conceived as such a mechanism. In a market system, price is the core element that transmits information to all agents and which spontaneously allows supply to be adjusted to meet demand. Likewise, some type of evaluation would allow the agents and authorities of education, together with schools and teachers to adapt their actions to meet the demands and needs of users. For this to occur, the results of the evaluation would have to be directly attributable to each unit independently that is of the educational agents, especially to the schools. However, the Law specifically establishes that the results of the evaluation "(…) cannot be used to carry out and make public individual evaluations of students or to rank schools" (Organic Law 3/2020, p. 122879). In this way, evaluation becomes a bureaucratic element in the hands of the government and education authorities. Furthermore, the Law states that "the educational project of the school must include an improvement plan for that school,

which will be reviewed periodically" (p. 122878). As such, it is a bureaucratic solution that seeks to avoid the schools and the system itself from being held publicly accountable. Access to the immediate information produced by the students themselves is denied, since citizens are not considered sufficiently mature to make adequate use of the results of the evaluation. Public comparisons are equated with the perverse effects of evaluation, and the best way to avoid such perverse effects is to avoid all comparisons.

Yet, the express ban on ranking schools may also respond to a desire to protect teachers working at schools that receive disadvantaged students. But, in this way, the Law implicitly incurs a contradiction. Education is believed to be capable of eliminating all social differences and, at the same time, it is understood that teachers in schools with disadvantaged students who do not succeed in doing so should be protected from public scrutiny because really they are not responsible for the poor performance of their students.

All of the above, regarding the unwanted effects of summative or large-scale evaluations, does not mean that the State renounces its control of the Education System. Articles 149, 150, 151, 152, 153 and 153bis of the Law identify the powers and mode of action of school inspection (Organic Law 3/2020, pp. 122929-122930). These articles make it very clear that the inspectorate has direct power over the activities that the schools can carry out. But it would be a

mistake to understand Campbell's law as something attributable exclusively to evaluation. The corrupting element targeted in Campbell's law is precisely that of external control. Does this mean that the control exerted by school inspection does not have unwanted effects on the system? Far from it. It is well documented that the very existence of school inspection causes 'collateral damage' to the system. The broad study carried out by Jones et al. (2017) shows that in all the countries studied[2], the use of educational inspection to control the operation of schools causes unwanted effects. What is the difference then? Simply, that the effects of using school inspection to control the system are less visible to the general public, and that it is the political power that directly manages and governs the inspection, so it is always possible for the administrative power to regulate the inspectorate's interventions.

4. Concluding comments

In this article, we have undertaken an analysis of the role that the new education law — the LOMLOE — attributes to the transmission of content and the evaluation of school outcomes. As we have seen, the Law is dominated by a concern for the way in which the educational process should be developed rather than for the content that should be learned. In terms of Biesta's domains, there is a greater concern for socialisation than there is for qualification. Likewise, when the Law addresses the evaluation of learning, it seeks to avoid the summative component of assessment in favour of its formative aspects.

Our analysis, however, insists that both the functions of socialisation and subjectification can only be activated via that of qualification. Students learn to be and learn to live together while they learn something. You cannot learn to be if you don't make the effort to learn something. We cannot teach our students to be if we don't teach them something. It is this cultural content and heritage that is neglected by the Law in favour of supposedly higher competences that are detached from specific content.

Similarly, the improvement of the system itself, of the schools and of the teachers is entrusted to intentional processes that are reflected in the schools' improvement plans, which are drawn up based on the analysis of the outcomes of the evaluations proposed under the Law. In the case of the students, the outcomes of the evaluations ought to allow teachers to propose strategies of intervention that enable them to adapt their actions to the interests and conditions of the subjects. The summative component is reduced to a minimum, and with it the incentives that the evaluation has to ensure that it is the students and their families who provide the means for making the necessary improvements. And the same is true of the large-scale evaluations of the system. Since comparisons are expressly prohibited, evaluation is reduced to a bureaucratic element that is incorporated into the tools of control that the government, by means of inspection, exercises over its

schools. By eliminating league tables and the publicity that accountability entails, all incentives for schools and teachers to adapt their study plans and actions to the results of their evaluations are also eliminated. In seeking to avoid the unwanted effects that evaluations might have, the mechanism that makes evaluation such an effective tool for optimising the system is discarded.

As far as school outcomes are concerned, the new Law is, therefore, a reflection of the weak assumptions on which it is based and, ultimately, it can be seen as a missed opportunity to promote the improvement of the system that goes beyond the simple spouting of rhetoric.

Notes

[1] Naturally, understanding the logic of multiplication and learning the mechanics of multiplication tables are not incompatible.

[2] Austria, the Czech Republic, England, Ireland, the Netherlands, Sweden and Switzerland

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The competency-based curriculum approach.
An analysis of the LOMLOE *

El enfoque del currículo por competencias.
Un análisis de la LOMLOE

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Abstract:

The competency-based curriculum approach is an international focus that embodies a trait which is widely shared around the world in today's educational scenario. It is deemed a response to the challenges faced by societies today, in the era of modern globalisation and the fourth industrial revolution. In Spain, the recently passed Organic Law Amending the Law on Education (hereinafter, LOMLOE) has developed legislation that is now reaching the curriculum. Therefore, it is appropriate to analyse such legislation. This is the purpose of this paper, which describes some of the institutional history behind this curriculum reform movement; the humanistic component of the movement, which remains connected to so-called "liberal education" while broadening its perspectives, is specified; certain elements of the ideological controversy around this new curricular approach and its rendering in the new law are described; a critical analysis of the conceptual foundations of the new structure is made and its limitations are indicated; attention is drawn to the central role of evaluation of learning outcomes and the paper ends with a succinct conclusion.

Keywords: competency, curriculum, educational reform, educational legislation, education quality.

Resumen:

El enfoque del currículo por competencias constituye una orientación internacional que encarna un rasgo del actual panorama educativo, ampliamente compartido alrededor del

mundo. Es considerado como una de las respuestas a los desafíos que, en la era de la moderna globalización y de la cuarta revolución industrial, se les plantean a las sociedades actuales. En España, la reciente LOMLOE (Ley Orgánica 3/2020, de 29 de diciembre de 2020, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación) ha emprendido el desarrollo normativo que alcanza ya al currículo. Por tal motivo, resulta oportuno proceder a su análisis. Esa es la finalidad del presente trabajo en el que se describen algunos de los antecedentes institucionales de ese movimiento de reforma curricular; se explicita la componente humanista de dicho movimiento que no pierde su conexión con la llamada «educación liberal», aun cuando amplíe su perspectiva; se describen algunos elementos de la controversia ideológica, a propósito de este nuevo enfoque del currículo y su plasmación en el desarrollo de la nueva Ley; se efectúa un análisis crítico sobre la base conceptual de la nueva estructura y se señalan sus limitaciones; se fija la atención en el papel central de la evaluación de los aprendizajes, y se cierra el texto con una sucinta conclusión.

Descriptores: competencia, currículo, reforma educativa, legislación educativa, calidad de la educación.

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1. Introduction

The competency-based curriculum approach is an international focus that, with its different nuances, embodies a trait which is widely shared around the world in today's educational scenario. It is deemed a response to the challenges faced by societies today, in the era of modern globalisation and the fourth industrial revolution.

Located between the past and the future — to paraphrase the title of the well-known essay by Hannah Arent (2016) — education, as a secular social institution, looks toward the past in its capacity as the institution entrusted with transferring consolidated knowledge and the values that represent the common ground of cultural and moral heritage to new generations. At the same, however, it is committed to preparing for the future to serve society, which acknowledges its decisive role while also expecting, with increasing intensity, that it will succeed in its mission and commitment.

In light of what is now known about the institutional history of that curricular reform movement, the competency-based approach effectively looks toward the future in that it represents one of the greatest contributions that education has made to preparing society to properly cope with these challenges.

As a member of the European Union and of other multilateral organisations competent for education, the Spanish educational system has not been indifferent to this movement. Ever since the first references to competencies were made in Organic Law 10/2002, of 23 December, on Educational Quality (LOCE, Spanish acronym), the successive organic laws

have addressed a competency-based curriculum approach with various degrees of detail and success. But whether due to matters of conception, implementation or both, and to the deconstructive effects on educational reforms that are now customary in the political rotation in Spain, the fact is that this movement has not taken a strong enough hold in this country.

The recent Organic Law 3/2020, of 29 December, amending Organic Law on Education 2/2006, of 3 May (referred to herein by its Spanish acronym, LOMLOE), sets out to define this movement by developing legislation that is now reaching the curriculum, in practical terms. Therefore, it is appropriate to analyse such legislation at this time. This is the purpose of this paper, which starts by describing some of the institutional history behind this curriculum reform movement. Secondly, the humanistic component of the movement, which remains connected to so-called "liberal education" while broadening its perspectives, is discussed. Thirdly, certain elements of the ideological controversy around this new curricular approach and its rendering in the LOMLOE are described. Next, a critical analysis of the conceptual foundations of the new structure is made and its limitations are indicated. Finally, attention is drawn to the central role of evaluation of learning outcomes and then the paper ends with a succinct conclusion.

2. Some institutional background

In 2001, the OECD put the final touches on the *DeSeCo* (Definition and Selection of Competencies) project, which can be considered the starting point, at the fully institutional level, of a movement that just a few years later would provide the foundations and inspiration for a renewal in the focus of school curricula.

Two characteristic features of this project should be highlighted. The first lies in the magnitude of the corresponding effort in terms of organisation and international cooperation, moving beyond the purely academic realm of its predecessors to step into the arena of transnational politics and application thereof (Rychen and Salganik, 2006). The second consists in its field of validity, exceeding the world of school education to take root in the paradigm of *lifelong learning* (OECD, 2001a; López Rupérez, 2012).

Within this institutional context, the *DeSeCo* project would be the launching pad for the subsequent introduction of curricular reforms in developed countries, focusing on the competency approach (OJEU, 2006; Dede, 2010; Voogt & Pareja Roblin, 2012; OECD, 2018a, 2018b).

F. E. Weinert, one of the scholars that contributed significantly to the direction of the project, originally defined the concept of competency in the following terms:

The theoretical construct of action competence comprehensively combines those intellectual abilities, content-specific knowledge, cognitive skills, domain-specific strategies, routines and subroutines, motivational tendencies, volitional control systems, personal value orientations, and

social behaviours into a complex system. (Weinert, 1999, p. 10)

Later, when the final work was presented in Paris, the education ministers of the member countries summarised the concept of competency in the following terms in their declaration:

> Sustainable development and social cohesion depend critically on the competencies of all of our population — with competencies understood to cover knowledge, skills, attitudes and values. (final communiqué of the meeting of education ministers, OECD, 2001b)

Through the OECD's mechanisms of influence over the European Union — it should be recalled that most of the member countries that take part in the councils and committees of the OECD are also members of the EU — this same concept and concern also prompted, strictly in relation to schools, the *European Reference Framework of Key Competences* (Official Journal of the European Union, 2006, 2018), which would spread in one way or another to the Member States (Eurydice, 2012; Voogt and Pareja Roblin, 2012).

3. Fostering a humanistic approach

Although the competency-based curriculum approach adopted by the EU owes some of its forward-looking vision to technology companies and entrepreneurs in relation to the challenges of the future (Kairamo, 1989; Voogt and Pareja Roblin, 2012), it has also inherited that broader conception of a humanistic nature set out in the four main principles of the Delors Report (Delors et al., 1996): learning to know, learning to do, learning to live together and learning to be. This vision — part forecast, part regulation — of the education of the future has been integrated into the concept of competency mentioned above, and has inspired both the European framework and its rational justification. In fact, that approach represents an expanded conception of the strictly academic focus on education in that it includes other aspects in the curriculum, beyond knowledge, that were present in the past century but not explicitly or systematically.

In the cognitive field, the notion of competency has placed learning, and therefore also teaching, at a higher level in the hierarchy of knowledge and its use. In general, particularly in more standardised subjects, the application of knowledge requires a command of the concepts, which entails comprehending the related procedures and rules of use, without which said command is ineffective and insufficient. This expansion of the cognitive framework has been referred to as "deep learning", or deeper learning, a concept that stems from cognitive psychology and artificial intelligence (López de Mántaras, 1989; Sawyer, 2008; Luckin and Issroff, 2018) and entails deep representations of knowledge in the student's mind. These representations feature both rich semantics and applicability (López Rupérez, 1994, 2020). As Webb (1997), among others, noted, the degree of depth of the knowledge may be expressed in a variety of dimensions, including the level of cognitive complexity of the information that students are expected to have, their capacity to transfer it to diverse situ-

ations, the ease of making generalisations or the amount of prior knowledge needed to grasp the ideas.

Shortly after the publication of the first version of the European Reference Framework of Key Competences, the Spanish Regional and National School Councils took a similar stance at their XVIII Meeting (Bilbao, 2008) in a text worth mentioning for its clarity:

> (…) After all, *knowing how to do* — that ability to apply conceptual knowledge in different contexts, the development of which is characteristic of the competency-based approach — entails the mobilisation of cognitive capacities of a higher order such as analysing, interpreting, applying, predicting, etc. But these skills cannot be separated from the specific contents and learning on which they are based; rather, they should be the decanting or solidification of that conceptual knowledge without which it is simply not feasible to apply the new approach in an educational context, from the perspective of mental processes. The basic challenge consists in becoming more effective in the teaching and learning processes, in systematically creating and applying new organisational procedures and new didactic tools capable of bringing all students up to that higher level in the use of knowledge. (p. 17)

Essentially, this is also the focus taken by technology companies in their recommendations on how to prepare new generations, through education, for the challenges of the future in terms of employability, which partly explains the presence of that utilitarian component in the development of competency-based curricula (Voogt & Pareja Roblin, 2012; López Rupérez, 2020).

However, beyond this pragmatic aspect related to skills, the vision of the competency-based curriculum approach extends to those other components related to attitudes and values, which actually represent an organised and systematic transfer of learning to be and learning to live together, as discussed in the Delors Report, into the school system. As described in greater detail elsewhere (López Rupérez, 2020), in recent decades this circumstance has been bolstered by at least four positive vectors of influence that, despite their diverse nature, act in a converging manner: the rise of classical moralism, the character education movement, the growing importance of non-cognitive skills and the employability demands in the 21st century.

Juan Carlos Tedesco (1995) — a well-reputed scholar and education minister from Argentina who could in no way be suspected of taking a neo-liberal approach to education — asserted the following after a profound reflection on the topic of education in the final years of the past century:

> Modern companies arise as a paradigm of functioning based on full development of the best capacities of human beings. We may be facing an unprecedented situation in which the capacities needed for achievement in the productive process are the same as those required for the role of citizen and for personal development. (…) In the new production models, there is a possibility and a need to implement the same capacities as those required at the personal and social level (62-63).

Indeed, now that we are well into this present century, what we observe, from the perspective of the purposes of education, is a profound intermingling of knowledge, skills, attitudes and values, all of which are necessary in an education that can properly prepare the new generations for the future. In the end, this intermingling will serve to reassess some aspects of a "liberal education". Liberal education in this context means an education in the fundamentals, which entails a sufficiently comprehensive approach to our cultural, intellectual and moral heritage, the development of broad frameworks of reference, respect for the facts, the ability to organise and use knowledge, a critical spirit and clear thinking, particularly in secondary education (López Rupérez, 2014).

This vision of liberal education could not be more appropriate in a context such as this one, involving swift changes, personal and social uncertainty, confusion and ambiguity; in sum, a complex scenario brought on, to a great extent, by globalisation, the digital revolution and its interactions (López Rupérez, 2021). The features of this scenario, precisely, lie at the very foundations of the justification offered by the European Union in its commitment to a competency-based curriculum approach (OJEU, 2006, 2018), invoking some of the characteristics of that liberal education that make the principles formulated in the aforementioned UNESCO report (Delors et al, 1996) feasible, namely learning to be and learning to live together.

A humanistic approach to teaching facilitates both cognitive development and the development of non-cognitive skills in the different subject matters (Kautz et al., 2014), as well as attitudes and values. In fact, the typical approach used in liberal education is essential for linking the person being educated to that person's traditions of thought and culture and thus, to equip these individuals with personal stability, a unique direction, intellectual autonomy and a moral capacity that enable them to cope, with some certainty, within this complex, and therefore unforeseeable, new context in which they are to live. All of this highlights the extent to which different components of a competency-based curriculum approach are related to a so-called liberal education.

4. Certain elements of the ideological controversy

Ever since the first version of the European Reference Framework of Key Competences (OJEU, 2006) was outlined, certain sectors of academia in Spain have expressed their misgivings with respect to this approach due to its allegedly neo-liberal focus (Bolívar and Pereira, 2006), and have even gone so far as to disregard academicism as exclusive and selective, to mistrust curricula focused on area contents and to identify it as being responsible for the failures of compulsory education (Goñi, 2008). In line with this, they have postulated a biased approach to the notion of competency that focuses not on knowledge but on skills.

The lack of specification in the approach of the LOMLOE — as is appropriate for an organic law which is high in the hierarchy of norms — was recently resolved in its enacting legislation. Thus, the draft version of the royal decree establishing the regulation and minimum teachings in Compulsory Secondary School and its annexes (Ministerio de Educación y Formación Profesional, 2021) sets out a conception of the curriculum that is formally inspired by the European Reference Framework of Key Competences but actually stems from an appropriation of the concept of competency that places greater weight on certain personal and social skills and attitudes of a non-cognitive nature. As described on page 2 of Annex I 'Outgoing profile of students upon completion of basic education', these skills take on a marked prevalence that is evident in the very definition of the *Outgoing Profile*, a crucial concept in specifying the key competencies that students are expected to have acquired by the time they finish their basic education in order to "respond to the main challenges they will face throughout their lives".

The response to these challenges, linked to the acquisition of said non cognitive learning, is, according to the legislation, what makes it necessary to have "the knowledge, skills and attitudes that lie beneath the key competencies". However, this text, which is introductory but destined to provide general guidance for the aforementioned legislation, clearly prioritises certain skills, attitudes and values, rendering cognitive concepts secondary to certain types of personal and social learning. This denotes a certain ideological continuity with those approaches that mistrust knowledge and move away from the principles inspiring liberal education.

This approach also contrasts with the emphasis of the Council Recommendation of 22 May 2018, of the Council of the European Union (OJEU, 2018), in this regard and, in particular, with the second recommendation, most directly related to the educational system (p. C 189/4). When it comes to referring to the challenges of young people, the whereas clauses in this text by the European Union are also worded quite differently from the aforementioned draft royal decree. For example, Whereas Clause 2 states as follows:

> People need the right set of skills and competences to sustain current standards of living, support high rates of employment and foster social cohesion in the light of tomorrow's society and world of work. Supporting people across Europe in gaining the skills and competences needed for personal fulfilment, health, employability and social inclusion helps to strengthen Europe's resilience in a time of rapid and profound change (C 189/1).

And in Whereas Clause 7, the Council reasons in the following terms:

> In the knowledge economy, memorisation of facts and procedures is key, but not enough for progress and success. Skills, such as problem solving, critical

thinking, ability to cooperate, creativity, computational thinking, self-regulation are more essential than ever before in our quickly changing society. They are the tools to make what has been learned work in real time, in order to generate new ideas, new theories, new products, and new knowledge. (C 189/2)

While it is true that the definition of key competencies in the draft royal decree, of necessity, refers to the generic guidance of the European Reference Framework, the wording of the text attempts to prevent it from conflicting with the priorities of the aforementioned Outgoing Profile by offering justification worded as follows:

> (…) the Recommendation refers to ongoing learning that takes place throughout one's lifetime, whereas the Profile specifies a precise, limited moment in students' personal, social and formative development: the basic education stage. (Annex I, p. 3)

The conceptual and methodological change prompted by the introduction of the new paradigm of *lifelong learning* (OECD, 2001) based on the typical focus of adult education is apparently ignored here. This concept takes into consideration all the formative stages of an individual and the interactions and interdependencies between them (López Rupérez, 2012), and gives prevalence to the European Union's approaches in terms of education.

5. Structural inconsistencies

In the aforementioned draft royal decree and Annex 1 thereto, curriculum development is divided into the following basic con-

cepts, which are formally pieced together and given the same degree of precision across the different areas, fields and subjects; they have been arranged here from more general to more specific to facilitate comprehension:

– *Key competencies.* They are defined as the "achievements that are considered essential in order for students to progress with ensured success in their formative path", and they "entail the adaptation of the key competencies defined in the European reference framework to the Spanish educational system".

– *Outgoing profile.* As the title indicates, this refers to the formative levels at the end of the compulsory stage. According to the official text, "the profile identifies and defines the key competencies that students are expected to have developed upon completion of this phase of their formative path".

– *Operative descriptors* of the key competencies in basic education. These are elements "based on which the specific competencies of each area, field or subject are defined" and they embody an "applied dimension of the key competencies".

– *Basic knowledge.* This reverts to the typical formulation of a school curriculum and, in the official text, is referred to as the "knowledge, skills and attitudes inherent to the content of a subject or field, which

must be learned in order to acquire the specific competencies".

– *Specific competencies.* These are the achievements of the students in each area, field or subject, "which require basic knowledge so they can be accomplished".

– *Evaluation criteria.* These aim to specify what should be evaluated. According to the official text, they are "benchmarks that indicate the levels of achievement expected of students in the situations or activities referred to in the specific competencies for each subject or setting at a certain time in the learning process".

Despite the evident intention to give the new curriculum a structured nature, a detailed analysis of the contents of this section reveals that this aim is not sufficiently elaborated, for the following reasons:

a) An overlap between classification categories is seen that sometimes makes them hard to distinguish in practical terms. For example, the official definition of *basic knowledge* as "knowledge, skills and attitudes" is indistinguishable from the notion of competency from the perspective of both the European framework and that of the OECD (OECD 2018a, 2018b) except that, in this case, it refers to a specific subject or field. Thus, they are specific competencies. There is a conceptual circularity in the proposals that generates confusion because the competencies include basic knowledge that is, in turn, a competency. Although

the term 'specific' resolves the circularity issue, it does so at the expense of identifying both concepts and making them redundant. In addition, within the context of school education, including the ethical and personal dimension of competencies in the category of knowledge seems inappropriate at the epistemological level.

b) A similar situation is true for the *operative descriptors* and the *specific competencies* themselves. If the *operative descriptors* can be understood as a kind of bridge between the *key competencies* and the *specific competencies*, the fact is that these descriptors are beyond the scope of the evaluation criteria, which refer explicitly to the specific competencies.

c) These so-called *operative descriptors* provide little actual operational guidance because they are not defined with sufficient precision and therefore, they are inadequate to bear this name. For example, the operative descriptor CCL5 in Linguistic Communication Competency is described as follows:

> Use their communication practices to foster democratic coexistence, managing conflict through dialogue and equal rights for all people, detecting discriminatory customs in language and abuses of power therein to encourage not only an effective but also an ethical use of language. (Annex II, p. 5)

The use of the term "operative" here generates certain conceptual confusion, bearing in mind the long tradition of

using this term, or its synonym "operational", in education to refer to unambiguous definitions of concepts or objectives that facilitate evaluation (Bloom et al., 1971). However, in this case, the operative descriptors are much more descriptive than operational in nature.

d) The *evaluation criteria* offer mere orientation, thus rendering them difficult to interpret when it comes to unequivocally or unambiguously determining the students' achievements by the end of the basic education stage. Thus, for example, evaluation criterion 1.1, related to specific competency 1 in the subject of biology and geology, is defined as follows:

> Analysing concepts and processes related to knowledge of biology and geology, interpreting information in diverse formats (models, graphs, tables, diagrams, formulas, outlines, symbols, websites...), having a critical attitude and reaching well-founded conclusions. (Annex II, p. 21)

Moreover, their focus often makes them hard to distinguish from the focus of the *operative descriptors*.

No less relevant is the issue raised by the *outgoing profile*, as it is currently defined. According to its definition, it is linked to the conceptual genealogy of *learning standards* in the sense of unambiguous formulations of what the students must know and know how to do by the end of a cycle or stage (Pont, 2014; p. 19). The fact of the matter is that the outgoing profile is actually a set of collections of operative descriptors, which are systematically mentioned at the end of the description of each specific competency. Therefore, the definition of *outgoing profile* for basic education lacks that open, barely operational, nature described above for the operative descriptors; in other words, it does not provide enough guidance and allows for a variety of assessments.

6. The issue of evaluation

The matter of evaluation is one of the problems raised and acknowledged internationally in relation to the competency-based curriculum approach (National Research Council, 2001; Gordon et al. 2009; Soland et al., 2013; Lamb et al., 2017; Vista et al. 2018; OECD, 2018b). There is broad consensus among specialists in considering that we are in the early stages of evaluation of competencies for the 21st century, or, in the words of Care et al. (2016), "our capacity to evaluate complex social and cognitive skills is in its infancy" (p. 262). However, the individual, social and political relevance entailed in educational evaluation at different stages or levels of the system makes this a core topic when creating and implementing this curricular approach in the school setting[1].

In order to accomplish the multiple purposes of evaluation, it must be valid and reliable, that is, it must measure what needs to be evaluated and it must measure it properly. These requirements of educational evaluation become a matter of justice and fairness when

the results of the evaluations are used by teachers in decision-making on handing out diplomas; obviously, this process has academic and administrative effects and an impact on the job-related and personal future in the lives of the students. However, rigorous empirical studies have shown that the constructs of competencies are weak with regard to attitudes and values (Lamb et., 2017). In fact, even the OECD itself has been forced to give up evaluating them, despite the fact that they are part of the overall framework of competencies used in the latest edition of PISA (OECD 2018a, 2018b). This reality throws into question the advisability of the approach to evaluation in the curricular development of the LOMLOE and, consequently, of certain elements of its architecture, in light of the aforementioned studies. It is as if that ambiguity in determining the students' achievements, which is typical of insufficiently defined constructs, had also extended to other well-defined ones that have been possible to evaluate in the past.

7. Conclusion

While it is true that the competency-based curriculum approach is a focus that is widely accepted as being inherent to education for the 21st century (López Rupérez, 2020; Reimers et al. 2021), there is also broad consensus as to the difficulties involved in effectively developing it: implementation difficulties arising from the fact that teachers are faced with a new, more complex and much more ambitious approach; eval-

uation issues prompted by including learning elements for which there are insufficient empirical bases and practical experience in evaluation; and difficulties in social acceptance due to the change it represents compared to a more traditional approach.

For these reasons, it would have been preferable to have a more realistic strategy that did not distort the genuine approach to the concept of competence, nor compromise the quality of education for students that would have been offered had this concept been applied correctly. A substantial portion, at least, of the criticism aimed at the curricular development of the LOMCE[2] (López Rupérez, 2020) is once again applicable to the LOMLOE, and it is compounded by a recognisable ideological burden that distances us from the fundamental elements of the approach in the European framework on key competences.

On the other hand, such an open approach, both in terms of *outgoing profiles* and assessment criteria, together with the extension of the competences of the Autonomous Communities in curriculum development and the flexibility of promotion and qualification criteria, will not only reduce the structuring function of basic regulations, but will most probably increase inequalities between territories in terms of the consistency of the education obtained by pupils on their way through compulsory education.

Nearly two decades after the above-mentioned reference framework was created, it is possible that we have once again strayed from the course. The future will have the final say in this.

Notes

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The regulatory quality of legal frameworks:
A critical approach

La calidad regulatoria de los marcos normativos:
una aproximación crítica

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Abstract:

The regulation on education suffers from the lack of regulatory quality of many laws and regulations that has been denounced in many countries. The concern for the quality of the norms is old, but it has intensified in the face of "motorized" and "unbridled" legislation that is being the result of the exercise of the normative power by the social and democratic constitutional State under the rule of law. Some causes of the degradation of legislative quality, still limited by the fundamental role of constitutions and international treaties, can be identified. Among the means for remedying or, at least, alleviating or curbing the problem, Spain has, although still with limited effectiveness to date, the role given to the Council of State, the General Codification Commission, the Office of Coordination and Regulatory Quality and the Constitutional Court. Particularly noteworthy are some defects or aspects that could be improved on in terms of the quality of the legal framework formed by the main statutes (organic laws) regulating education in Spain.

The entire analysis focuses on the legal method, the basis of well-founded doctrinal opinions, legal information and some judicial decisions, under a concept of knowledge or legal science that assumes the integrity of its understanding from the Digest of Justinian Roman Law as *divinarum atque humanarum rerum notitia, iusti atque iniusti scientia*, and which, therefore, is founded on ontological anthropology and includes due attention to logic and linguistics. The conclusion arises from the study as a whole: the goal of achieving legislative quality that arises from the outset as a substantive requirement of all legislation, and which is so lacking, cannot fail to be decisively and critically pursued.

Keywords: Legislative quality, good regulations, legal certainty, educational legislation, constitutionality of laws.

Resumen:

La normativa sobre educación adolece de la falta de calidad regulatoria de muchas leyes y reglamentos que viene denunciándose en muchos países. La preocupación por la calidad de las normas es antigua, pero se ha recrudecido ante la legislación «motorizada» y «desbocada» en que se ha traducido el ejercicio del poder normativo del Estado constitucional, social y democrático de derecho. Cabe identificar algunas causas de la degradación de la calidad normativa, aun limitadas por el papel fundamental de las constituciones y por el de los tratados internacionales. Entre los medios para remediar el problema, o al menos paliarlo o frenarlo, se cuenta en España, aun con limitada eficacia hasta ahora, con el papel del Consejo de Estado, la Comisión General de Codificación, la Oficina de Coordinación y Calidad Normativa o incluso el Tribunal Constitucional. Son de notar en particular algunos defectos o aspectos mejorables en la calidad del marco normativo formado por las principales leyes orgánicas reguladoras de la educación en España.

Todo el análisis se atiene al método jurídico, sobre la base de fundadas opiniones doctrinales, datos normativos y algunas decisiones jurisdiccionales, bajo un concepto del saber o de la ciencia jurídica que asume la integridad de su comprensión en el Digesto del Derecho romano justinianeo como d*ivinarum atque humanarum rerum notitia, iusti atque iniusti scientia*, y que, por ende, toma como cimiento una antropología ontológica, e incluye una debida atención a la lógica y la lingüística. La conclusión se desprende del conjunto del trabajo: no puede dejar de perseguirse, decidida y críticamente, el objetivo de la calidad normativa que se plantea desde el comienzo como exigencia sustantiva de toda normativa jurídica, y que tanto se echa en falta.

Descriptores: calidad normativa, buena regulación, seguridad jurídica, legislación educativa, constitucionalidad de las leyes.

1. A long-standing concern, exacerbated in modern times

1. In the 13th century, on the subject of laws, Saint Thomas Aquinas stated under question 95, Article 3 of I-II *Summa Theologica*, the following famous words of Saint Isidore of Sevilla, the wise Spaniard of the 6th and 7th centuries, taken from his *Etymologiae*:

> The law has to be honest, fair, possible according to the nature and customs of the country, appropriate to the place and time, necessary and useful; it must also be clear, so that no tricks are hidden in the darkness; it has to be enacted not for private profit, but rather for the common benefit of all citizens[1].

In these Isidorian demands, some truly substantial ones can be found, such as, for example, that the law must be "honest, fair" and "not for private profit, but rather for the common use of citizens"; no doubt understanding such "private profit" not as

being contrary to common use — something that today we would say is not covered by the fundamental rights of people or, in reality, that contradicts it —, but rather, as is logical, as more awareness of the centrality, for the law as a whole, of human beings, their dignity and of their legitimate rights and individual freedoms, the just social conjunction of which, insofar as corresponding to all individuals, specifically constitutes the "common benefit of all citizens".

The other demands, however, look at how the law's essential aim must be achieved and from what, ultimately, its quality in meeting its raison d'être will derive. A complete programme, effectively, of legislative quality that so often may indeed be longed for despite the long-standing nature and authority of its formalisation[2].

2. The special importance granted to the law and its connection to popular will in the new constitutional rule of law –which emerges and largely materialises with the so-called contemporary age as from the revolution and independence of the United States of America in the later decades of the 18th century, and later, in Europe, as from the French revolution of 1789–, has come to test with increasing acuity in our era the standards of quality required of good laws.

The existence of certain permanent legislative powers, which are periodically renewed every few years via public representation, has generated a progressive legislative fever that increasingly entangles legal systems and constant changes and alterations, seemingly or in reality.

In the first half the 1900s, Carl Schmitt spoke of the problem of "motorised legislation". Professor García de Enterría, at the peak of his authority, on receiving in 1999 an honorary doctorate from the University of Málaga, spoke of "a world of unbridled laws" (2006). Professor Aurelio Menéndez, along with Antonio Pau, took a seminar at the Colegio Libre de Eméritos, which gave rise to collective works published in 2004 called, *The proliferation of legislation: a challenge for the rule of law* (*La proliferación legislativa: un desafío para el Estado de Derecho*). Pendás (2018, p. 216) talks of "legislative hypertrophy" and legislative "inflation" with an effect of devaluing the legislation, similar to that on the value of money that produces its inflation. There is a growing feeling of unease and concern for the alarming decrease in the quality of laws and regulations, with its unavoidable consequences: insecurity, instability and divisiveness. Furthermore, focus regarding doctrinal[3] and official means, even in some legislative texts[4], is on the importance of 'better regulation' —expression that some use as the new Mediterranean—, even though it may occur that the same rules that urge it, in turn, totally contradict the most fundamental aspects of the scope of said notion.

2. Reasons

1. None of the political agendas competing to obtain public support refrains from promoting a bigger or smaller range of new laws and the consequential "indispensable" legislative changes. Furthermore, there is a widespread idea that a parliament or legislature that fails to pass a good

number of laws does not achieve its mission and, therefore, it is seen as evidence of the corresponding government's failure. And, naturally, majority changes have to be set out in new legislative packages, as though the laws were the pure 'balm of Fierabras', a magic potion for any economic, educational, healthcare or social problem at any time. The reality is evidence enough that, often, the problem is not in the laws themselves, but rather in how they are or are not complied with in administrative, financial and managerial actions, as well as in other diverse ethical, cultural and social factors, the improvement of which such laws provide little, and even less so when they are badly done.

Of course, there is also the case of going down in history, affixing one's signature to a new law, which continues to be one of the most influential reasons, despite now knowing that nothing is certain with regard to the permanency of laws, not to mention that of regulations. But one major cause of the imbroglio of many laws and of the excessive changes to them is the government's wish to "armour-plate" rules that should only be regulations by giving them the status of laws (Astarloa, 2021, p. 76). Many statutes contain an excess of intricate regulations; this tends to detract from what they should be, namely more abstract, basic and stable rules.

The "pet projects" of functionaries and politicians when exercising their regulatory powers have been discussed in writings on administrative law, but they are no less common in the laws themselves, despite statutes having more filters, which some-

times "encapsulate" the ideas of particular people, meaning that experts can put names and surnames to them.

The current process for drawing up laws and regulations provides a number of routes at all levels for the attentive and persistent activities of a wide variety of lobbying and pressure groups. These are wholly organised for this purpose and often achieve their goals, for good or ill depending on their aim in each case. In reality, few people have an understanding of such intricacies. Transparency is not always a feature and everything is so fast, heterogeneous and multi-layered, that it is hard to retain so many facts. They are soon superimposed on top of one another and become blurred in the memory, if there is any recollection. It has rightly been noted that "one problem with the low quality of the language of regulations is the challenge of finding the person responsible for the texts," as "there are hundreds of writers and intermediaries, and public participation adds to the confusion," something that "could explain why the linguistic form of the rule, which should be simple and coherent (…), is complicated, ambiguous and nebulous"[5].

2. Other generalised cultural factors now contribute to the confusion of the legislative framework. One that is especially important is the worrying lack of care for command of the language[6]. Another, is a growing decline in rational thought that follows a coherent conceptual logic. This is a consequence of the predominant excess of empiricism and pragmatism. It is in the field of law that we see the undermining of a genuinely scientific way of thinking that

aspires to concepts that are well-founded both aetiologically and critically and duly coordinated as part of a coherent system that can fully account for the enforceable interpersonal exigencies that underpin a just social order. This results in a tendency to multiply specific cases and particularised regulations in all of their complexity in the body of rules: there is no ability to exercise appropriate conceptual abstraction that would reduce this complexity to what, being shared by that diversity, could be formulated much more straightforwardly, simply, accurately, adequately and effectively.

In addition, fierce ideological clashes constantly flare up in our time and then continue. There are many countries – it is virtually a shared feature of the most developed countries – where deep social divisions are developing in the understanding of central anthropological and social matters. This undoubtedly results in deeply divergent ideas about social organisation, and there are often great difficulties in seeking and finding a way to approach and accommodate them with some degree of stability[7].

In this perspective and context, winning power in each electoral encounter comes to be seen as decisive, with the aim of being able to try to push through one's programme, even if only a narrow majority is obtained in the ballot, which so often does not even guarantee a minimum effective social majority. So, with frequent changes of fortune where the majority changes hands, governments attempt, to varying extents, to weave and then unpick the shroud of Penelope that they make in so many areas of legislation.

Also, many laws are set out as *measures* to promote one policy or another — *Massnahmegesetze* as Carl Schmitt would say (García de Enterría, 2006, p. 49-51) — and not to establish stable, lasting regulatory frameworks for liberties or for the obligatory fulfilment of one or other fundamental rights.

In short, successive changes to the same laws are not drawn up with the appropriate clarity and simplicity, legislative "packages" that simultaneously modify laws on a range of different matters are misused and the decree-law model has also been distorted with very worrying effects.

3. A well-established constitution that is guaranteed by a consistent supreme or constitutional court places significant limits on these swings and requires a qualified majority or a broad political consensus to change the most fundamental legal standards, at least in a number of aspects. However, theories about the evolving interpretation of the constitution could reduce the actual importance of the constitutional framework and allow approaches to flourish that for many go beyond the constitution, thus souring political life and hindering good legal order.

4. Another factor that limits — positively most of the time — confrontation about fairly basic aspects of the social order, is the way the state is bound by international or supranational treaties that constrain and guarantee certain options, commonly shared in the international order or within the sphere of supranational organisations like the European Union.

Treaties take precedence over laws and are hard to modify.

3. Remedies... or brakes

1. Even with the limitations we have noted, the problem of the poor quality of rules is still all too frequent and is hard to solve. The best remedies can only involve trying to solve the defects in culture, education, science, politics and reason that we have noted, but this is an enormous, long-term task. Meanwhile, the best organised states, as they have become more aware of the negative implications of what we have described, have created structural and procedural rules and mechanisms to try to lessen the process of regulatory degradation and to guarantee, as far as possible, greater reflection, justification and moderation, better drafting and good coordination in the exercise of regulatory powers, particularly those of the legislature.

2. There is ongoing discussion about whether the constitutionality of other aspects of the quality of the law can be subject to review — as well obviously as considering how their substantive content or competence and procedural requirements fit the constitutional order — at least in some of their components[8], and, obviously, primarily insofar as this might affect the *legal certainty* that section 9.3 of Spain's constitution guarantees as one of its principles[9]. It is important not to ignore the fact that "legislating clearly and effectively", using good "regulatory technique", is not just a question of "good practice" but can be very important for the effectiveness of this constitutional requirement of legal certainty[10].

Indeed, Spain's Constitutional Court has sometimes interpreted it in this way, although understandably it usually maintains a position of giving the fullest consideration to the different ways of shaping legislation that result from the plurality of Spain's democracy of liberties, as well as the fact that it is not itself responsible for ensuring the technical perfection of regulations, that is to say insofar as they do not neglect or harm constitutional requirements. But it is true that "confusing, obscure and incomplete legislation is difficult to apply and, as well as undermining legal certainty and public trust in it, can even obscure the value of justice," as the same court said in its judgment 150/1990, FJ 8[11]. Similar criteria can also be inferred from, for example, the principle of prohibition of arbitrary action in section 9.3 of Spain's constitution (Fernández, 2008, Astarloa, 2021, p. 77).

However, insofar as this review is possible, it will still always be ex post and occasional, even if what the constitutional court says on the matter will still have some influence on the composition of future laws. Restoring the abolished prior review for unconstitutionality in Spain would not change the fact that control by the constitutional court comes after the law, but it would take place before the law is published and takes effect and so this would undoubtedly increase its effectiveness[12].

It is also worth noting that the European Court of Human Rights has held itself to be competent to hear certain cases — particularly ones regarding the conditions of the power to discipline — concerning the quality of the law, as something

linked to its predictability and accessibility[13].

3. In Spain the Council of State has played an important role, as the government's supreme advisory body for many of the regulations it adopts, but also often for the bills it sends to parliament.

Even so, the Council of State — and, where applicable, the corresponding advisory bodies in the Autonomous Regions — only intervene when the text of the preliminary draft has already been shaped, in a very advanced phase of the drafting of the rule, before its final approval or it being sent to the legislative branch. Its options for having an impact are considerable, but limited: the structure of the rule, its general orientation and its formulation are already practically complete when they go to it for consultation, although it is true that the Council is sometimes able to persuade the executive to make significant changes. But it is never involved in the genesis of a project or its first steps.

4. The General Administration of the State also, notably, features two bodies entrusted with ensuring the quality of laws and even regulations to different extents.

The oldest of them, established in 1843, is the General Commission of Codification of the Ministry of Justice, to which "corresponds, in the field of competence of the ministerial department to which it is affiliated — and in that of the competences of others at their request — the preparation of pre-legislative and regulatory texts and any other tasks entrusted to it for the bet-

ter orientation, preservation and protection of the legislative framework"[14].

It has traditionally focussed on private, civil and commercial, criminal and procedural or judicial law. However, since 1938 public law has also been assigned to it and is now the object of one of its sections, which covers constitutional, administrative and financial and tax law.

The importance of this Commission for the desired outcome of improving technical quality is potentially considerable, but in reality, it is limited or simply non-existent with regards to everything that pertains to the right of legislative initiative or the formulation of rules by ministries other than the Ministry of Justice, as happens in almost all of the legal-administrative and, consequently, educational spheres.

There have been attempts to expand its activities, including changing its name — something that happened in the Second Republic (1931-1939) — and make it a major permanent instrument of the government ensuring the highest possible quality of rules right from their origin and first formulations, similar to what is found in different forms in other countries. But no progress towards this important objective has yet been made.

In contrast, there have also been attempts to promote this objective through the Ministry of the President of the Government (under the various names this has gone by), in connection with its traditional important role as the seat of the secretariat of the government, to which preparing councils of min-

isters corresponds. Royal Decree 1081/2017, of 29 December, which covers improved compliance with what is provided for this purpose as basic legislation by Law 39/2015 regarding the Common Administrative Procedure and, for the state by Law 50/1997 regarding the Government (amended by Law 40/2015) established the Coordination and Regulatory Quality Office (OCCN) in the Under-Secretariat of that ministry, with the modest rank of a subdirectorate general. This royal decree also regulates its functioning. It is specifically entrusted with issuing advice on the areas stated in section 26.9 of the Law of the Government 50/1997[15], relating to preliminary bills, organic laws or ordinary laws, draft royal decree-laws, draft royal legislative decrees and draft regulatory royal decrees[16]. The subject matter of the draft general regulations that it must report on expressly include *education*.

We cannot go into detail, and indeed it seems unnecessary for the purposes of these pages, but this Office can — as its regulatory rules state (sec 6 of Royal Decree 1081/2017) — receive *qualified advice, if deemed necessary*, and, *in particular, request the cooperation of the General Codification Commission* — with which, incidentally, the second additional provision orders special cooperation — *(…) of the Centre of Political and Constitutional Studies (…) and of the Secretariat of the Council for Market Unity*. And it is notable (sec. 7) that the competent ministries have to request the advisory report from the Office *once they have a first text of the draft and the corresponding regulatory impact analysis report*, before other reports. Therefore, although this advisory report will not be binding, if it is not followed, *the reasons for doing this must be justified*.

This seems to be a major step, but to date we are not aware of it having born any fruit or whether the various ministerial departments — so numerous recently — and ultimately the government, actually use the services of this new Office. In reality, the texts of the numerous royal decree-laws from recent years or of the statutes that come from bills, or, ultimately, the texts of the abundant regulatory royal decrees, only seem constantly to increase the defects in legislative technique.

5. Besides that, various advisory bodies, attached to the different branches of the General Administration of the State — and of the regional administrations — intervene in the corresponding sectoral texts, although not in the specific area of their technical-legal quality, without forgetting the role that the ordinary legal advice services try to cover for these purposes, although they are usually in demand for a multitude of tasks and also do not usually have special qualifications for carrying out the function to which we refer even in a system with a minimal degree of collegiate performance, etc.

6. Finally, we should note the important proposals that have been made to ensure that the Spanish Parliament itself, with its qualified legal and technical services — which for this purpose would be concentrated in an Office for Legislative Quality — plays a significant role in preserving and raising the quality of laws (Astarloa, 2021, pp. 82-89).

4. This question in Spain's educational legislation

1. Basic educational legislation is the exclusive competence of the State, in accordance with sec. 149.1.30ª of Spain's constitution. It is also largely reserved — without prejudice to the necessary regulatory additions that are accepted — to organic law under sec. 81. It is now set out in a handful of organic laws currently in force – although not all of their content has that status – that comprise what we could consider the basic legal framework (the word basic here has its common meaning and not the technical legal-constitutional one) of education in Spain: the LODE (Organic Law 8/1985, of 3 July 1985, regulating the Right to Education), LOE (Organic Law 2/2006, of 3 May, on Education), LOU (Organic Law 6/2001, of 21 December 2001, on Universities) y LOCFP (Organic Law 5/2002 of 19 June 2002 on Qualifications and Vocational Training).

2. However, it is known that all of these laws, especially the first three, have undergone major modifications and reforms with virtually every change of majority in parliament and governing party. Layers of changes have built up, especially in the LOE, as one of the factors in their textual complexity. Since latest reform produced by the LOMLOE ((Organic Law 3/2020 of 29 December 2020, which amends Organic Law 2/2006 of 3 May on Education, promoted by the Minister Isabel Celáa), contains a major technical-legal flaw that still causes perplexity and uncertainty: in its political desire to make explicitly its complete rejection of the educational legislation enacted under the majority of the Partido Popular

led by Mariano Rajoy seven years earlier, its single derogatory provision provides for the complete repeal of the LOMCE (Organic Law 8/2013, regarding the improvement of the quality of education). However, if we consider what the new organic law amends and maintains from the text of the LOE over the 99(!) paragraphs — including some numbered as *bis* or *ter* — of its extremely long single section, it is clear that altering in detail some of the precepts that had been modified by LOMCE was not proposed. Should the repeal be understood to impose a return to the original text of the LOE in such precepts?

An example: the single article of the LOMLOE does not in any way modify para. 3 of sec. 116 of the LOE, although para. 59 does modify other paragraphs from it. But the LOMCE added a brief second subparagraph to paragraph 3 by virtue of which: *Educational funding agreements will have a specific minimum duration of six years in the case of Primary Education and four years in other cases*. The consolidated version of the LOE published in the official state gazette still contains this text. This suggests that the LOMLOE's derogatory provision is to be interpreted as having limited effects with regards to the content of the LOMCE that was altered — eliminated or amended — by the LOMLOE's single section, but not the rest of it.

In any case, it displays clear failures of legislative technique.

3. There is no doubt that the content of the LODE primarily relates to the compulsory levels of education, but its most im-

portant precepts still have implications for other levels or stages of education. While it is true that university education and, perhaps even more so, vocational training have very distinctive features, partly thanks to their more direct relevance to various rights and liberties, or for aspects of general interest that differ from the strictly educational, the common application to all of education of the basic requirements of the Constitution regarding the right to education (especially but not only sec. 27) as well as some precepts of the LODE that try to make substantive requirements clearer, could easily justify the consolidation into a single legal text of what is currently governed by the four organic education laws discussed above, thus facilitating a useful simplified codification. Although, ultimately, steps could be taken to simplify and clarify this legislation by maintaining the current distinction between one law which is more general in character and principles — a LODE with all of that more basic and common regulatory part — and the three other organic laws that address what is specific to each of the three major areas of the educational system in general.

4. Of course, it would be essential for society as a whole, and more specifically political figures, to accept consistently and faithfully as an untouchable normative floor everything that is already established at a fundamental level by the Constitution as it has been interpreted in a consolidated and firm way by the Constitutional Court. This would not affect the right to promote constitutional reforms, but they would need a clear awareness of the very broad political consensus required and,

therefore, could not include vain attempts to sneak in through the legislative route things that can only be done by changing the constitutional framework. There might be assertions by the top court that could be subject to review, but it cannot be denied that over time it has developed a well-founded set of precedents regarding many of the implications of the Constitution, which does not appear to be alterable without changes to the text of the Constitution, although it can of course be complemented and modulated as new incidents allow new perspectives and insights.

Furthermore, we should not ignore the compulsory principle of interpreting laws in accordance with the constitutional order, which Spain's Constitutional Court has clarified[17]. This is explicitly mentioned in sec. 5.1 of the Organic Law of the Judiciary (LOPJ), so that only when it cannot be applied will it be appropriate to bring proceedings regarding matters of unconstitutionality before the Constitutional Court against a legal precept that contravenes the Constitution or its interpretation by the court (sec. 5.3 of the LOPJ). It is no wonder that by this route, we so often find that the law, as eminent German jurists from the late 19th century said, is more intelligent or more reasonable than the legislator, although this might happen not only in these cases of necessary interpretation "consistent" with the Constitution[18] but, more generally, as a result of judicial interpretation, the principles of which are laid down in Spanish law sec. 3 of the civil code.

5. Greater sobriety in legal texts would be very welcome, avoiding undue repetition

and unnecessary explanations. A normative text is not and should not be a doctrinal or explanatory pamphlet or a political speech; it should limit itself to establishing properly normative rules as clearly and unquestionably as possible. And, as noted in legal scholarship (Santamaría Pastor, 2010; Rebollo Puig, 2010), particular care should be taken not to allow supposed "principles" to multiply without justification.

For this objective it is, of course, important to have a clear idea of what should be formulated as a rule or principle, in order for its fulfilment and for the consequent effective enforceability of the rights and duties that derive from it[19], and to arrange normative texts with a suitable rational, systematic structure, including anything with this character in the most general terms and saving for the more specific or special regulations that which is only strictly applicable to them.

It makes no sense, for example, for the requirement of non-discrimination in education to be specified with regards to admission to educational centres supported by public funds (LOE, sec. 84.3) since this is something that clearly must always apply in all of the field of education and so is a basic principle. It also cannot solely be linked, as sec. 1.a bis) of the LOE does now, to *quality of education*, even though the same law then somewhat obsessively repeats these requirements here and there, as though simply stating it as a fundamental principle were not sufficient, even listing the factors that cause this discrimination, as it does when referring to the purposes of education in sec. 2, just a few lines after it states them in the aforementioned sec. 1.a bis).

If we quickly look at the ever longer section 1 of the LOE, for example, with its 21 principles set out from a) to r) with some *bis* letters among them, several defects are already apparent in its formulation, as well as the general reiteration of the basic general formulations already found in the LODE. Still referring to specific cases, and without going into a more detailed analysis of all of art. 1 of the LOE that would not be possible here, we can immediately see the irrelevance of emphasising, for example, the *effective fulfilment* of the Convention on the Rights of the Child and its protocols as the first "principle" of Spain's education system since the LOMLOE. This is because this convention is only one of the various relevant *international treaties and agreements* relating to the subject of education that have been *ratified by Spain* in accordance with which sec. 10.2 of the Constitution states that *the rules relating to the fundamental rights and freedoms that the Constitution recognises* must be interpreted. Furthermore, it is not the most important of them. This is indeed a principle — and a constitutional one at that — of Spain's education system, but there is no need to restate it in a law. However, mentioning just this convention and not other international treaties and agreements could give the false impression that the other international instruments, some of which, as noted, are even more basic and general, do not share the principial character claimed for *effective fulfilment* of it.

The unsuitability of what is formulated in letter a) as an inspiring principle of the education system is shared by the specific explicit mention of recognition of

the *best interests of the child, of its right to education, not to be discriminated against and to participate in decisions that affect it and the obligation of the state to guarantee its rights*. These rights are established in sec. 27 of the Constitution and are already reiterated at the organic-law level by the LODE. The state's obligation to guarantee all of these rights is inherent to the very notion of the state and exists at the constitutional level. It is not a bad idea to include, explicitly if desired, the principial importance of the *best interests of the child*, the appraisal and valuation of which is placed by the Convention primarily in the hands of parents and guardians[20] — something that should be made explicit in its legal formulation, if wanted, to ensure legal certainty — but it is unnecessary to accompany it with something that is already proclaimed in its own right and is of higher value. In addition, this wording would in any case be better in the LODE.

There are many examples of rambling, repetitive, confused or unduly partial wording in Spain's organic education laws, especially in the LOE and its various regulatory levels.

It must be stressed that legal texts do not exist for the purpose of publishing ideological-political diatribes in the official state gazette, but rather to regulate behaviour and determine the legal standing of claimants and respondents that are effectively enforceable through administrative and/or judicial guarantees. When introducing new rules, legislators should ask themselves: what will change with this supposed new rule? what will be modified? what will

its specific functionality be? So often, many of the reforms that fill pages in the official gazette do not result in anything, simply because in the real world they lack any legal effect. The people who passed many of these reforms were very satisfied because they had inscribed particular expressions for history, perhaps without realising that legal and institutional systems have mechanisms that can make the law more intelligent than the legislator, and so what they thought was new and transformative was actually not and could not be so, even if it did cause worry and uncertainty until the dust settled.

And, of course, what is established as a more general principle or rule, should not be repeated when formulating rules on more concrete, specific, or particular aspects, as we have already observed.

For example, what need is there for sec. 6.2 of the LOE regarding the curriculum to repeat, albeit partially, that the curriculum specifies the elements that education must cover (sec. 6.1), its very purposes, which are already set out exhaustively by the LOE itself? Also, mentioning only some of the aims of section 2 might raise doubts, even though many of the aims listed in section 2 are contained in others of more general scope that are also formulated in it, so that the ones reiterated in section 6.2 in reality probably comprise all of them.

Many rules could be made much more concise and much clearer simply by a little more logical rigour, starting with conceptual rigour, with subsequent good systematic order.

Notes

[1] According to the version of Jesús María Rodríguez Arias in the Thomas Aquinas edition (1989, p. 743). We have allowed ourselves to change his translation of the word conveniens — which implies something more than proportionality —, as 'proportioned to', for 'appropriate to'. The text is a classic that is often used and referred to. Vide for example, Caravale (2018), p. 86.

[2] It has also been noted that "concern for the quality of legislative language has historical roots, given that the Siete Partidas of Alfonso X states that the writing of laws "must be done by wise and learned men" and that "they must be done with very good and well-chosen words" (Law 9, Title 2, Part One)" (Moreu Carbonell, 2020, p. 320).

[3] In 2019 a Yearbook of Good Governance and Regulatory Quality (*Anuario del Buen Gobierno y de la Calidad de la Regulación*) (Fundación Democracia y Gobierno Local) was even published, although the breadth of the subject matter of its first subject area could result in the second being somewhat sidelined.

[4] By a resolution of Spain's Council of Ministers of 22 July 2005, some extensive and specific *Regulatory methods directives* (Spanish Official State Gazette of the 29th) were approved in Spain, but we must particularly note Law 39/2015, sec. 129 (see Martínez López-Muñiz, 2016 and 2017), on which the Constitutional Court's judgment STC 55/2018 has imposed an arguably restrictive interpretation. Spain's Supreme Court has already used this ruling to annul some Government regulations by the Government: Supreme Court judgment STS 868/2020, of 24 June 2020 [ECLI:ES:TS:2020:1946], FFDD 1 y 3.

[5] Moreu Carbonell (2020, p. 321), following Gregorio Salvador (2004, p. 631).

[6] Various authors have drawn attention to this matter. "Law is language. (...) Therefore it is vital to take care of the 'words' of the law" (Pendás, 2018, p. 217); "good law is not possible without good language" (Moreu Carbonell, 2020, p. 344).

[7] It has been accurately observed that "different legal languages reflect different world views" and that "a language is not just a series of concepts with their corresponding words or labels: it is a way of seeing the world, irreplaceable and unrepeatable, even in more complex and abstract domains of language" (Moreu Carbonell, 2020, p. 329).

[8] Pendás (2018, p. 219); more broadly Cruz Villalón (2003), who in particular emphasises the requirements of coherence, systematicness and protection of trust (p. 160).

[9] Although all authors note this, García-Escudero (2014) in particular has analysed it.

[10] See García-Escudero (2014, in particular p. 10).

[11] Vide García-Escudero (2014, p. 11), who also illustrates the court's respect for pluralism, which is also made explicit in the judgment cited above after the quoted lines. This author has critically and in detail analysed defects considered irrelevant by various judgments for the purposes of the review that corresponds to Spain's Constitutional Court, even criticising them in many cases and urging legislators not to repeat them because of their risks, but also when in connection with certain constitutional requirements, such defects have been held to be unconstitutional.

[12] Vide in this regard, Cruz Villalón (2003, p. 164), although he does not appear to be in favour of the prior review (2003, p. 165). This type of prior review exists in other nearby European states, such as France (sec. 61 of its Constitution) and Portugal (sec. 278 of its Constitution).

[13] Judgment of the Grand Chamber, *De Tommaso v. Italy*, 23 February 2017, §§ 106-109. On this matter, before this judgment, Martín-Retortillo Baquer, L. (2003).

[14] Articles approved by Royal Decree 845/2015, of 28 September, sec. 1. Section 3 includes among its functions, technical correctness, clarity of legal language and style of preliminary bills and draft provisions that are entrusted to it by the Ministry of Justice. The adverse assessment of the codification in the earlier regulation of 1997, rightly criticised by García de Enterría (2006, p. 71 et seq.) has disappeared from its preamble.

[15] a) The technical quality and rank of the regulatory proposal. b) The consistency of the initiative with the rest of the legislative framework (...), with others that are being developed (...). c) The need to include the express repeal of other rules, as well as to consolidate other existing ones covering the same area in new ones.

[16] In particular: a) To evaluate the technical quality of the proposed rules, considering the correct use of language and compliance with the regulatory technique directives, as well as the suitability of the proposed regulatory rank. b) It will examine the consistency of the initiative with the Constitution and the rest of the legislative framework, (...), with others that are being drawn up (...) or which are to be drawn up (...), avoiding potential duplications and contradictions. (...) e) It will check that the content of the recitals and provisions of the bill are in accordance with the principles and rules laid down in Title VI of Law 39/2015, (...) and in Title V of Law 50/1997 (...). f) It will analyse the compliance or consistency of the initiative with any

projects to reduce administrative burdens or ensure good regulation that have been approved (...). (Sec. 2.2).

[17] Vide, in the doctrine, Arzoz Santisteban (2010).

[18] Which would the case be, in our opinion, with regard to the new wording of sec. 109 and additional provision 25 of the LOE since the LOMLOE, as we have explained elsewhere.

[19] Regarding the "phenomenon of promotional or programmatic rules", justified concern is caused by "the loss of the imperative character of the rules (...). It is not necessary to be an old-fashioned positivist to uphold a conclusive truth: the law only merits this honourable name if it includes a coercive element" (Pendás, 2018, p. 216-217).

[20] As can be seen in the analysis by Martínez López-Muñiz (1991, p. 424-427). Although the notion of the best interests of the child was not the specific object of the study, a consideration of how many references there are to it in the Convention (notably sections 3.1 and 2, 9.1, 18.1) also reflects the primacy of parents in their estimation and the additional status that might exceptionally correspond to public institutions.

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Educational pluralism and vulnerable children
Pluralismo educativo y niños vulnerables

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Abstract:

Once again Spain has adopted a comprehensive education law. It is not my place, nor am I competent, to comment on the controversial process leading to this legislation, nor to its changes in the framework for the provision of schooling. The legislation offers an appropriate occasion, however, to seek answers to several questions relevant to every free society: What are the appropriate scope and limit of any government's role, in a free society, in the formation of its citizens? How have these changed in a time of growing cultural conflict? What arrangements for schooling are best suited to accommodating deeply-rooted cultural divisions while nurturing the qualities that citizens should possess? How can these arrangements serve as a vehicle for both freedom and justice, especially for those children who are most vulnerable?

Keywords: pluralism, conflict, civic, disabilities, trust, immigrant, minority, Islamic.

Resumen:

España ha adoptado una vez más una ley de educación integral. No me corresponde —ni tengo las competencias adecuadas para ello— comentar sobre el controvertido proceso previo a la promulgación de esta legislación, ni sobre los cambios que conlleva en el marco de la escolarización. No obstante, la legislación brinda una ocasión apropiada para buscar respuestas a varias preguntas relevantes para cualquier sociedad libre:

¿Cuáles son el alcance y el límite adecuados del papel de cualquier Gobierno, en una sociedad libre, en la formación de sus ciudadanos? ¿Cómo han cambiado estos aspectos en una época de creciente conflicto cultural? ¿Qué medidas de escolarización son las más aptas para acomodar divisiones culturales profundamente arraigadas al tiempo que se fomentan las cualidades que los ciudadanos deberían poseer? ¿Cómo pueden estas medidas servir de vehículo para la libertad y la justicia, especialmente para los niños más vulnerables?

Descriptores: pluralismo, conflicto, cívico, discapacidades, confianza, inmigrante, minoría, islámico.

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1. The role of government in a time of cultural conflict

Thirty years ago, sociologist James Davison Hunter popularized the phrase "culture wars," arguing that the divisions causing conflicts in American society were no longer economic, as had been the case earlier in the 20th century, but involved deep and sensitive differences, that these "are not just disagreements about 'values' or 'opinions.'

…Such language in the end reduces morality to preferences and cultural whim. What is ultimately at issue are deeply rooted and fundamentally different understandings of being and purpose" (1991, p. 131). This mutual alienation and mistrust has, if anything, intensified; according to a recent report by the American Psychological Association, "the future of our nation' is a bigger source of stress among average Americans than even their own finances or work" (Putnam, 2020, p. 16).

Many observers have pointed out that the rise of what could be called 'conservative populism' in Europe, as in the United States, is related to this growing conflict between the cultural norms promoted by societal elites through universities, public schools, and the mainstream media, and the norms with which most of people of these countries have grown up, like their parents before them, and which they hope to pass on to their children. Pankaj Mishra notes that

it has become impossible to deny or obscure the great chasm, first explored by Rousseau, between an elite that seizes modernity's choicest fruits while disdaining older truths and uprooted masses, who, on finding themselves cheated of the same fruits, recoil into cultural supremacism, populism and rancorous brutality (2017, p. 346).

David Goodhart has described the two parties in Britain and elsewhere as "Anywheres," the cosmopolitan elites who place "a high value on autonomy, mobility and novelty and a much lower value on group identity, tradition and national social contracts," and "Somewheres," those locally-rooted who continue to value "faith, flag and family." He warns that "if the value gulf becomes too deep — especially between the dominant class and the rest — we become vulnerable to shocks and back-lashes like Brexit" (2017, pp. 5-20).

This phenomenon of populist alienation from what is perceived as the elite's reckless over-turning of traditional norms and its insulting disrespect for those continuing to hold them takes somewhat different forms and reacts against different perceived aggressions. There is also, of course, a "populism of the Left" in Europe as in the United States, where ANTIFA and other radical movements employ violence on the streets to oppose the allegedly racist and fascist character of American society, and their political allies call for "defunding" the police.

Populist hostility to the established and emerging order, whether motivated by conservative backlash against cul-

tural change or radical determination to overturn political and economic institutions, made a strong appearance in Flanders three decades ago, then in the Netherlands; more recently there have been strong populist movements in Scandinavia and Germany, France, Italy, and in Hungary and Poland. Nor has Spain been spared, as *The Economist* described recently in an article significantly titled "From rage to disillusion" (2021).

Ominously, the gap continues to widen. "Across Europe, traditional parties of the left now find their backing primarily among the wealthy, the highly educated, and government employees" (Kotkin, 2020, p. 114), abandoning their former working-class supporters and concerns about wages and local communities. For Goodhart's "Somewheres" a special grievance is the perceived threat to traditional norms represented by immigration and the resulting introduction of unfamiliar customs into their communities. As a result, "immigration has become a metaphor for the larger disruptions of social and economic change, especially for those who have done least well out of them" (2017, p. 118).

In Western Europe an aggravating factor has been the increasingly-visible presence of Islam as the Muslim migration of the past half-century evolves into a self-conscious minority population with its own institutional expressions. Thus, Dutch populist leader (and 'martyr') Pim Fortuyn charged, in a 1997 book, that Dutch culture was being 'Islamicized' (Fortuyn, 2016). More broadly, "[a]cross the board, surveys indicate that Europeans consider Islam to be incompatible with Western values" (Cesari, 2013, p. 15).

While for a variety of reasons the presence of Muslims does not represent a comparable aggravation in the United States, there is similar resistance to massive immigration from Latin America as somehow threatening American culture and communities.

In short, "populist rebellions against establishment parties will likely continue and could become more disruptive. Elite disdain for traditions of country, religion, and family tends to exacerbate class conflict around cultural identity. 'Liberalism is stupid about culture,' observed Stuart Hall, a Jamaican-born Marxist sociologist" (Kotkin, 2020, p. 123). The COVID-19 pandemic has exacerbated this alienation by allowing those with access to government to set aside regular decision-making processes and enact their own agendas for change without the need to seek popular support.

How should public policy in Europe and North America address the strains that are making it increasingly difficult to work together to further the public interest? What should governments be doing, what instruments do they possess to promote, if not agreement, then at least the ability for us to hear each other and to find common ground across our differences?

Should they follow historical precedent? The development of systems of

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popular schooling in the 19th century (and earlier in Prussia, Scotland, and New England) was never only about, and often not primarily about, literacy and numeracy; there was always a nation-building and citizen-building intention (Glenn, 1988, 2011). It was only through schools that governments could reach into every local community and family, seeking to promote loyalties and civic virtue in children whose habits and dispositions were not yet fully formed. Common public schools with mandatory attendance always had a political agenda, unlike the academies and other private institutions which preceded them.

It may be tempting to consider reviving the "nation-building" strategies that employed schooling to convert "peasants into Frenchmen" (Weber, 1976) or, having "made Italy" through the Risorgimento, to set out to "make Italians" (Soldani & Turi, 1993). The assumption behind these efforts was that government should, in its own protection, develop an effective monopoly of popular schooling; elite schools continued in many cases to preserve their independent character. This had the corollary that the State should not permit the competition of networks of popular schooling representing alternative, usually religious, perspectives. In France, the United States, and other countries, this meant that Catholic schools were seen as a threat to national unity and led to repressive legislation. In other cases the government simply incorporated Catholic and (where present) Protestant schools into its system.

It would, however, be unwise to attempt to employ such a strategy to address the cultural divisions that afflict our countries today; there is every reason to believe that an intensification of government's role in seeking to impose a single set of cultural norms on society would serve only to exacerbate the present tensions. Spanish readers will not have forgotten bitter controversy over the introduction of a required subject, in private as well as in government-operated schools, of a subject with the innocent title "Education for Citizenship and Human Rights" (*Educación para la Ciudadanía y los Derechos Humanos*). Many Catholics, in particular, saw this as an attempt to indoctrinate their children in perspectives to which they objected, imposing a vision of the nature of humanity, the family, sexuality, of life itself. The Tribunal Supremo de Justicia ruled, in January 2009, that neither the educational authorities nor teachers might impose upon pupils moral or ethical criteria about which there was disagreement in society; the content of the subject must be focused instead on education in constitutional principles and values (Galan & Glenn, 2012).

Far more troubling is the history of efforts by totalitarian regimes to use schooling as a means of suppressing even the desire for freedom of thought and action, to shape "the New Soviet Man" and similar puppets (see Glenn, 1995).

Educational policy, at national, regional, or local level, should of course seek effective ways to respond to deep

societal divisions, but take care not to do so in a way that creates new conflict. After all, schools are not only an important part of any strategy to rebuild a sense of shared citizenship, but also one of the major sources of political discord. There is a danger that efforts to employ government-controlled schooling to foster cultural convergence could in fact have the opposite effect, stimulating resentment and alienation. This has always been a potential source of conflict – consider the seventy-year *Schoolstrijd* in the Netherlands and the conflicts between Catholic loyalists and governments over schooling in France, Belgium, Austria, Mexico, Spain, and elsewhere – but the danger is even greater in a period of disorganized but fierce resistance to elite imposition of new values and mores. In the United States, for example, the Cato Institute maintains a "public schooling battle map" documenting several thousand recent conflicts at the state or local level over issues of values and identity in public schools.

It is of the essence of a free society that government does not possess absolute sovereignty; it fulfills its duties and exercises its authority within a context which it does not itself create. For those within the Abrahamic tradition (Jews, Christians, and Muslims), this context ultimately derives from divine Creation and the natural order established thereby. For them, as well as for those who do not share this belief, it finds expression in national constitutions and international covenants which governments are expected to use as the framework for and limitation of any exercise of this authority. An essential feature of these basic norms is recognition of a variety of other sources of authority, including non-governmental associations and institutions of civil society, such as especially the family, that do not derive from and in a sense are prior to the State.

The result is *political pluralism*, an understanding of social life that comprises multiple sources of authority–individuals, parents, civil associations, faith-based institutions, and the state, among others – no one of which is dominant in all spheres, for all purposes, on all occasions. In a liberal pluralist regime, a key end is the creation of social space within "which individuals and groups can freely pursue their distinctive visions of what gives meaning and worth to human existence" (Galston, 2005, pp. 1-3).

In some spheres of national life, such as national defense and the enforcement of laws, government's authority is absolute, within constitutional constraints. In others, such as the internal affairs of families and of religious communities, government altogether lacks authority except in exceptional cases, such as child abuse.

Education and other provisions for social welfare occupy an intermediate position, where government and civil society (including families) must cooperate, and it is in defining the forms and extent of this cooperation that debates and even conflicts often arise. After all, schooling can provide, for the

State, unparalleled access to the vulnerable minds of children and thus exercise over an entire population an influence going far beyond the appropriate role of government in a free society.

Every society expects certain behaviors from its citizens (as well as visitors and resident aliens), and from the voluntary associations which make up the civil society. With the rights that these enjoy come responsibilities. This is true also of schools, including independent schools, whether or not publicly-funded, as well as homeschooling families. To assert these responsibilities for certain outcomes is not to diminish their rights or to give government broad license to interfere inappropriately with the role of parents and teachers.

In thinking about how far the writ of government in the formation of citizens legitimately extends, it will help if we make a distinction between *instruction* and *education*, terms used more inter-changeably in English than in Spanish, French, or Italian. Instruction we take to mean teaching of skills and information, especially those important for a successful life in a particular society, and education we take to mean the formation of character and convictions, the shaping of a human being. Of course these distinctions cannot always be untangled in practice (memorizing the times tables or Latin declensions arguably builds a work ethic), but the distinction is useful.

Government has a clear interest in ensuring that all of its citizens possess the skills and information that will enable them to work productively and to function under the complex conditions of daily life. It can thus legitimately expect that whoever is providing instruction demonstrate that this produces the age-appropriate knowledge and skills.

Parenthetically, this assumption has been challenged by ultra-orthodox Jewish groups (Haredi) in the name of freedom of conscience, insisting that government does not have a right to set expectations that conflict with their alternative understanding of the nature of a good life (Bedrick, Greene & Lee, 2020). To pursue this interesting question, which has arisen in Europe (Glenn, 2020) as well as in Israel and the United States, would take us too far afield.

2. Pluralistic provision of schooling

The goals of nurturing commitment to a common citizenship and reducing conflict arising from deeply-held cultural disagreements will best be served by strengthening structural pluralism in education. Pluralism in this sense is to be distinguished from diversity. The latter refers to differences along many dimensions present in any modern society, differences whose exploitation currently gives rise to "identity politics . . . both devoid of and hostile toward institutions. It attributes to people a place based on their biology or ethnicity, and so treats their unformed selves as nearly all there is to know" (Levin, 2020, p. 25). Pluralism, by contrast, is pre-

cisely based upon institutions and the role they play in giving form and context to human relationships: the family, voluntary associations, the whole rich panoply of civil society that, in contrast with government or the market, "tends to be best at performing tasks that generate little or no profit, demand compassion and commitment to individuals, require extensive trust on the part of customers or clients, need hands-on, personal attention... and involve the enforcement of moral codes and individual responsibility for behavior" (Osborne & Gaebler, 1992, pp. 45-46).

It is characteristic of authoritarian elites of whatever political coloration to distrust these independent civil society institutions and thus to resist pluralism, much in the spirit of Rousseau's insistence, in his *Social Contract*, that there be no partial society in the State. In the current climate of cultural mistrust, pluralism "becomes to the pure partisan mind an instrument of injustice and civil liberties a barrier to progress. Because when one is righteous, the very existence of dissenting communities is proof that justice is thwarted and evil exists" (French, 2020, p. 90). Unfortunately, such self-righteous intolerance has become all too common. This suspicion has extended above all to civil society institutions with a religious character.

> It is precisely for their capacity to build morally cohesive and formative communities that our religious institutions have become increasingly con-

troversial in contemporary America. The question at the heart of some of our most divisive cultural conflicts has been whether institutions that embody the religious convictions of their members, leaders, or owners will be permitted to embody those convictions when they are not shared by our society's cultural elites. Culture war now threatens the integrity of these essential forms of association, just when that integrity is most badly needed. (Levin, 2020, p. 155).

Structural pluralism in schooling rests upon a recognition, on the part of the State, that it possesses neither a monopoly on truth about life's deepest questions, nor a right to use its regulatory authority or its financial muscle to favor an official orthodoxy. While it may enforce reasonable expectations for behavior – obeying the laws, paying taxes, and so forth – it may not prescribe the worldview on which such behavior is based, and it should recognize that many of its citizens hold convictions about life that *go all the way down* and may disagree profoundly with some societal norms, such as shifting standards for sexual behavior. This in turn will cause them to resist the teaching of those norms to their children as unquestionable *official* truth.

Educational pluralism is a way to provide space for such profound disagreements about ultimate questions, not suppressing them but allowing them free expression, while providing a framework to ensure that every child receives effective instruction in the skills and knowledge required for life together.

3. Schooling vulnerable children

Every child is, in a sense, vulnerable and in need of protection, but we will here be concerned with three specific forms of vulnerability and how educational policy might best seek to address each of them. First, those children whose incomplete mental or physical development requires special educational interventions. Second, those whose family circumstances do not provide the emotional support and adult examples needed to attain a confident maturity. And third, those who belong to ethnic or other groups stigmatized in the wider society, especially the growing Muslim presence in the West.

We will ask whether (as many in what has been called the Educational Establishment insist) a robustly pluralistic educational service works against the interests and the rights of such vulnerable children, or whether instead it can serve them better than would a monopoly of schooling by government. We will ask also how it can promote in them the civic virtues, the settled dispositions so critically needed in our divided societies. Of course, our answers will, in the space available, be no more than suggestive, but supported by a rich and growing research literature, as well as by my own experience, for more than twenty years, as a state government official responsible for urban education and equity.

3.1. Children with developmental disabilities

The schooling most beneficial for children with disabilities will of course vary widely based upon their specific needs and abilities, the subject of a vast literature which we cannot begin to address. A common imperative, however, is that they be thought of and treated as *persons*, not primarily as challenging cases or objects of pity, as is too often the case.

The prevailing orthodoxy among American educators for the past several decades has been that children with a wide range of disabilities should, so far as possible, be integrated into regular classes with supplemental support. Sometimes this works well, sometimes it does not, leaving the disabled child isolated and feeling unwelcome, even if all the prescribed services are provided. To over-simplify what can be a very complex dynamic, much depends on whether the focus of the school, and thus of the classroom community, is overwhelmingly on academic achievement and competition, or whether it places equal emphasis on validating the personhood of each of its members.

Public education systems are under strong pressure to focus on academic outcomes, especially in fields important to national economies, a pressure intensified by the regular release of comparative achievement results by OECD and other organizations. Such outcomes are very important, as is the need to reduce disparities based on income and other factors, but pursuing *instructional* goals should not lead to neglect of essential *educational* goals. These include, for children with disabilities as for other children, validating their personhood.

It would be reassuring to believe that this point is too obvious to belabor, but unfortunately that is not the case. Even among advocates, the insistence on calling these children "differently-abled" persists in defining them by their abilities. Educational pluralism provides the alternative of offering schools that treat them, not as imperfect individuals to be evaluated and treated, but as persons with full human dignity.

Such schools are often informed by a worldview that sees each child as created and in the care of a loving God, whatever his or her apparent imperfections. As a leading American sociologist has put it, the "vision of the Catholic school contrasts sharply with the contemporary rhetoric of public schooling that is increasingly dominated by market metaphors, radical individualism, and a sense of purpose organized around competition and the pursuit of individual economic rewards" (Bryk, Lee & Holland, 1993, p. 11).

It is worth going a little deeper into the implications of educating on the basis of the perspective that the ultimate value of a person, and that person's rights, does not rest upon individual abilities. Legal philosopher Robert George of Princeton points out that "[o]rthodox secularists typically say that we should respect the rights of others… Ultimately, however, secularism cannot provide any plausible account of where rights come from or why we should respect others' rights" (George, 1993, p. 39). In consequence, a

society that does not nurture respect for the human person – beginning with the child in the womb and including the mentally and physically impaired and the frail elderly – will sooner or later (probably sooner) come to regard human beings as mere cogs in the larger social wheel whose dignity and well-being may legitimately be sacrificed for the sake of [the] collectivity (George, 2015, p. 1).

Philosopher Nicholas Wolterstorff, reflecting on how he reached the conclusions argued in his *Justice: Rights and Wrongs* (2010), points out how fragile an account of human rights based on abilities is, after all,

[s]ecular accounts can explain what it is about human beings who can function as persons that gives them rights, but they cannot explain what it is about those who cannot function as persons that gives them rights. Secular accounts of human rights typically ground the dignity that accounts for human rights in some capacity—for example, the capacity for rational agency. But human beings who are incapable of functioning as persons don't have the relevant capacities. So far as I could see, only a theistic account that appeals to God's love for every creature who bears the image of God can account for the rights of all human beings whatsoever (2019, p. 275).

After all, "[r]ights and dignity can be real only if human beings are more than biological matter." The implication for protecting the rights of disabled children in their schooling is that they may be best served in schools whose mission is shaped by "the belief that every human being is created in the image and

likeness of God" (Gregory, 2012, p. 381). This is what a pluralistic system permits, and it would be profoundly unjust to make such an affirming educational experience available only to those children whose parents can afford tuition for their schooling.

3.2. Children from unsupportive homes

A free society – and thus a democratic political system – cannot flourish without citizens who have developed the qualities of character, the settled disposition, that we call civic virtue. This is not news, of course; Montesquieu pointed it out in *The Spirit of the Laws* (I, 3, 3) nearly three hundred years ago, and America's second president, John Adams, wrote that its Constitution was made "only for a moral and religious people."

It is in healthy families that the seeds of civic virtue are planted; in such families

> we receive our formative experiences, where the most elemental, primitive emotions come into play and we learn to express and control them, where we come to trust and relate to others, where we acquire habits of feeling, thinking, and behaving that we call character – where we are, in short, civilized, socialized, and moralized.

Today, unfortunately, as philosopher Gertrude Himmelfarb has pointed out, "many parents are as ineffectual in promoting and enforcing social order as are other authorities. And that miniature system [of the family] is as

weak and unreliable as the larger social system of which it is part" (1999, p. 45). It has been said that the "cultural ocean in which American adolescents swim saturates them in the ethos of therapeutic individualism" (Smith and Denton, 2009, p. 172).

Nor is providing a nurturing environment that responds to the distinctive and evolving needs of each child a task that government can fulfill successfully. This is why, for example, properly-supervised foster care has replaced the earlier reliance on institutional orphanages.

> The molding of character required during the early stages of a child's development can only be provided in the intimate sphere of the family. The state is simply incapable of assuming this responsibility, even though it may be compelled in emergencies to take children into care. Family life offers an experience of communal solidarity that uniquely prepares children for participating in other communities (Chaplin, 2011, p. 244).

But what of children whose homes, while not so dysfunctional as to require foster or institutional care, fail to provide the loving stability and models of adult character needed to develop essential qualities of character, including the ability to trust and to be trustworthy? Where will they develop the "autonomous moral self required for liberal democratic citizenship"? For the fortunate among them it will be through immersion in thick, dynamic ethical and religious traditions that offer concrete visions of what it means to be a good person and to live

in a just society, acquired both among people – parents and children, teachers and students, children and their peers – and between students and the traditions into which they would be initiated (Alexander, 2012, p. 160).

Unfortunately, the common public school is often incapable of providing the sort of "thick" community within which trust and other civic virtues are nurtured. This is certainly the case in the United States, where "community value dissensus is in the ascendancy. Much attention has focused on public schools and their failure to provide value reinforcement" (Popenoe, 1995, p. 83). By definition, the common public school serves pupils assigned on the basis of residence or some other formal criterion, not by a shared agreement on the part of school staff and parents about the perspectives upon which the life and mission of the school will be based. It is no longer (if it ever was) possible to assume that these perspectives and the practices which express them will cohere in a common public school, while democratic governments no longer possess the confidence of their predecessors that they can or should impose a state orthodoxy.

Under these conditions, schools freely chosen by parents and (equally important) able to choose their staff on the basis of commitment to the school's distinctive mission (whether religious or humanistic) have a distinct advantage in nurturing trust and the settled disposition to behave as responsible citizens.

The media have at last grasped the fact that test scores and graduation rates improve where schools are freely chosen by families. But what many people still fail to appreciate is that the case for choice in education goes much deeper than market efficiency...

Shifting educational authority from government to parents is a policy that rests upon basic beliefs about the dignity of the person, the rights of children, and the sanctity of the family; it is a shift that also promises a harvest of social trust as the experience of responsibility is extended to all income classes (Coons, 1992, p. 15).

Sociologists have found that "[m]utual selection by both students and staff has important consequences for the social environment within private schools because it assures [sic] general value consensus and mutual trust within the community" (Salganik & Karweit, 1982, p. 153). A leading educational policy analyst points out that a freely-chosen "school will be stabilized by its commitments and respond to the needs of a group of students and parents to whom it is committed rather than to the politically bargained preferences of society as a whole." As a result, "[s]ocial trust and community feeling are higher when schools are distinctive and families have choices" (Hill, 1999, p. 151). Or, "[q]uite simply, relational trust is more likely to arise in schools when both faculty and students wish to be there" (Bryk & Schneider, 2002, p. 142).

Of particular importance for nurturing the qualities essential for citizen-

ship is "an ethos of trust [which] opens space for teachers to feel comfortable introducing contentious issues into their lessons and allowing debate and discussion of those issues among the students." (Campbell, 2012, p. 244). This is more likely to occur in schools where staff and parents are in agreement about fundamental matters.

Schools that have this capacity to foster trust are also sources of the hope on the basis of which individuals become engaged citizens. History has shown again and again that such engagement, and the positive change which it can bring about, do not arise from despair and alienation but from the hope that can be nurtured in the most difficult circumstances by communities of mutual trust. Thus, for example, the Freedom Movement of the Fifties and Sixties in the United States grew out of the local Black church and, in turn, degenerated into frustration in the following decades when it abandoned that connection and the way of life supported by the Black church had broken down. As sociologist Christopher Lasch put it,

> [h]ope implies a deep-seated trust in life that appears absurd to those who lack it... It derives from early memories... in which the experience of order and contentment was so intense that subsequent disillusionments cannot dislodge it. Such experience leaves as its residue the unshakable conviction... that trust is never completely misplaced (1991, p. 80).

Every child should experience such security in a loving family but, for those who do not, the opportunity to attend a school forming a coherent and loving community based on a shared understanding of the nature of a flourishing human life – often these will be schools with a religious character – is even more important than it is for other children.

3.3. Children from stigmatized groups

Concern that the presence of a large number of unassimilated (and perhaps unassimilable) foreigners will somehow alienate a society from itself is by no means new in Western nations. Maurice Barrès raised the alarm in France in the late 19th century that "the foreigner, like a parasite, is poisoning us" (Todorov, 1993, p. 247). The theme has become increasingly common in recent decades, long before the crisis created by the refugee and migrant wave in 2015-16 and the jihadist attacks in Paris, San Bernadino, and Brussels. A half-century ago, German and Swiss policy-makers responding to popular fears of *Überfremdung* (which might be translated as "over- foreigning") sought to distinguish between those foreigners who were compatible with their society and could be integrated selectively, and those who were not.

Muslims are perceived as more troublesome in heavily secularized Europe than they are in the United States in part "because they express their individuality through religious postures that for most of Europeans are not compatible with the idealized secular civism"

(Cesari, 2013, p. 144). Europeans need to remember, as Jürgen Habermas and others have pointed out, that deeply-held religious convictions, if listened to respectfully, can be a solid basis for participation in a pluralistic democracy. Indeed, "vital and nonfundamentalist religious communities can become a transformative force at the center of a democratic civil society–all the more so when frictions between religious and secular voices provoke inspiring controversies on normative issues and thereby stimulate an awareness of their relevance" (Habermas, 2011, p. 25).

On the other hand, fundamentalist religious groups in a hostile relationship with the surrounding society represent a danger to the majority as well as to its own members, and the periodic jihadist incidents in Europe as in the United States are a reminder that the peaceful co-existence of Muslims with the non-Muslim majority cannot be taken for granted. The challenge for social policy is how to deal respectfully with the convictions and practices of the majority of Muslims who wish to fit into their host societies while taking appropriate measures to isolate and neutralize the militant minority.

When, thirty years ago, I researched how a dozen countries schooled the children of immigrants (Glenn, 1996), the prevailing concerns were language and culture, and it was confidently assumed that these would largely lose their significance in the second generation. Today the concern about immigrants seems overwhelmingly to be about their religion, and the children of immigrants often cause more concern than their parents. As philosopher Charles Taylor has pointed out, ironically, "[e]ven French atheists are a trifle horrified when religion doesn't take the standard Catholic form that they love to hate" (2007, p. 529).

In the context of widespread secularization in Western Europe, "the demand by Muslims not just for toleration and religious freedom but for public recognition is… taken to be philosophically very different to the same demand made by black people, women, and gays. It is seen as an attack on the principle of secularism" (Modood, 2007, p. 70). One ironic consequence is that the sympathies of European political progressives shifted away from Muslim immigrants as the latter increasingly asserted their claims in religious rather than in cultural terms. So long as the religious practices of Muslim immigrants could be seen as cultural survivals, these were tolerated, but such practices "became unbearable when they take their place definitively on the stage of French society as the affirmation of a faith detached from any foreign culture." Members of the secular Left who, "in the 1980s defended the rights of immigrants against the *Front National* [are] indignant that the children of those immigrants display a Muslim identity and sometimes [they hold]… positions that were those of the *Front National*, but with the clear conscience of those who still see themselves as antiracist" (Roy, 2007, p. 5).

Meanwhile, Muslims themselves have sought other allies: "defending values more than a culture, conservative Muslims find themselves in the camp of the conservative Christians, and they use the same formulation: defense of family values" (Roy, 2007, p. 101). In this connection, it is significant that the first Islamic school in the Netherlands was sponsored by a Protestant school association, as was an Islamic secondary school in 2014 (Dronkers, 2016, p. 11), and that the right of a Muslim girl to wear the *hijab* in an American public school was successfully defended by a Christian legal advocacy group in 2003 (Moore, 2007, p. 244).

As the Muslim population in the United Kingdom continued to grow in the 1960s, its leaders expressed increasing concern about the effects that the "open society" and especially its schools would have upon children whose families lived by entirely different assumptions. The Muslim Educational Trust was established by immigrants, with one of its goals being to protect a distinct Muslim identity among children exposed to a permissive society and schools where they would encounter "the materialistic Western culture, broken families, sexual promiscuity, alcoholism, and the relaxation of morality" (Kepel, 1994, p. 153).

The younger generation of Muslims may seek a more 'pure' and fervent Islam as the basis for identity and for anchoring in an often-baffling host society, an Islam consciously chosen and affirmed. In contrast with the homelands of the immigrant generation, where individuals were Muslims by birth and without any conscious choice, under conditions of Western modernity "[o]ne has to prove one's faith and commitment. The community is not a given but a reconstruction" (Roy, 2004, p. 37).

The Western country with the largest number of government-supported Islamic schools, between forty and fifty at any given time, is the Netherlands. The situation of these schools has been difficult as a result of the low social status and education level of most Dutch Muslims. According to the government's education advisory board, the weak academic performance of many of these schools is attributable in large part to the inexperience of their boards (Onderwijsraad, 2012), though, as a result of strenuous efforts, "[b]y early 2013 two Islamic primary schools had been awarded the title 'Excellent School 2012' by the Ministry of Education" (Merry, 2013, p. 102).

In North America as in Western Europe, although most immigrants place a high value upon the schooling of their children, some of them regard the form available to their children in public schools as a threat to their cultural and religious identities (Gibson and Bhachu, 1991, p. 88). What accommodations to make for religious convictions – a fundamental human right – in common public schools is a question that has troubled education policymakers. Schools may

remove or grant excusals from practices that the devout find offensive (as some Muslims do coeducational physical education classes or field trips) and may modify the curriculum to give more recognition to the significance of religious belief, for example by teaching about world religions.

These accommodations within a "common school" are often unsatisfactory to all involved. Muslims, for example, have sometimes expressed opposition to allowing non- Muslims to explain their faith to Muslim pupils, believing they would not do so adequately (Zaki, 1982).

Jasmin Zine, in her research in Ontario, found "students who felt that being in public school was more isolating in many ways for Muslim students who are living a faith-centered lifestyle." (2009, p. 57). She also found that in "Islamic schools, being able to fit in and be accepted was a significant theme in students' narratives. They reported feeling less social differentiation on the basis of race, class, or culture in the Islamic school environment in comparison with public schools" (2008, p. 99).

It is often charged that Islamic schools in North America and Europe tend to undermine, in their students, the qualities that will make them good citizens of the host society. Thus some critics assert that many "are run by Islamists who teach children that their primary loyalty is to Islam rather than to their countries of citizenship" (Baran with Tuohy, 2011, p. 195).

There is now a legal requirement in the Netherlands that Islamic (and other) schools provide democratic citizenship education, and a similar requirement has been adopted in Britain (Niehaus, 2009, pp. 121f).

Of course, as with other religious groups, such as Catholics, Evangelical Protestants, and Orthodox Jews, it is quite common for Muslim educators to teach that a primary loyalty is owed to God, but that this need not compete with the requirements of good citizenship; indeed this emphasis can arguably contribute to being the sort of engaged and critical citizens that a healthy society requires. Princeton political scientist Stephen Macedo, though not an advocate of faith-based schooling, concedes that there may be costs to displacing educational institutions that reinforce and deepen children's commitments to particular communities: the liberal social goods of self-critical reflection and choice themselves depend upon a clash of significantly different conceptions of the good life.

Conversely, the

homogenizing effects of a public school system may…promote not the preconditions of a lively, and deeply reflective public life, but a flattened social order without much at stake.

Some might say that the shallowness of discourse and the blandness of public life in America testify to the overweening success of a common educational regime (2000, p. 249).

As we have seen, the robust virtues upon which family life, social life, and political life depend do not float in thin air; they require roots in a nurturing soil. Philosopher Leszek Kolakowski has argued that

> educating people to be tolerant and unselfish, to overcome tribal customs in favor of universal moral standards, cannot be done without the strong base of a traditional authority which up till now has derived from the great universal religions. Very often, though not always, the net result of education freed of authority, tradition, and dogma is moral nihilism (1990, p. 172).

Roman Catholic, Evangelical, Jewish – and Islamic – schools can, on this theory, do a better job than neutral public schools in providing a solid basis for the qualities required by good citizens, and it can be hypothesized that "the Muslim school is serving as a pathway for students as well as adults to cultivate social trust, leadership skills, and community values commonly associated with citizenship and civic engagement" (Cristillo, 2009, p. 79).

Concerns about the effects of Islamic schooling, however, continue to be one of the common themes of those who warn of Islamist subversion of Western societies and their democratic values, of what is sometimes called "civilization jihad." An on-line petition in the United States in 2007 sought to gain signatures calling for a total ban on Islamic schools, "charging that such institutions are imposing religion and backward traditions

on children" (Haddad & Smith. 2009, p. 3). While such a measure would not meet American constitutional standards, it suggests the suspicion prevailing in some quarters. A recent British example is Ed Husain's book *Among the Mosques* (2021).

On the other hand, widespread evidence suggests that few Muslim parents turn to Islamic schooling as a way to prevent their children from successful participation in the host society, albeit on the basis of distinctive religiously-rooted norms. That this is not widely recognized may be attributable, in large part, to the fact that, among societal opinion-makers, all too often a religious world view is held in contempt, as illegitimate, because of false dichotomies that privilege the 'rationality' of secular knowledge over the 'irrational' and 'mystic' knowledge that flows from religious or spiritual sources. Religious schools are often

> associated with intolerance...and they are often viewed as anachronistic in matters relating to women or sexuality... I would...argue that religious schools – in this case Islamically oriented ones – should not be dismissed as intrinsically intolerant or inherently misogynistic sites for educating impressionable youth. Islamic schools are part of the Canadian landscape, and they need to be examined as viable, growing alternatives that many Muslim families are choosing for their children (Zine, 2008, p. 7).

It may in fact well be that, as has been argued in the Netherlands, "Is-

lamic schools nurture and develop an Islamic identity which helps Muslim children to be assertive and confident when they engage with the wider society and contribute to the integration process" and that "Islamic schools make Muslim children better citizens by 'providing a moral compass, and instilling a new sense of morality into society'" (Niehaus, 2009, p. 117). David Hargreaves has argued that "specialised schools enhance social cohesion within a sub-community (e.g., of a shared religion or culture) and in a pluralistic society there can be no national cohesion that fails to foster and build upon more local and specific forms of social cohesion" (1996, p. 20).

The priority of moral formation in faith-based schools can involve practices that would be considered inappropriate in a public school. "Whereas secular school educators must generally keep private their deepest inspirations, understandings, and concerns related to the child and the curriculum, the religious schoolteacher *understands these things to be a vital aspect of the curriculum*." (Engelhardt, 2013, p. 186, emphasis in original). Such self-revelation contributes to the formation of a trusting environment, as discussed above.

A nationwide survey in the Netherlands measured components of citizenship among primary school pupils; pupils attending Islamic schools were found to score higher on acting democratically, acting in a socially responsible manner, dealing with conflicts and dealing with differences than pupils in other kinds of schools. Only with respect to civic knowledge did the Islamic school pupils, no doubt reflecting their socially-marginal families, score significantly lower than the average in Dutch schools. The late sociologist Jaap Dronkers commented that these "findings directly challenge the assumption that pupils at Islamic schools are less likely to cultivate the relevant civic virtues for Dutch society at large" (Dronkers, 2016, p. 15).

In a multi-year on-site study of seven Islamic secondary schools across the United States directed by the author, the

most striking finding was that, contrary to our expectations, staff, parents, and students did not have a great deal to say about the difficulty of reconciling their religious beliefs with life as active participants in American society. The students we interviewed, indeed, seemed rather taken aback by the suggestion that this would be a major problem for them. They did, of course, identify a variety of aspects of American life, and especially in popular youth culture, about which they had strong reservations, as did their parents and their teachers. One of the most valuable aspects of their school experience, it seemed, was the conversations about such matters that occurred in Islamic Studies classes and other contexts (Glenn, 2018, p. 192).

The students interviewed fully expected to go on to university and to

careers in business or the professions. Several volunteered that one of their goals was to change American perceptions of Muslims and of Islam. Many families that chose these schools told us they were concerned to protect their children from what they see as the corrupting influence of youth culture, prevailing unchallenged in most public high schools. Ibrahim Hewitt, in an English context, has described this as "bridging the ever-widening gap between traditional values in the home and peer-group pressures found in a secularist state school system" (1996, p. 120). One mother told us, "before, we didn't have Islamic school and Muslims used to put their kids in Catholic schools. Why? because Catholic schools teach them the same rules, manners, you know?" A student told us, of his former experience in a public high school, "It's more like a peer-pressure type thing, it has its own atmosphere, and they have their own image, like our school has their own image of, 'hey, everything has to be good,' and then like in public schools it's like, 'hey, you want some drugs?'"

The students we interviewed, alone or in focus groups, evinced none of the alienation so evident in accounts of young men or women who turn to terrorist acts, and indeed school staff spoke often of warning their students against gaining a distorted view of Islam through jihadist sites on the Internet. For the team from Boston University visiting these schools repeatedly, it was especially notable that

the students we talked with saw themselves as engaged through their classes – especially Islamic Studies – in thinking critically about American society, but also about the Islamic tradition and the cultural assumptions of their families, and how these would have to be re-thought for application to their lives in the United States. Contrary to the canard that faith-based schools are less capable than schools informed by secularistic materialism of developing critical thinking, our interviews suggest that these young men and women are keenly aware of how much in their lives cannot be taken for granted (Glenn, 2018, p. 197).

We should not assume, of course, that the Islamic secondary schools across the United States that were open to academic researchers are representative of all such schools, nor that the largely middle-class Muslim immigrants to the United States are comparable to the larger and less prosperous Muslim minority in Western Europe. At least, however, our research provided abundant evidence that, under the right conditions, Muslim youth can be educated into a "culture of engagement" with the host society which does not require repudiation of their religious tradition or community. It also suggests that this can be done particularly effectively in a school that makes this its primary mission, rather than an afterthought in the name of a banal "multiculturalism".

The successful Islamic schools that we visited were able to flourish because of state policies that permitted

such alternatives–thus structural pluralism–and in the case of two of them provided public funding to offset tuition costs. Rather than encouraging a dangerous separatism, these schools are in fact serving to enable transition to life in the American host society, as did the much-criticized Catholic schools for millions of immigrants over the past two centuries.

There was some evidence that students attending the Islamic schools and their families were actually more open to societal diversity than were Muslim youth attending public schools, where they might suffer alienating experiences. This is by no means implausible. Youth whose identity evokes mistrust may be more alienated from the host society if attending a public school where they are constantly reminded of their minority status, and exposed to insults and social exclusion, than if attending a school in which their identity is highly esteemed and they do not encounter hostility. Muslim girls who wear the *hijab* may be especially sensitive to marginalization in the context of a large public high school (Sarroub, 2005).

What seems to occur at the schools in our study is that the school itself mediates to some extent the contact between its students and non-Muslims, providing a context that reduces anxiety and promotes openness. Students in the Islamic school who might otherwise be isolated and awkward in relation to non-Muslim peers can thus develop the 'bridging' social capital that fosters social cohesion

and trust" (Smith and Denton, 2009, p. 230). An aspect of their school experience that they spoke of with particular enthusiasm was the regular community service projects in which they partnered with and befriended peers from Catholic, Jewish, or Evangelical schools in serving the homeless or cleaning up a public park.

These reactions suggest that we should not be concerned that well-organized and confident schooling based on religious convictions, including Islam as it is evolving in the West, will produce narrow-minded citizens unable to think for themselves or unable to collaborate with those who differ from them. Patrick Wolf, reviewing a very extensive body of research in American schools found, contrary to some expectations, that the

> private school advantage over public schools in nurturing the democratic values of young Americans is far greater than any advantage private schools have in boosting students' test scores. The myth that public schools are necessary for a stable democracy is not only unfounded, but the data suggest it is perverse. Access to private schooling is more conducive to civic flourishing (2020, p. 47).

When, however, schools and other institutions that serve a bridging function between the immigrant community and the host society are not encouraged, or even actively suppressed, the children of immigrants often turn to radicalized sources of information about Islam. Boston's 'Marathon bombers,' the man

who assassinated Theo van Gogh in Amsterdam, the London bombers, and the great majority of young men and women seeking to join ISIS in Syria have received a public school education. A study of hundreds of individuals arrested for terrorism-related offenses in the name of Islam noted that

> people assume that the jihadis are well educated in religion. That is not the case…The majority of terrorists come to their religious beliefs through self-instruction. Their religious understanding is limited; they know about as much as any secular person, which is to say, very little. Often, they have not started reading the Qur'an seriously until they are in prison, because then it is provided to them and they have lots of time to read it. (Sageman, 2008, p. 51)

As Olivier Roy has pointed out, when religion, and thus Islam, is expelled from the public domain, this delivers it and its powerful capacity for motivation into the hands of the radicals and those who invent their own interpretation of religion's requirements.

Thus French-style *laïcité* does not solve anything; chasing religion from public spaces, it confides it into the hands of the marginal and the radical (2016, pp. 116-165).

An appropriately-regulated structural pluralism can provide educational settings within which new identities and loyalties are reconciled with those of the family and its traditions, providing

a solid basis for integration and civic participation. The fact that in most cases the countries from which Muslim immigrants come are intolerant of religious diversity is no argument for limiting support for pluralism; indeed, to the contrary, these countries offer a warning about the effect on healthy civil society and democratic institutions of suppressing alternative voices and convictions or undermining them by neglect and lack of respect.

4. Summing up

Government can and should, as an aspect of instruction for citizenship, ensure that youth come to understand their own rights and those of others, and the importance of protecting these rights. But it may not, in a free society, usurp the authority of families to shape the character and the deep convictions of their children. As Michael Ignatieff insists,

> [c]odes of rights cannot be expected to define what the good life is, what love and faithfulness and honour are. Codes of rights are about defining the minimum conditions for any life at all. So in the case of the family, they are about defining the negatives: abuse and violence. Rights can't define the positives: love, forbearance, humour, charity and endurance (in Arthur, Gearon & Sears, 2010, p. 44).

As we have seen, the importance of nurturing such positive character is a sensitive task beyond both the capability and the legitimate reach of gov-

ernment. This makes it necessary that the role of the State in education be limited to oversight and general support without any attempt to claim a monopoly of schooling. Not only is this required in the interest of freedom, but a panoply of alternative forms of schooling are the best guarantee for the development of positive character and commitment.

Children with special needs and disabilities flourish in schools for whose staff and governance recognizing and nurturing their personhood is at least as important as measurable academic outcomes, and so develop confidence to contribute within their abilities to family and society.

Children from difficult and unsupportive homes can develop the ability to trust and the stability of character required for worthy citizenship in school where the staff share a common understanding of human flourishing and exhibit trustworthiness in their relationships with one another as well as with their pupils.

Children from marginalized social groups flourish in settings which provide an inter-active bridge between their families and traditions and the wider society. Just as thousands of Catholic parochial schools, supported at great sacrifice by European immigrants to the United States, gave the children of those immigrants safe spaces within which to become American Catholics, so well-organized Islamic schools can serve a similar role.

This means that they should be brought out of the shadows and expected to meet common expectations for instructional outcomes and civic engagement.

For each of these vulnerable groups of children, and for other children as well, a pluralistic system of education offers a range of positive options which provide supportive environments for their development into responsible citizens. Such a system

is best able to achieve the needed balance between teaching for specific commitments and also teaching for commitment to the common liberal values that are essential for the coexistence of peoples with various commitments in pluralistic liberal democracies. (Thiessen, 2001, p. 196)

American researchers, using national data-bases on civic and political participation, found that "the more politically homogeneous the environment within a high school, the stronger the norm linking voting with being a good citizen." In fact,

[t]o the extent that teachers, principals, and parents all have common preferences (values), school officials can feel free to act in loco parentis. The process is almost certainly self-reinforcing. The greater the trust among parents, teachers, and administrators, the more...teachers and principals are willing to enforce discipline, because they know that actions at school will be supported at home. And the more roles and norms are enforced, the more parents are satisfied with the disciplinary

climate in the school, and thus deepen their trust in the school's faculty and administrators. (Campbell, 2006, p. 113)

Thus, "[a]s suggested by [sociologist James] Coleman, the intergenerational transfer of social norms is easier to accomplish in social environments where values are held in common." In fact, "the reality is that when it comes to civic education the action does not appear to be in the formal curriculum" (Campbell, 2006, pp. 151-3), but in the overall life of the school and in the social capital that it develops (or fails to develop) in its students. Students learn or do not learn the civic virtues through what they experience in school. If, for example, both they and their teachers are essentially voiceless in the educational process, they may learn to keep their heads down and accept (albeit resentfully) whatever is imposed upon them. If, on the other hand, they experience school as a sphere of competition and self-seeking, they may learn to be cynical about any shared social purposes. Every school educates, it is well to remember, but a dysfunctional school – whatever the test scores it produces – may make its students *less* rather than more capable of a flourishing life.

At its best, in addition to the individual and group benefits that we have discussed above, the social capital developed by a school with a coherent and shared mission "makes us smarter, healthier, safer, richer, and better able to govern a just and stable democracy" (Putnam, 2000, p. 290), thus benefitting society as a whole as well.

Does attendance at an Islamic (or Jewish, Catholic, or Evangelical) school cut students off from the common public school experiences that will make them global citizens with the ability to function effectively in a diverse society and world? Stanford legal scholar Judge Michael McConnell argues that, to the contrary,

> [i]n the cultural crisis of our time, solutions are not to be found in abstractions like cosmopolitanism, but in renewal of our various intact moral communities. I predict that those in the next generation who have the greatest knowledge of and respect for other cultures, as well as commitment to their own, will not be the products of an explicitly cosmopolitan education, but of home schooling, of religious schooling, of schooling in culturally and morally self-confident communities. They will be the students who learn to love the good and to recognize and respect visions of the good in others. (2002a, p. 84)

Indeed, in the social context of American life, he suggests, "home schools and religious schools (and other schools provided by morally coherent subcommunities) may be the best democratic schools we have" (2002b, p. 133). And, as Canadian philosopher Elmer John Thiessen points out, "[t]he best guarantee against institutional indoctrination is that there be a plurality of institutions" (1993, p. 274).

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Author's biography

Charles L. Glenn is Professor *Emeritus* of Educational Leadership and Policy Studies at Boston University. From 1970 to 1991 he was Director of urban education and equity for the Massachusetts Department of Education. Glenn has published more than a dozen books on historical and comparative dimensions

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The new Spanish educational legislation: why public education will not improve

La nueva legislación educativa: por qué no mejorará la educación pública en España

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Abstract:

This paper provides some reasons that explain, in the view of the author, why the present eagerness of the Spanish Educational Authorities to reform all levels of education, from primary school to the universities, will not improve the quality of the Spanish educational system.

Keywords: Forthcoming Spanish educational legislation, primary school, secondary education, universities.

Resumen:

Se exponen algunas razones por las que, en opinión del autor, el reciente afán legislativo de las autoridades educativas españolas que afecta a la enseñanza primaria, la secundaria, al bachillerato y a las universidades, no mejorará la calidad de la enseñanza en España.

Descriptores: próxima legislación educativa española, educación primaria, educación secundaria, universidades.

1. Introduction

I have hesitated, I admit, before writing this article. Defending the quality of public education in Spain is an increasingly difficult task, especially when struggling against the dominant trends and pedagogical clichés that, under the semblance of improving it, achieve exactly the opposite. Moreover, I find it hard to accept without comment certain constructs *à la page*, such as the ubiquitous 'competences'[1] that confuse doing with comprehending, and whose plasticity gen-

erates an abundant literature dealing with their definition and scope. Nevertheless, after decades as a university professor and researcher — and after patiently reading the new laws, in force or still in draft form — I have resolved to expose my opinion. What follows explains why.

The first thing that must be pointed out is the legislative inflation that will affect the Spanish educational system should all the initiatives currently pursued prosper — as is likely to be the case. The number of pages is revealing: the LOMLOE or *'Ley Orgánica que Modifica la Ley Orgánica de Educación'*, known as the Celaá Act, takes up 85 pages of the Boletín Oficial del Estado (Spanish Official State Gazette) (BOE 30-XII-2020). The remainder of legislation on non-university education are Bills under the responsibility of the new Minister for Education and Vocational Training (*Formación Profesional*, FP), Pilar Alegría. This legislation comprises the following: *Borrador* (Draft) *del Proyecto de real decreto por el que se establece la Ordenación y las Enseñanzas Mínimas de la Educación Primaria* containing 140 pages; *Borrador del Proyecto de real decreto por el que se establece la Ordenación y las Enseñanzas Mínimas de la Educación Secundaria Obligatoria* [ESO - Obligatory Secondary Education, four school years from age 12 to 16] has 315 pages including its Annexes. The *Borrador del Proyecto de real decreto por el que se establece la Ordenación y las Enseñanzas Mínimas del Bachillerato* extends to 500 pages with its Annexes; the recent *Real Decreto* (BOE of 17-XI-2021) *por el que se regulan la Evaluación y la Promoción en la Educación Primaria, así como la Evaluación*, la *Promoción*

y la Titulación en la ESO, el Bachillerato y la FP is concise, at 13 pages. The *Documento de Ley Orgánica del Sistema Universitario* (LOSU, drafted by the present Minister for Universities, Manuel Castells) has 92 pages (despite which it constantly refers to future legislation) to which we should add those containing the new 70-page *Estatuto para el Personal Docente e Investigador* (PDI) announced in the LOSU, some versions of which have already circulated (as *'Draft(s) for consultation'*) but are now presumably obsolete. Thus, on non-university education gravitate — literally — 1053 pages of laws, and a further 160 or so on university education, before taking into account all the amendments to Universities' Statutes that a new LOSU would imply. With the *Organización de las Enseñanzas Universitarias y del Procedimiento de Aseguramiento de su Calidad* (BOE 29-IX-2021, 42 pp.) the total reaches 1255 pp. The exact number of pages is of course of little consequence but, ignoring their content for a moment, the order of magnitude is astonishing: well over one thousand pages. Without recalling Gracián, this figure should prompt anyone with a sense of proportion to question this legislative pulse: less than half this number should suffice. And not only is significant what these highly repetitive texts include, but also what they do not: the Celaá Act, for instance, unbelievably omits Spanish as the vehicular language in the whole of Spain.

How has such normative excess been reached? To illustrate this, let us consider an earlier case of unnecessarily prolific legislation: the *Decreto que regula los Estudios Oficiales de Doctorado* promulgated by Ángel Gabilondo, Minister of Education at

the time, (BOE 10-II-2011, maintained with no changes in the BOE of 29-IX-2021, Art. 19.4). Its 17 pp. describe the aim, definitions (eight!), structure, et cetera and, of course, the inevitable competences, capabilities and skills that must be delivered in a doctoral programme: twelve, no less. A legislator with a less Baroque frame of mind would have stated one single 'competence' along the following lines: "a doctor [PhD] must be able to conduct original research and communicate the results" (and, as far as possible, to direct research conducted by others). Describing 'personal capabilities and skills' such as "working as a team and individually in an international and multidisciplinary context" (Art. 5.2) is to precise obvious aspects that nevertheless might be inappropriate. For example, the illustrious mathematician Grigori Perelman, who 'won' the Fields medal (equivalent in Mathematics to the Nobel prize) for proving the Poincaré conjecture (one of the mathematical problems 'of the millennium'), would not be qualified as doctor — he received his PhD Degree in 1990, in Leningrad — according to the mentioned 'capability' given his acutely reserved and individualistic nature. So much so, that Perelman did not wish his results to be published in standard scientific journals, and declined both the Fields medal offered at the Madrid International Congress of Mathematicians (2006) and the million-dollar Clay Millennium Prize in 2010. This detailed casuistry, therefore, to describe what a proper doctoral programme should achieve is superfluous and futile. Furthermore, the BOE not only lists (Art. 5) these twelve competences, capabilities and skills to be acquired by all doctors, but also cautions that the doctoral programme "shall guarantee, as a minimum, the acquisition of the basic competences" and, "at least, the required personal skills" on said list. "As a minimum" and "at least", since there may be others to be addressed; it just a question of looking harder for them.

2. The case of mathematics

The propensity for empty, pretentious and counterproductive detail would suggest that these legal texts were drafted by 'experts' (who, incidentally, remain anonymous) endeavouring to think up a growing number of entries, however absurd these may be. For instance, and still within the domain of mathematics, the mentioned *Borrador* for Primary Education includes such pearls of pedagogical wisdom as "to develop social skills acknowledging and respecting the emotions and experiences of others and the value of diversity, participating actively in heterogeneous working teams in which roles are assigned to build a positive identity as a student of mathematics, enhance personal wellbeing and establish healthy relationships" (Specific competence number 8). Other statements include "emotional self-regulation: self-conception and learning of mathematics from a gender perspective" or "respect for the emotions and experiences of others toward mathematics" (Basic knowledge F.1, socio-emotional awareness). It is not obvious what role the word mathematics plays in these texts, nor how they enlarge upon what any teacher would do as a matter of course, yet they contain further remarks in the same spirit. May the following serve as a final example, worthy of holding the Western

world in awe: "the addition, subtraction, multiplication and division of natural numbers resolved flexibly and sensibly". Students' mathematical competence is not going to be improved in this manner, although we may hope that teachers will have the good sense to ignore all that is pointless in these *guidelines*. Perelman, by the way, won the first gold medal at the International Mathematics Olympics in 1982 at the age of 16. We can be sure he did not add, subtract, multiply and divide "flexibly and sensibly".

In fact, the *innumeracy* or mathematical illiteracy that this legislation persists in *not* correcting is a serious problem, to the extent that it impacts negatively on the quality of democracy. Citizens lacking sufficient education in mathematics, as implied in the PISA reports commented below, are defenceless against much of the information they receive: they are a captive population. Information very often has a numerical content that these citizens are unable to fully understand, an essential requirement before they can make judgements or decisions. This is why teaching mathematics to children and adolescents has *enormous* importance beside the fact that, when scores are higher in the PISA reports, the GDP also grows. Mathematics constitutes a language that, as any other, must be learned at an early age; later, it becomes much more difficult. Countless opportunities are lost by individuals who have received a poor education in mathematics. Although at first this is deemed unimportant or is brushed off on the grounds of being more inclined toward 'letters', it ultimately poses an insurmountable barrier in many aspects of life. It might perhaps be

presumed that being a theoretical physicist and hence a 'science' scholar explains my advocacy for mathematics. However, whenever any authority (or journalist) issues a mathematically impossible statement — and we have to put up with too many of these — it is inevitable to ask ourselves whether they can calculate 2/3 of 4/5 as proof of minimal — really minimal — mathematical competence. Those unable to readily give the answer 8/15 (eight fifteenths) can consider themselves victims of poor quality mathematical education in their youth. Unfortunately, the new legislation will do nothing to solve this serious problem.

3. Equality and effort

Constantly recurrent, often in identical context, are the expressions "gender" and "gender perspective": 31 times in the Celaá Act, 90 in the *Borrador* for Primary Education, 122 in the *Borrador* for Secondary Education, 182 times in the *Borrador* for Bachillerato and 23 in the LOSU. Conversely, the 'effort' made *by students* is only mentioned twice in the LOMLOE, once (Art. 27) in the *Borrador* for Bachillerato and 4 times (allowing a generous interpretation) in the Annexes. In the latter, 'effort' appears a dozen times more, but as "individual and collective efforts against climate change", "efforts by the healthcare and scientific staff", "peace keeping efforts", etc. It appears that reminding students of the need to dedicate effort to their studies is politically incorrect. The LOSU likewise makes no mention whatsoever of the term 'effort', which is surprising: the cost of tuition at state-funded universities is much greater than the enrolment fees, and univer-

sity students should correspond with their effort to that made by society in defraying their expenses.

It goes without saying that the efforts made by institutions, healthcare staff, etc. are meritorious; what is less than clear is their relation to the learning process for the subjects in the students' curriculum, which should be safeguarded by the laws on education. Similarly, it is difficult to understand what is meant, for instance, by the "contribution made by numbers to the various fields of human knowledge from a gender perspective" (Basic Knowledge in mathematics F.2). If the intended meaning is that girls should not be left behind in this "contribution made by numbers", it would suffice to say so, stating the obvious. It would be better to state clearly, as occurs once in the *Borrador* for Secondary Education (Art. 7c), that it is necessary to "value and respect the difference between the sexes and the equality of rights and opportunities for both" and to "reject stereotypes that discriminate between men and women" (and other groups, we might add). However, reading the constant references to the gender perspective it is difficult not to recall the conceptists, or Ortega, who affirmed that "clarity is the courtesy of the philosopher" (here, the legislator) and, far less positively, some of the obscure statements by post-modern philosophers of three or four decades ago. A gender perspective in mathematics? They might as well refer — for example — to the disquisitions by Luce Irigaray on the omitted femininity of fluids in the laws of physics or on why Einstein's equation $E=mc^2$ is sexed[2] because "it privileges the speed of light over other speeds

that are vitally necessary to us". Regaining our senses, what is essential is to prevent sexist bias of any kind and, in particular, to avoid the impression that "girls and women" are excluded from certain reserved areas. This would be much more effective than repeating the word 'gender' 448 times.

4. Knowledge and merit

This simple word count evinces the concerns of the anonymous authors of the mentioned drafts and annexes, who in their drive to 'keep up appearances' fail to address what is fundamental: the acquisition of knowledge. It is indirectly suggested that learning should not entail any great effort, that *comprehension* is secondary (hence the insistence on 'competences') and that students of their own accord can be left to re-discover the concepts with a little prompting, almost as part of a game. However, this is *impossible*: humankind took centuries to establish schools of philosophy, or for a Newton to appear, or to unravel the structure of ADN (a breakthrough that has allowed us to develop vaccines against COVID-19). We cannot expect schoolchildren to discover the laws of movement by themselves: even Aristotle himself made flagrant errors in this regard. *Study* requires *effort* and the *merit* of making it deserves recognition. However, "merit" appears only once in the *Borradores* for Primary Education, ESO and Bachillerato but not in reference to students: Specific Competence number 6 for History of Art establishes that students should value the "social and material importance of our artistic and cultural heritage, appreciating the complexity and merit inherent to the work done by the profes-

sionals in charge of its maintenance". Once again, we are faced with relativism: it seems that the paintings in the El Prado Museum carry the same importance as the (meritorious) work of those who look after them.

The figure of Miguel de Unamuno is controversial, and not only for his statement (1906) "let them invent, then, and we will benefit from their inventions… electric light is just as effective here as where it was invented" in the polemic he maintained with Ortega y Gasset. Similar doubts are raised by his well-intentioned *Amor y Pedagogía* (1902), a bitter satire on pedagogical and scientific trends. But in one of his *Arabescos Pedagógicos* Unamuno hit the mark with the statement[3]: "we seem afraid to teach children how hard, how demanding it is to work. This has led to having them learn by playing, which always ends up as playing at learning. And the master who is teaching them plays, plays at teaching. And neither is he, strictly speaking, teaching, nor are they, strictly speaking, learning anything worthwhile". Indeed, in my view Unamuno is indirectly criticising the 'competences' trend currently rampant given that "on abandoning the notion that learning is comprehending in favour of the idea that learning is doing something of a practical and social nature, there is but a short distance to claiming that learning should be an entertaining and ludic engagement", as stated[4] by Inger Enkvist, a Hispanist and expert on education at the University of Lund. In any case, students, as their name implies, must study and find their effort rewarded. That merit — *that of the students*, I insist — is not mentioned even once in the Celaá Act, the drafts for Primary Education, ESO, Bachillerato

and Annexes thereto, despite taking up over 1000 pages, is revealing. It could be surmised that good students are to be stigmatised for their audacity (there is no better term for it) and merit in striving to learn.

A controversial issue is the institutionalisation of progressing from one year to the next despite not having passed one or more subjects although, again, words like *fail* or *failed* are taboo and are not used in order to avoid hurting susceptibilities. For example, the *Borrador* for ESO establishes (Art. 16.2) that "students will progress to the next year when the teaching body is satisfied that any subjects or fields of knowledge in which they have not obtained a pass will not prevent them from successfully following the next year's syllabus and holds expectations for their favourable recovery and that said progression will benefit their academic advancement. In any case, students who have passed all subjects or fields of knowledge studied, or who have received a negative grade in one or two subjects, will progress to the next year." To this we must add that ESO assessment will be "continuous, learning-focused and integrative" and "conducted collectively" (BOE 17-XI-2021, Art.10), that second-chance examinations disappear and that "the Secondary School Graduate qualification will be standard and issued without a grade[5]" (Art. 16.3). Students with difficulties may be derived to a "curricular diversification" programme (Art. 13) but it is not hard to imagine the problems some of these students may encounter if they go on to Bachillerato. Minister Pilar Alegría has recently defended her yearly progression measures in a TV interview arguing that "the majority of

those [students] who repeat a year end up increasing the school dropout rate", which "in Spain is very high, currently at 16%, for which reason we should prevent these students from being abandoned to their fate", going to the extreme of claiming that "repeating a year is unfair". Universities Minister Castells has expressed his affinity with the Minister of Education and FP considering it "unfair" and "elitist" to prevent students from progressing to the next year on the grounds of a failed subject because "this amounts to trampling on those at the lower end and favouring those at the top".

The *Borrador* for Bachillerato follows a similar reasoning. Art. 21 in this Draft establishes that "students will progress from first year to second year of Bachillerato on passing the subjects studied or obtaining a negative evaluation in a maximum of two subjects" although, "at any event, students must enrol during the second year in any first-year subjects pending. Educational centres must organise the required recovery activities and evaluation of subjects pending in the organisational framework set forth by the educational authorities". Pursuant to Art 22.3 in the Draft, the qualification of *Bachiller* will require "a positive evaluation in all the subjects covered during the two years of Bachillerato" although, "exceptionally, the teaching body may decide to grant the qualification of Bachiller to a student who has successfully passed all subjects but one", provided that the grade point average reaches a minimum of 5. Independently of how these conditions for progression to the next year, which may occasionally be justified, are judged, it seems likely that classes to which students are

accepted without a pass in all the previous year's subjects may suffer a loss in academic level. It is true that we can hardly disagree with Minister Castells in his claim that "the right to study is not dependent on circumstances, and, should students face difficulties at any time, we should give them the opportunity to overcome them and continue leading a normal life". However, it is important to establish limits, and both the disregard for merit patent in all the above mentioned texts and Minister Pilar Alegría's personal outlook will cause students, parents (and comparisons among teaching centres as well) to establish undue pressures on the teaching committees.

Of course, failure and the school dropout rate are grave problems, but they should be tackled appropriately. Some twelve years ago the *Consejería de Educación de la Junta de Andalucía* [Andalusian regional ministry of education] decided to address these problems creatively granting an economic incentive to the region's teachers based on the number of students who passed, which gave rise to rather a scandal. The current proposal by the Ministry of Education (MofE) and FP for progressing to the next year in ESO is, of course, different, but in it one may nevertheless perceive a second reading: an attempt to resolve the school dropout rate by concealing it, despite the ensuing devaluation of the Secondary School Graduate diploma and prejudice to those who did obtain it through their effort. Moreover, it remains to be seen whether this policy is successful in retaining students who fail if they do not *really* receive special coaching. It is hard to uphold that a culture of per-

sonal effort is being sustained for students, as declared by Minister Pilar Alegría (who makes it extensive to teachers and families, something that *va de soi* for the former), when it is sufficient to read the legal texts referring to ESO or Bachillerato to appreciate that this is not the case.

5. PISA, Finland and the selection of teachers

In defending her policy, the Minister for Education and FP has set the example of "what is being done in the Northern European countries whose results draw our attention, such as Finland and Norway". To make more informed comparisons, let us consider the PISA (Program for International Student Assessment) reports, the OECD tests measuring mathematics, science and reading comprehension levels in 15 year olds. The most recent, not exempt from some controversy, were held in 2018 with the participation of 79 countries (owing to the pandemic, the next edition will be in 2022). Spain obtained its worst results in mathematics (481 points) and in science (483) since PISA commenced in 2000, with a low percentage of very good students. All in all, Spanish schoolchildren scored below the OECD average of 489 points. The reading comprehension results for Spain were not included in the report because the OECD detected 'anomalies' in those tests. We might ask which country took first place: as in 2015, it was China with 579 points (followed by Singapore), well ahead of any other in the three PISA areas. In broad terms, Spain, with no global classification for 2018 due to the mentioned 'anomaly', ranked 34th in mathematics and 30th in science (where

China obtained 591 and 590 points). United States gained 25th place with 495 points and Russia 30th with 482. Finland and Norway occupied positions 10 and 23, respectively, with their global scores; in mathematics, science and reading comprehension they took positions 16, 6 and 7 (Finland) and 19, 27 and 19 (Norway).

Let us consider Finland, pointed out by the Spanish minister Pilar Alegría from among "the countries we look upon with envy and admiration", although countries such as Germany, Belgium, France, UK, Poland and Portugal also did better than Spain in the PISA tests. To begin with, this comparison requires us to consider the rigour applied to selecting teaching staff at Finnish schools, for which there is no parallel in Spain. In Finland, the social prestige of teachers is very great and on a par with the extremely high standards required for admission to the corresponding university programmes: greater than for law or medicine. The Counsellor at the Finnish National Board of Education could proudly say that "it's a quite wonderful thing that even nowadays we have every year about 8,000 applicants who want to be teachers, and only 10% are accepted in each year. So, it means that among the good ones we can pick 10 %". As a consequence, Finnish universities prepare excellent candidates guaranteeing very high teaching standards. If now we consider funding[6] (which nevertheless is not everything, as evidenced in Spain by the PISA results segregated by Autonomous Communities[7]) and the fact that the number of classroom hours taught by Finnish teachers is among the smallest in the OECD, it becomes clear that there is

still a long way to go beyond the 'continuous assessment' policy.

In fact, *the selection of teaching staff is the key to quality in public education* (and often the weakness in private education). It is obvious that public education is a public service and that, as I have pointed out elsewhere, this statement only holds true when the recipient of this service is correctly identified. In the present case the target audience is made up primarily of young students, and not the teachers themselves. This principle, which should be self-evident, is constantly flouted. I still remember some 'competitive' examinations of many years ago, with assessment scales that likened a week's photography course to a Ph. D., and for which points awarded to temporary staff for years in post enabled candidates who had *failed* the knowledge exam to exceed the maximum of 10 points required and obtain the position. As a consequence, there were external candidates who, even scoring 10 points in the knowledge exams, failed to secure a position for being unable to add points for time in post as temporary staff. These candidates, however, were a far better prospect *for the students*, as those who failed the knowledge tests should never have been allowed to teach. In fact, such assessment scales should be described as AASDPE: Allegedly Academic Scales Designed to Penalise Excellence. This is how, using them, the *Ley de Acceso a la Función Pública* (BOE 10-IV-1995, consolidated text of 2006) governing access to civil service scales or bodies, purporting to "guarantee the principles of equality, merit and capability, as well as that of publicity" as stated in its Art. 4, can be bypassed. Although the LOMLOE refers to "all citizens" right of access to public employment in accordance with the constitutional principles of merit and capability", the AASDPE allow sufficient loopholes to dodge it. By contrast, Finland is a good example to follow: its stringent teaching staff selection process and firm financial commitment to education placed it in tenth place in the 2018 PISA survey (Finland even took the first position in 2000, but lowering curricular levels always brings consequences). Here, the new Bachillerato will offer four (five in practice) modalities or curricular paths, as opposed to the previous three, and will include some fifty subjects that will generate greater material needs. And, although the responsibility for education has been transferred to the Autonomous Communities, we cannot but question the MofE and FP's good intentions on reading in full the mentioned BOE dated 17-XI-2021. While in principle it is only meant to "establish evaluation and promotion within Primary Education, and evaluation, promotion and qualification in ESO, Bachillerato and FP", the decree includes an Additional Provision establishing that "the implementation of the measures included in this royal decree shall not cause any increase in allocations or personnel remuneration, or any other staff expenditures". How is this provision —for instance— coherent with the proposed increase in modalities and subjects in Bachillerato? We can only imagine the anxiety being experienced at schools regarding what is coming to them.

6. The new Bachillerato

This will include four *modalities*: Science and Technology, Humanities and Social Sciences, Arts (with two variants: Artistic

with Music and the Performing Arts, and Artistic with the Visual Arts) and General. It will offer some fifty subjects distributed into six/eight common subjects (Physical Education, Spanish Language and Literature I and II, Philosophy, Foreign Language I and II, History of Spain and History of Philosophy), modality-specific and elective subjects. Whereas the Secondary School Graduate diploma provides access to Bachillerato and Intermediate Vocational Training (*Formación Profesional de Grado Medio*), the Bachillerato Graduate diploma provides access to Advanced Vocational Training (*FP de Grado Superior*) and to University. Vocational Training in Spain gets less attention and funding than it deserves.

Annex I to the Draft for Bachillerato (16 pp.) is dedicated to students' Competence Profile ('competences' again) on completing the two years of Bachillerato. The General Competences are eight: competence in linguistic communication; plurilingual competence; mathematical competence; competence in science, technology and engineering (STEM) [there is a Freudian omission here: STEM stands for Science, Technology, Engineering *and* Mathematics]; digital competence; personal, social and learning-to-learn competence; citizenship competence; entrepreneurial competence and, lastly, competence in cultural awareness and expression. Annex II (461 pp.) deals with specific competences, evaluation criteria and the knowledge inherent to each subject, occupying on average some nine pages. Despite the confidence allegedly deposited in the teaching staff, the latter is effectively deprived of scope for action, although we may expect it to take the minutely detailed guidelines

cum grano salis. I will not remark on Annex III, a blend of commonplaces and wishful thinking fortunately not exceeding a single page. Lastly, Annex IV establishes a table of classroom hours which, in the case of common (compulsory) subjects are as follows: Physical Education, 35 hours; Philosophy, 70 h; History of Philosophy, 70 h; History of Spain, 70 h; Spanish Language and Literature I, II, 105 + 105 h; Foreign Language I, II, 105 + 105 h. To these must be added 87.5 hours for each modality subject, which total 4 + 3 subjects per year plus further subjects added by the Autonomous Regions. Of this total, 10% may be subtracted in the case dual official languages; students of religion, an elective subject, will avail of a minimum of 70 hours during this stage.

The expression "sustainable development" appears 54 times (*sic*) in the text although no explanation is given regarding how this should be achieved[8] apart from referring to the United Nations' 2030 Agenda. The CC2 'operative descriptor' has, of course, laid down that "on completion of their basic education, students shall" participate "in community-focused activities such as decision-making or dispute resolution, in a democratic spirit, showing respect toward diversity and commitment to gender equality, social cohesion, sustainable development and the *achievement of world citizenship*" (my italics; what would Greta Thunberg remark were she to read this?). Climate change is likewise repeatedly mentioned. However, it should rightly be referred to as *anthropogenic* climate change, and or two reasons: firstly, so that society takes responsibility for its origin, as it has not appeared *ex nihilo*, and secondly, to avoid its trivialisa-

tion through referring to the many climate changes — e.g. glaciations — that have occurred on larger time scales.

In general, there is too much empty verbiage and wishful thinking. For instance, the evaluation criteria for Specific Competence number 1 in Geology requires students being able to «defend aspects related to knowledge in the fields of biology, geology and environmental sciences, reasoning their position while adopting an open, flexible, receptive and respectful attitude towards others». This statement is a further example of *langue de bois*: it is obvious or inconvenient, since the necessary respect cannot — for example — validate a rejection of the theory of evolution (mentioned in Biology only once and indirectly in Basic Knowledge B; there is also no mention of Crick and Watson in the specific Competence 6 in Biology). Incidentally, Darwin is not mentioned even once (nor are Newton or Einstein where we might expect finding them). This relativist "open and flexible" attitude produces ignoramuses who reject vaccines. Another instructive comparison is the space dedicated, for instance, to Artistic Projects and to Physics. The former requires 12 pages and the acquisition of 11 specific competences, while for Physics (which I refrain from remarking on) 7 pages and 6 competences suffice. No less 'interesting' are the 10 pages devoted to Artistic Fundamentals, the Knowledge for which is presented in considerable confusion, or those dealing with Cultural and Artistic Movements that are limited to movements in the past century with scarce repercussion (e.g., *Arte Povera*). The criteria for History of Art reflect a curious imbalance that I will not describe here, but the evalu-

ation criteria for Specific Competence number 3 include "identify and understand the complex nature of the artistic creation process … promoting art that is committed to achieving the Sustainable Development Targets" (sic). And, with regard to Basic Knowledge, great emphasis is placed on its social (it is surprising that 'transformative' is not added) nature. "Renaissance Art" seems of little relevance as compared, for instance, with "art as a means of domination and control", "art and its propagandistic value", "art and nationalism", "art and collective identity", etc. The subject Cultural and Artistic Movements in the general modality should "contribute to the awareness of self-identity, and also to the comprehensive education of students in citizenship values, respect for diversity in artistic expression and in the promotion of intercultural dialogue". Is this an allusion to the alliance of civilizations[9] meant to compensate for the pernicious insistence on "self identity" made previously? (these allusions to the 'identidad propia' are frequent in the texts despite the fact that, in the past, self-identities have never brought anything beneficial to Europe). The subject also refers, selectively, to twentieth century movements; absences include, for example, socialist realism in the USSR and China or expressionism. In History of Philosophy, Clara Campoamor — to give an example — is not mentioned despite the study of feminist thinking lists various feminists. The subject History of Spain essentially and surprisingly begins with the 19th century and directly envisages a plurinational State.

It is true that many of the texts in this critique are still only 'Drafts'. But we can

only expect changes such as, literally, replacing "socio-emotional awareness" in mathematics with "socio-affective skills" and other no less profound substitutions. Our schoolchildren will not go far with the curricula detailed in the Annexes. Lack of rigour is rife and, with any due exceptions, the Specific Competences, their Evaluation Criteria, and the entailed Knowledges evidence the wish that students, notwithstanding the repeated allusions to diversity and respect which they should also deserve, end up thinking on the same lines as those who designed those very competences and key knowledge requirements. It is a pity that the *Weltanschauung* they reflect should also be so narrow, which incidentally constitutes a further *contradictio in terminis*.

7. A reflection on Secondary Education

In *The Memory Chalet* [Penguin, 2010], the moving autobiography the great historian and essayist Tony Judt (Hannah Arendt awardee, 2007) dictated while bedridden with ALS, the condition that led to his demise, he praises the quality of the free education he received at Emanuel College of London, an institution founded by a cousin of Elizabeth I. Judt was always grateful for the instruction he received there, thanks to which he went to Cambridge University (King's College). During the period 1944-1976 Emanuel was a "voluntary-aided grammar school", free of charge, accessed after completing primary education, the 11+ exam and an interview. *Grammar Schools* have existed for centuries (Shakespeare attended the one at Stratford), and remained

after the major education reform (the *R.A. Butler Act*, 1944) undertaken by the coalition government led by Churchill during WW2. These state-funded schools with a high academic level were obliged to merge with the *Comprehensive Schools* by Oxonian Harold Wilson, who won the election in 1964, as part "of the unfortunate integration process of the British education system" according to Judt, or to become public schools (meaning private, despite the misleading English terminology). Judt had always been highly critical of this labour party reform. In his magnificent *Postwar* (2005) he wrote:

> The destruction of the selective state schools of England merely drove more of the middle class to the private sector … Meanwhile, selection continued, but by income rather than merit … leaving the children of the poor at the mercy of the weakest schools and the worst teachers, and with much reduced prospect of upward educational mobility. *The 'comprehensivisation' of secondary education was the most socially retrograde piece of legislation in post-war Britain* [my italics].

Apart from some nuances[10], Judt's defence of sound education, of merit, of public education quality and regret of the consequences of its loss — *which implies a parallel loss of equity* — is directly applicable to Spain. This reflection is especially valuable coming from a self-defined "universalist social democrat", two admirable qualifiers with which I cannot help feeling identified. Another pupil of the Emanuel School was Sir Tim Berners-Lee, winner of the Charlemagne Prize and father of the World Wide Web (where would humankind be today without Internet –in particular, during the pandemic?). Another illustrious alumnus

was the theoretical physicist Peter Goddard, who coincided with Judt several years. Like Judt, Goddard declared "that the six years I spent at Emanuel were key to everything I did later", commencing with a scholarship for Cambridge (Trinity College). Throughout his extensive career, Goddard (CBE, FRS) was Master at St John's College and subsequently director of the Institute for Advanced Study at Princeton. Goddard, who in parallel to his scientific work held important responsibilities in education (in particular, he was *Governor* of Emanuel School from 1991 to 2003), has always defended that it is essential for young people to have "inspiring teachers". It is sad, therefore, and this is the greatest reproach we can make to the discussed upcoming legislation as a whole, that those who surely claim to defend public [state] education are not favouring the social elevator that its quality should safeguard. Perhaps the reason is that, over and above a solid education — and education is a preparation for life — there is more interest in performing a social engineering that fits in with the opinions held by those driving the reforms. As we have seen, besides reminders of constitutional precepts such as equality among men and women, it is common to find Competences and Key Knowledge items that are subtly or expressly imbued with the ideology of the drafters of the reform, even in the scientific subjects. All in all, the proposed legislation will not give Spanish students the education they deserve.

8. The LOSU of Minister Manuel Castells[11]

As in the case of pre-university education, it is also regrettable that in Spain a State Agreement cannot be reached among the main political parties to afford stability to our Universities. After years of great upheaval, the Spanish University System (SUE) had recovered — functionally, if not structurally — from the nefarious effects of the devastating Spanish version (BOE 30-X-2007) of the Bologna Plan enacted by the Minister for Education, Social Policy and Sports, Mercedes Cabrera. This version paradoxically distanced the SUE from European universities, contrary to the Bologna Declaration of 19 June 1999. It is hard to understand how the ill-named four-year 'degree' was conceived without thinking of the highly questionable interest in extending three-year degrees to four years, or of the financial savings gained by reducing by one year the time spent at university, then and in the future, by students[12].

Before continuing I must mention, for full disclosure, that I was a member of the Committee of Experts (public, of course) for the Reform and Improvement of Quality and Efficiency in the Spanish University System, or *Comisión Miras* (named after the committee's chair), whose conclusions (hereinafter, the Report) were made public on 13 February 2013. The Report stood on two fundamental principles:

P1) "Neither students' social background, nor their place of birth, may condition the type or quality of education they receive".

P2) "Universities, and most especially those that are state-funded, constitute a public service … The reforms proposed

herein stem from the premise that the public that universities are bound to serve is, first and foremost, their students together with the society at large that provides their funding, with a commitment to their intellectual advancement and economic and social wellbeing. It is only after establishing these that, on a lower level of priority, the remaining two bodies that together with the student body make up a university, make their appearance: the Teaching and Research Staff (PDI) and the Administrative and Services Staff (PAS). Appreciating this perspective is essential in ensuring the best use of universities' autonomy, given that certain dysfunctions currently affecting Spanish universities arise from inappropriately identifying the public they should serve ... Universities should be at the service of society and not of themselves".

That said, is it convenient at present to enact a new Universities Law?[13] Yes, but not the proposed LOSU. The SUE needs a rigorous *aggiornamento* that will guarantee, additionally, *Good Governance* and the *Next Generation EU* funds. The SUE has lost steam since the *Ley de Reforma Universitaria* (LRU, BOE 1-IX-1983) promulgated by José Mª Maravall, Minister of Education and Science in the Felipe González cabinet, superseding the *Ley General de Educación* (BOE 6-VIII-1970) by Villar Palasí, very advanced for its time and which, *avant la lettre*, had adopted for the SUE the French 3+2+doctorate cycles that much later would become the European 'Bolognese' structure[14] that was maintained by the SUE until 2007. But, what are the problems that need to be addressed in a reform of the SUE today? Beside the fact that a Ministry for Universities should also

be the ministry for Science and Research, the most outstanding are the following:

1. Under-funding, also of research.
2. The selection of PDI, far removed from the P2 principle: firstly, owing to the AASDPE criteria set forth by ANECA for accreditations and, secondly, to the nearly absolute local endogamy.
3. A suitable grants policy in accordance with P1, allowing mobility within Spain against the current localism that puts artificial blinkers on young minds.
4. The system of government that, despite claims to the contrary from most of the University Rectors, is neither efficient nor fully democratic, since society — the provider of public universities funds — is poorly represented.
5. Internationalisation, the essence of what universities are.
6. Universities' autonomy.
7. The extraordinary bureaucracy, wasting time and resources, including the proliferation of pointless committees encouraged by ANECA through unduly rewarding managerial tasks in its AASDPE-type criteria (as retribution for these is already provided for in economic terms and through reduced teaching hours).

It is necessary to recall, before we continue, that since the advent of democracy and with the LRU, the improvement in the SUE has been spectacular. It is no less true, however, that such improvement has been mostly thanks to the University Teaching and Research Staff (the

PDI), to their national and European research projects (independent of the universities which, nevertheless, benefitted from the so-called 'revolutionary tax' on them) and to well designed programmes such as ICREA (Catalan Institution of Research and Advanced Studies) and IKERBASQUE (Basque Foundation for Science) among others. In a word, progress was mainly made in spite of, and not thanks to, the universities' own organisation and structure. The SUE still suffers from a considerable relative backwardness which, as demonstrated by PISA in pre-university education, can and should be measured externally. The well-known Shanghai ranking (the ARWU [Academic Ranking of World Universities]) for 2021 only placed one Spanish university — that of Barcelona, UB — among the top 200 in the world and within the 151-200 group, which is a very insufficient score for Spain as the thirteenth world economy. In fact, smaller countries such as Belgium, the Netherlands or Denmark have 4, 9 and 3 universities, respectively, among the top 200.

Let us examine now whether the proposed LOSU is likely to improve the SUE. With regard to 1, funding, it is impossible to make an appraisal: minister Castells has made statements that are as diverse as they are optimistic, but his careless handling of figures fosters scepticism and makes it impossible to draw any conclusions in the absence of the corresponding Financial Report. At any event, funding is not established by the LOSU itself (despite referring to it 34 times). As for 2, the LOSU maintains the non-presential state accreditation for accession to teaching bodies (Art. 58.1) "to be regulated by a future royal decree" (the Report demanded "*public* accreditations"). It also requires (Art. 58.1) the accreditation (in the spirit of Arts. 34 and 37 of the LRU) of sojourns totalling nine months' duration at centres other than the institution at which candidates obtained their PhD, but on 11 November the ministry informed the trade unions that this appropriate requisite had been eliminated. The LOSU provides for university selection committees for entrance examinations to be formed by public ballot (Art. 60.4) with a majority of members external to the local university and public CVs (the Report additionally called for several six-year research periods). Should this requirement be upheld (changes within the LOSU have been constant), some progress could be made against the current absolute endogamy. Regarding grants, 3, Art. 2ñ does not respond to the requirements of principle P1. Nor will Art. 85.2, which sets forth that "the State shall establish the overall system of grants and student aid funded by the general stage budget", guarantee mobility among *different* Autonomous Communities as required under principle P1. And, although according to Art. 101.1 "the Minister for Universities, the Autonomous Communities, and the universities themselves shall promote mobility and student exchange initiatives", there is reason for scepticism except for the European mobility funding and the excellent Erasmus programme that fortunately do not depend on the LOSU.

Point 4, system of government ('governance' in the LOSU, Title VII), is given decidedly poor treatment; ill-treatment, in fact. To begin with, it does not seem appropriate to establish a 6-year limit for all positions, thus preventing overlaps that

are favourable in periods of transition[15]. The University Cloister (composed of PDI, students and administrative personnel) had previously been reduced — very aptly — to 100 members, but this limitation has now disappeared. The Governing Council (Art. 23) is made up of a number of members to be determined (50 in an earlier LOSU version), of which at least 10% belong to the Social Council (which has 20 members, Art. 24.3). Social Council members, however, are appointed by the Autonomous Communities' parliaments (one half from among those nominated by the university in question). Thus the Social Council's control capacity is brought into question; it is sufficient to recall events that befell in other spheres, and the origin of the savings banks disaster in 2008 to understand why. The independence of Social Councils and their essential role as representatives of the society that supports universities should be emphasised, not mediatised or politicised. The Rector (Art. 29) must be a civil servant "with three six-year research periods (if this requirement is maintained), three five-year terms teaching, and four years' experience in university management", not necessarily a full professor (*catedrático*), and elected by universal weighted suffrage with a majority of PDI. It is not reasonable to require 4 years of management experience: the Rector, who in particular should lead and implement the academic and research university policies of his/her university, is confused in the LOSU with the university's Manager (the *Gerente*). The Report required at least 4 six-year research approved periods for a Rector; it also allowed the candidate to be a foreign academic of renowned prestige. Clearly, the LOSU is not inspired on good universities.

Let us examine Internationalisation, 5. Why not address the root of this problem and urge the SUE to recruit at least a very modest 3%-5% of foreign teaching staff (PDI)? Art. 97 speaks of "boosting the internationalisation of the university system" leaving this initiative[16] up to the universities themselves (Art. 97.1) which will be supported (Art. 97.2), but it does not explain how. Art. 92.1 will likewise not help promoting internationalisation by stating that "universities shall encourage the use of the co-official languages in their territories", particularly in view of the increasingly exclusive interpretation given to such 'encouragement' (to which universities must allocate funds, Art. 39.3c). A further hazard to internationalisation is, of course, the ANECA itself (strongly criticised in the 2013 Report) and its AASDPE-like criteria. The CNEAI or *Comisión Nacional de Evaluación de la Investigación* [National Commission for the Evaluation of Research] must recover its former independence from ANECA and prestige: it is enough to read the recent 9 principles and 20 (sic) guidelines to be applied by its evaluators to understand why. The ANECA, moreover, has recently been involved last October in an international scandal after an extravagant report suggesting that excellent scientific journals should not be considered as such. The Agency's current Director (since 2020), the mathematician Mercedes Siles, has recently appointed (BOE 24-XI-2021) "in view of the number of applications" further experts for the Assessment Committees of the CNEAI: two for Mathematics and Physics, two for Chemistry, one for Cellular and Molecular Biology and one for Natural Sciences. However, 14 are appointed to

Economic and Business Sciences, 4 to Social Sciences, Political Sciences and Gender Studies, etc. Let me summarize: ANECA *delenda est*. Regarding 6, it would not seem that the LOSU will help universities to recover any degree of autonomy (Art. 37) as this depends largely on financial aspects. In any case, a better system of government is a *prior* requirement for greater autonomy, and the LOSU will not provide it. Finally, it seems that — as might have been expected — bureaucracy does not officially exist; what little there is, it is 'exterior' (Art. 102). To sum up: *Nihil novum sub sole*.

In the meantime, we witness how China, after the disastrous consequences of Mao's cultural revolution that literally destroyed its universities, ended up reforming its educational system bringing back effort and merit (the initial aim of the Shanghai ranking was, precisely, to gauge the *actual* quality of Chinese universities). Having left behind the "century of humiliation", China is today the second world economic power, and, without implying any sympathy toward their national-techno-capitalist communism, the fact is that China has achieved in three decades what took other countries two centuries. Although not exactly in the terms he envisaged, it is what the politician and academic Alain Peyrefitte forecast in *Quand la Chine s'éveillera... le monde tremblera* (1973), whose sequel, *La Chine s'est éveillée*, was published in 1996. Singapore, as China before on a massive scale and, over a century ago, Japan during the Meiji restoration, grants scholarships to its best students to study abroad with a commitment to return for a period of time, with spectacular results. Japan, as we know, is today the third world economy, followed by Germany. Good education not only leads to greater knowledge: it also raises the GDP.

I cannot consider other issues, among them the surprising practical indifference toward education of a large part of Spanish society, through lack of space. I will conclude with a reference to the Report[17] since, despite the years that have passed, I believe it still contains the best diagnosis and proposals for reforming the SUE. Our universities do not deserve undergoing another full and traumatic restructuring that will not resolve their problems. Of these, the most pressing are two: the generational replacement of PDI and the extreme precariousness in certain sectors. And for both *there is a simple remedy that only requires the proper funding*: creating a suitable number of positions in a constant and tiered manner, eliminating the criteria set by the expendable ANECA (that furthermore hamper the incorporation of expatriated talent that the opacities in LOSU's Art. 102 fail to resolve) and to follow principle P2 to cover these positions. University education will not improve with the changes put forward in the LOSU, that seem inspired by the words of Tancredi, the nephew of the prince of Salina: *se vogliamo che tutto rimanga com'è, bisogna che tutto cambi* [if we wish that all remains as before, we need to change everything]. Well, for the changes implied by the LOSU, it is much better to stay put.

Notes:

and subsequently in the derogated *Ley Orgánica para la Mejora de la Calidad Educativa* (LOMCE, BOE 10·XII·2013, enacted by M. Rajoy); they were ubiquitous in both.

[2] See, respectively, R. Dawkins (1998), Postmodernism disrobed, *Nature*, *394*, 141·143 and L. Irigaray (2002), *To Speak is Never Neutral*, Routledge. See also A. Sokal and A. Bricmont (1997), *Impostures Intelectuells*, Éd. Odile Jacob.

[3] The Mondays of "El imparcial", Madrid, 17 November 1913; OC VIII, *Inquietudes y meditaciones*, p. 550, Escelicer (1967).

[4] In a book that, the author tells me, is due to appear soon (my thanks to J.M. Lacasa for the quotation).

[5] Not specifying the level achieved diminishes the 'public attestation' nature that any diploma conveys to society. Nonetheless, Art. 16. 4 establishes that "in any case, all students will receive, on concluding the ESO [Obligatory Secondary Education], an official certificate stating the number of years studied and the level of acquisition of the competences required during this stage". As reality is obstinate, we may expect that employers will eventually demand this certificate too.

[6] According to the World Bank (2019), Spain invested in education only *4.3 % of its GDP*, well below the mean of 4.9 % throughout the OECD and of 5.2 % (Finland), 7.6 % (Norway), 5 % (Germany), 5.4 % (France) or 5.2 % (UK).

[7] I acknowledge M. Gomendio for this information.

[8] In fact, if there is development, it is *not* sustainable. The Earth at present supports 7800 million people, which the United Nations expects to reach 11200 by the turn of the century. All we can do is strive to mitigate unfair imbalances in the development of different areas of the planet, but we cannot speak of "sustainable growth" as this is a *contradictio in terminis* destined to soothe consciences.

[9] See my Darwin y la alianza de civilizaciones (2009), *CLAVES de Razón Práctica*, *194*, 20·27, also under 'general articles' at http://www.j.a.de.azcarraga.es (# 27).

[10] Judt is not always precise; in particular, Emanuel was not a "direct grant grammar school" as he says in *The Memory Chalet* nor, as Peter Goddard (who coincided with Judt at Emanuel) told me, did the school have so many students at that time (about 700 rather than the 1000 claimed by Judt).

[11] Manuel Castells has resigned today (16th December 2021); he has been replaced by Joan Subirats. Nevertheless, the processing of the LOSU is likely to continue.

[12] See my ¿Universidades boloñesas 4+máster o 3+máster? (2015), *CIAN-Revista de Historia de las Universidades*, *18* (1), 21·54, journal published by the Instituto Figuerola de Historia y Ciencias Sociales de la Univ. Carlos III de Madrid, #44 in http://www.j.a.de.azcarraga.es

[13] See J. A. de Azcárraga and F. M. Goñi (2014), *Sobre la necesidad de una reforma universitaria [On the need for university reform]*, **revista española de pedagogía**, *72* (257), 5·21. This need had been likewise identified in the report of a committee headed by theoretical physicist R. Tarrach, *Audacia para llegar lejos: universidades fuertes para la España del mañana* (2011), that contained several useful recommendations, also ignored.

[14] The Report recommended that universities could voluntarily return to the 3 + 2 years *Bolognese* structure, predominant in Europe, but the law authorising this was rejected by the corporatist *Conferencia de Rectores de las Universidades Españolas* (CRUE) and the universities' trade unions.

[15] The underlying philosophy for these 6 years is that the present two 4+4 years system implies the first 4·year period is wasted because e.g. Rectors may fear losing re·election if they act beyond being mere caretakers. But this argument is wrong: it just shows that current university governance is badly designed (see the Report).

[16] There was an excellent *national* programme for sabbatical years abroad and another reciprocal one for foreign doctors and technologists at Spanish centres; they no longer exist.

[17] Available at http://www.j.a.de.azcarraga.es in the section general articles, or https://www.uv.es/~azcarrag/ (# 36). These sites contain further papers on university issues.

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129 EV

Research and proposals

María Teresa Ballestar, Jorge Sainz e Ismael Sanz
An economic evaluation of educational interventions in the LOMLOE:
Proposals for improvement with Artificial Intelligence

Francisco López Rupérez
The quality of governance of the education system. The case of the LOMLOE

Inmaculada Egido Gálvez
Curriculum reform to respond to the challenges of the future.
Spain in international perspective

Samuel Gento Palacios, Raúl González-Fernández y Ernesto López-Gómez
Heads of educational institutions and expansion of autonomy with accountability.
The mediating role of pedagogical leadership

An economic evaluation of educational interventions in the LOMLOE*: Proposals for improvement with Artificial Intelligence

Evaluación económica de intervenciones educativas en la LOMLOE: Propuestas de mejora con Inteligencia Artificial

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Abstract:

This research aims to demonstrate the need for an economic evaluation of the Organic Law that modifies the Organic Law of Education (LOMLOE), especially after the investment of EU Next Generation funds that open new opportunities that were lacking in the initial drafting of the law. The challenge for Public Administrations is to use this additional investment efficiently.

Our analysis shows that artificial intelligence models can predict whether educational support programmes will help increase the likelihood that students who lag behind will pass the 4th grade of ESO (Compulsory Secondary Education). In this way, we can calculate the social return of one of these programmes and contribute to their *ex-ante* design to achieve higher success rates for students.

To complement the models already used by Public Administrations, we use robust Machine Learning (ML) models such as CHAID decision trees and artificial neural networks to analyse the characteristics of the groups of students and the intervention they have been part of. The conclusions allow us to improve educational reinforcement programmes in the coming years to

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support students with lower chances of academic success.

Keywords: Public policy analysis, Machine Learning, educational efficiency, LOMLOE.

Resumen:

El objetivo de esta investigación es demostrar la necesidad de evaluar económicamente la LOMLOE (Ley Orgánica 3/2020, de 29 de diciembre de 2020, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación), especialmente tras la inversión de los fondos EU Next Generation que abren nuevas oportunidades de las que carecía la ley en su redacción inicial. Las Administraciones públicas tienen el reto de emplear esa inversión adicional de forma eficiente.

Nuestro análisis demuestra que los modelos de inteligencia artificial pueden predecir si los programas de apoyo educativo ayudarán a incrementar la probabilidad de que estudiantes rezagados superen 4.º de la ESO. De esta forma, se puede calcular el retorno social de los programas de apoyo educativo y contribuir a su diseño *ex-ante* para lograr que los alumnos tengan mayores tasas de éxito.

Para completar los modelos ya utilizados por Administraciones públicas, empleamos modelos de Machine Learning (ML) robustos como árboles de decisión CHAID y redes neuronales artificiales para analizar las características de los grupos de estudiantes y la intervención en la que han formado parte. Las conclusiones permiten mejorar los programas de refuerzo educativo de los próximos años para apoyar a los alumnos con menos posibilidades de éxito académico.

Descriptores: análisis de políticas públicas, *Machine Learning*, eficiencia educativa, LOMLOE.

1. Introduction

One of the principles of educational management by international organisations such as the OECD (Organisation for Economic Co-operation and Development) is the evaluation of educational policies, both global and of specific interventions. (Golden, 2020). The result of the analysis leads to greater effectiveness and impact, both at the social and individual levels, of educational actions. This in turn has a positive impact on students and a positive dynamic for the system in general. (OECD, 2018). This informative principle appears in almost all European law, and, in the case of Spain, is included in Organic Law 2/2006 of 3 May (LOE), which states in Article 2 bis that "The functioning of the Spanish Education System is governed by the principles of [...] efficiency in the allocation of public resources, transparency and accountability".

Our aim is to demonstrate that the economic evaluation of education policies serves to optimise and prioritise the legislative objectives set by the LOMLOE. This fact would demonstrate that the law faces a gap in its construction that affects its management evaluation, an evaluation

that is a requirement for the justification of *EU Next Generation* funds for education, which in 2021 alone represent 1,852.5 million euros in the general state budget.

It is this European investment that will make it possible to implement and evaluate the law, since in its Analysis and Regulatory Impact Report (known as MAIN), which includes the technical aspects of the regulation, it is stated that "…the project does not involve an increase or decrease in public spending". On the other hand, the Commission requires an assessment of whether the population effectively acquires the skills to compete at a global level. (Crescenzi et al., 2021; Porte & Jensen, 2021).

The European Commission and UNESCO recognise the importance of this type of action, both in the choice of reforms and in their subsequent analysis, and the need for data on educational interventions to be available for said analysis, despite the reluctance of some administrations. European Comission (EC, 2010; Yusuf, 2007). Although the preferred approach for this analysis is the experimental method, in the reality of education there are problems in carrying it out for various reasons: such as the economic cost, the difficulty of establishing randomised control groups, problems of management, anxiety, etc. (Golden, 2020; Slavin, 2016).

To solve this proposition, there is an arsenal of new techniques that are being used and which are in full development and can serve as a proposition, including artificial intelligence (AI) (Ballestar et al.,

2019; Chassignol et al., 2018; Chatterjee & Bhattacharjee, 2020) because of the difficulty of identifying who are the main beneficiaries and what are the long-term effects. Still, new policies including financial incentives have been adopted to increase the research output at all possible levels. Little literature has been devoted to the response to those incentives. To bridge this gap, we carry out our analysis with data of a six years program developed in Madrid (Spain. Following the triangulation strategy of Ballestar et al., (2020) we evaluate the use of different AI strategies for the evaluation of the return on educational interventions. To do so, we will delve into the intervention carried out by the Regional Ministry of Education of the Junta de Comunidades de Castilla y León called *Programa para la Mejora del Éxito Educativo (Programme for the Improvement of Educational Achievement)*, which we will analyse in its 2020 edition, after the closure of schools due to the pandemic. The Junta made a call for financial aid so that schools could offer support classrooms during July to students in the sixth year of primary school, the fourth year of ESO and the second year of baccalaureate in the areas of Spanish language and literature, mathematics, or English with educational difficulties. The programme has contributed over the years to the promotion of a significant number of students in the community. All grades benefited from the programme, yielding an improvement in promotion of 5% in the 2019-20 academic year for students who participated in the programme, compared to those who were able to participate but did not.

2. The intervention

To design any educational intervention Slavin (2016) y Golden (2020) recognise as fundamental that it should be based on scientific evaluations. The support classes that make up the *Programa para la Mejora del Éxito Educativo en* Castilla y León are probably one of the most scientifically grounded in recent years. Research conducted by the *Education Endowment Foundation[1]* shows that small group tutoring is among the measures for which there is empirical evidence of greatest effectiveness internationally. As such, they have proven to be a good complement to an education system that is designed to move large numbers of students from grade to grade, but which does not work for all students.

Kraft (2015) and Burgess (2020) discuss the factors contributing to its success: delivery by selected and trained staff in coordination with their regular teachers and in small groups. The impact is significant: Nickow et al., (2020) show, from the study of 96 randomised experiment items, that the effect of small-group tutoring is large and significant (37% of the standard deviation).

This intervention is one of the few that are included in the Spanish legislation. LOMLOE, Art. 4.4, states as one objective to facilitate "...access to the support that students require" and the increase of these measures throughout the entire educational process in an individualised manner (Artart. 20 bis) "...to avoid school repetition, particularly in socially disadvantaged environments".

In fact, the regulation leaves a very clear wording on its objectives to repetition, for example, the new Artart. 28 reads: "Remaining in the same year [of secondary school] shall be considered an exceptional measure and shall be taken after having exhausted the ordinary reinforcement and support measures to solve learning difficulties".

These support measures have been present in educational legislation throughout this century. Thus, the unborn Organic Law 10/2002, of 23 December, on the Law on the Quality of Education (LOCE) included in its art. 2 the right of students to "...receive the necessary help and support to compensate for personal, family, economic, social, and cultural deficiencies, and disadvantages, especially in the case of special educational needs, which prevent or hinder access to and permanence in the education system". The various regulations since then have taken up similar precepts of protection in line with the recommendations of specialised bodies (Gouëdard et al., 2020; Pont & Montt, 2014; Schleicher, 2020) or the literature on educational return (Brunello & Paola, 2014; de la Fuente & Jimeno, 2009; Doncel et al., 2014) which establish the importance of the acquisition of competences, a fact which has become fundamental with the irruption of new technologies (Ballestar et al., 2020, 2022; Goos et al., 2009; Gregory et al., 2019).

Art. 9 of the LOMLOE gives the responsibility to the autonomous communities (CCAA) to reduce and prevent school fail-

ure and early school leaving through territorial cooperation programmes. The Law's Analysis and Regulatory Impact Report (MAIN) in the first draft of the law, prior to the pandemic, provides 45 million euros per year for this type of programme for the period 2020-2023.

The autonomous regions were already investing heavily in this type of project. Since the 2007-2008 academic year, the Regional Ministry of Education of Castilla y León (Castile and Leon) has been developing, among others, the *Programme for the Improvement of Educational Achievement*. Its objectives are, in line with the LOE, LOMCE (Organic Law for the Improvement of the Quality of Education, 2013) and LOMLOE "… to contribute to the improvement of the educational model in the Community of Castilla y León and to facilitate the success and continuity of students in the education system" guaranteeing "the didactic progression of students and their promotion in the education system, reducing early school leaving, promoting their effective integration into the labour market and at the same time optimising the climate of coexistence in schools".

It is the schools that request these measures to favour educational success, the integration of students and the involvement of families to increase the promotion and graduation rate of students, with special attention to the most vulnerable students in the 4th year of ESO, 6th year of Primary Education and 2nd year of Baccalaureate in publicly funded schools. The programme was is taught in

93 centres in language, mathematics, and English to reinforce the end of the cycle and with the participation of students attending voluntarily and supported by their families. The access requirements are to require educational support or to be in a situation of socio-educational vulnerability and it is taught by specialised teachers.

For the 2019-2020 academic year, students participating in the programme increase their probability of passing language by 24.6%, English by 13.8% and mathematics by 8.4% compared to those not enrolled, generating a high level of satisfaction among both teachers (85.7%) and families (88.2%).

This first analysis serves as the basis for our research on the economic efficiency of the interventions included in the LOMLOE. To this end, we propose to classify students participating in the Programme for the Improvement of Educational Success in Castile and Leon in the 4th year of ESO into groups and to predict the probability of passing this school year for each of the groups of students. This will allow individual predictions to be made for students based on their characteristics, details of the special support programme carried out and their performance in the programme. This allows the probability of success of the programme to be estimated and its social return (ROI) calculated through a triangulation model that employs different ML methodologies such as CHAID decision trees and artificial neural networks to evaluate educational policies.

3. Empirical analysis.

The information used for the analysis contains the data available for students in the 4th year of ESO participating in the Programme for the Improvement of Educational Success in the 2019-2020 academic year. There are 1,739 records that correspond to the students who participated in one of the three programmes implemented in the Autonomous Community. Of these, 47.27% are girls and 52.73% are boys. Of these students, 47.15% (820 students) have already repeated a grade.

Students can participate in three categories of programmes. The C2 consists of accompanying students throughout the academic year and accounts for 76.37% of students (1,328). The C3 consists of extra classes during the summer in July and includes 17.02% of the students (296). The C2C3 programme, a combination of the two previous programmes, represents 6.61% of the students (115). These actions are delivered in the nine provinces of Castilla y León, with 66.36% of the students concentrated in provincial capitals and 33.64% in other localities, with a success rate in the completion of 4th-year ESO studies of 85.34% for those who finished the programme.

One of the innovations of our research is the application of a triangulation methodology, which consists of the development of more than one quantitative method, applying different approaches, with the aim of enriching the results, as well as confirming the results obtained twice. (Ballestar et al., 2020). In the first phase, we develop a Machine Learning (ML) model based on CHAID (Chisquare Automatic Interaction Detector) decision trees to determine which variables are relevant when designing and predicting the expected success rate of participants in the programme. The aim is to identify the factors to be considered when designing an intervention of these characteristics, as well as to calculate its success rate and, consequently, the social return on the investment made.

In the second phase, we assess the robustness of the first model by designing a new model using an ML methodology based on artificial neural networks multilayer perceptron backward programming (ANN-MPL) to validate the results obtained previously.

3.1. Definition of variables in ML models.

CHAID decision trees and multilayer perceptron artificial neural networks (ANN-MLP) are supervised machine learning methods. These models describe and explain the underlying relationships between different input variables in order to predict the value of the target variable, through a training process using a data sample that contains both the values for the input and output variables. (Maimon & Rokach, 2005). As supervised methods, the accuracy of their classifications and predictions will depend on the quality of the sample available for training, validation and testing of the models. (Aad et al., 2012; Ballestar et al., 2018; Li & Eastman, 2006).

We performed a data mining process on the database to create a single table for the development of the ML models. This table

contains 1,739 student records and 21 variables that capture the information for the characterisation of the student, as well as their performance and results both in the programme they have participated in and in the 4th year of ESO.

Through descriptive and iterative causal analyses, five of these variables were statistically significant and relevant for the empirical analysis and development of the two ML models. Of these variables, four act as input variables in the models and one as an output or target variable to be determined or predicted (Table 1). Therefore, both models use the same five variables and are trained on the same database.

The target or output variable, the percentage of students who did not pass the

TABLE 1. Description of the variables of the ML models: CHAID decision tree and multilayer perceptron artificial neural network (ANN-MLP).

Input variables	Description
years_repetition	Discrete numeric variable. Number of years the student has repeated. If the student has not repeated any year, the value will be 0.
student_repetition	Boolean variable. Value 1 if the student has repeated a course; Value 0 if the student has not repeated a course.
kind_program	Categorical variable indicating which of the three academic programmes the student has completed: C2; C3; C2C3.
finish_program	Boolean variable. Value 1 if the student has completed the academic support programme; Value 0 if the student has not completed it.

Output variable	Description
finish_studies	Boolean variable. Value 1 if the student has passed the 4th year of ESO; Value 0 if the student has not passed the course.

Source: Own elaboration.

4th year of ESO (0 in the variable finish_studies), is 14.66%, while those who do pass the year represent 85.34% (value 1 of the variable finish_studies), leaving an unbalanced sample.

3.2. First phase of the empirical analysis: Predictive model of the success of the special education support programme.

In this phase, we developed a model consisting of a CHAID or *chi-squared automatic interaction detection (*CHAID) decision tree

(Kass, 1980)CHAID, is and offshoot of AID (Automatic Interaction Detection whose objective is twofold: classification and prediction. This model will classify each of the students into homogeneous groups based on the explanatory input variables or predictors that interact significantly with the dependent output or target variable (Akin et al., 2017; Khosravi et al., 2019). The algorithm identifies the students who are likely to belong to a particular group and, at the same time, identifies the rules that it

will use in predicting future cases of those students who have not participated. In our case, these groupings are constituted according to the characteristics of the student, the programme in which he/she participates and his/her performance, making it possible to fulfil the second objective of determining and predicting the pass rate in the 4th year of ESO for each of the groups and individually (Ramaswami & Bhaskaran, 2010). Finally, the prediction of this success rate makes it possible to calculate how to reinforce each of the programmes by type of student.

One of the benefits provided by CHAID decision trees over other methods is that they could generate non-binary trees. In addition, they also support continuous or categorical numeric type input variables. Being non-parametric, it can handle both linear and non-linear relationships between the explanatory variables and the output variable and can also handle very large volumes of data very efficiently, even in real time, (Chassignol et al., 2018; Khosravi et al., 2019).

For the development and training of the model, we applied a training, testing and validation (TTV) methodology which consists of training the model with 70% (1,203 records) of the sample and testing and validating it with the remaining 20% (367 records) and 10% (169 records) of the sample, respectively. (Ballestar et al., 2019)because of the difficulty of identifying who are the main beneficiaries and

GRAPH 1. CHAID decision tree diagram for the success model of the student support programmes for the successful completion of the 4th year of ESO.
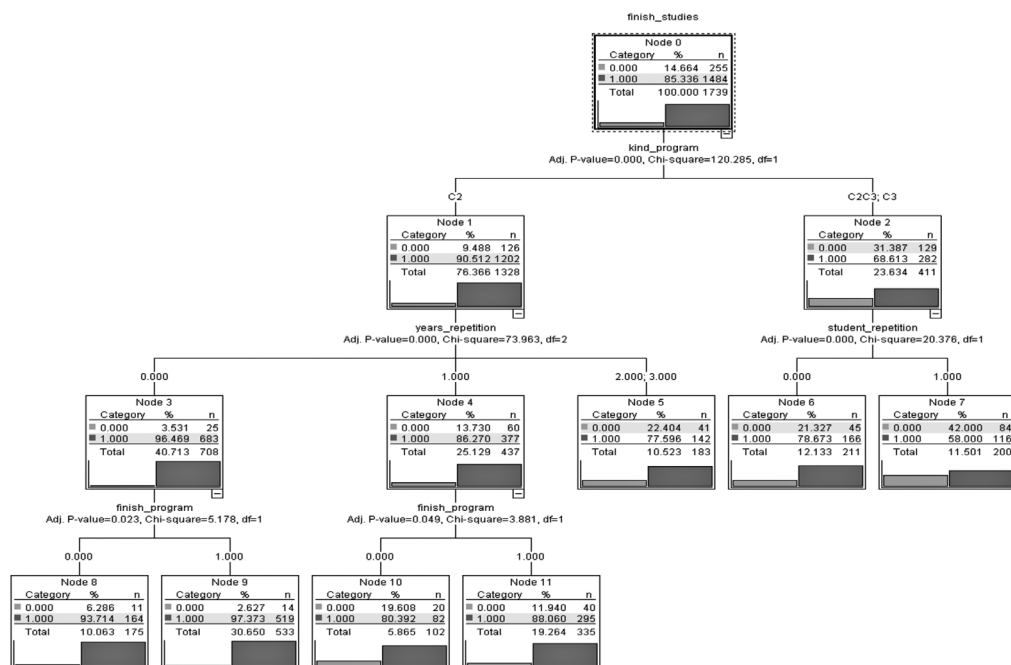
Source: Own elaboration.

what are the long-term effects. Still, new policies including financial incentives have been adopted to increase the research output at all possible levels. Little literature has been devoted to the response to those incentives. To bridge this gap, we carry out our analysis with data of a six years program developed in Madrid (Spain). Graph 1 shows the CHAID decision tree diagram obtained for the programme success model.

3.2.1. First phase of the empirical analysis: Evaluation of the model.

The most relevant CHAID indicators are classification accuracy, sensitivity, specificity, area under the ROC curve and the GINI coefficient. These accuracy indicators and the confusion matrix, which contains the percentage of cases classified both correctly and incorrectly for the two possible values of the dependent variable, are available in Table 2. The indicators have been calculated both for the total sample and for each of the training, testing and validation subsamples of the model. Therefore, we observe that the model has an accuracy in classifying students and predicting their percentage of passing students of 70.73% (error of 29.27%). This percentage of correctly classified students is very similar between all the training, testing and validation subsamples, so we can affirm that the model has not been overtrained.

The percentage of true positives, called *sensitivity*, is 71.43%. This value explains the percentage of students who pass the course and who have been correctly classified by the CHAID decision tree based on the characteristics of the student, the support programme carried out and their result in this programme. The percentage of true negatives, also called *specificity*, is 66.67%. This value is the percentage of students who do not pass the 4th year of ESO and who have been correctly classified based on the same input variables. The complementary values are the percentage of false positives, 33.33%, which corresponds to the percentage of students who did not pass the 4th year of ESO and were classified by the model as having achieved it. Finally, the percentage of false negatives is 28.57%. This value corresponds to the percentage of students who, having passed the year, were classified by the model as not having passed it.

In this research we prefer to use as the main measure of accuracy of the CHAID decision tree the area under the curve (AUC) ROC indicator, as it is more robust than the classification accuracy indicator when working with unbalanced samples as in our case (Table 2). (Dželihodži & Jonko, 2016; Yin et al., 2013). The area under the ROC curve (AUC) for the total sample has a value of 0.762, like those of the training, testing and model validation subsamples (0.763, 0.760 and 0.755 respectively). The AUC values can range from 0.5, which is the worst possible value and would imply that the model makes random classifications, to 1, which is the best value and would mean that the model makes perfect classifications. Therefore, it can be concluded that the quality of this CHAID decision tree model is good. (Hosmer Jr., et al., 2013). Complementarily, the GINI coefficient has also been calculat-

TABLE 2. Model accuracy and confusion matrix of the CHAID decision tree.

Model Accuracy

Sample	Sub-sample	Sample size	Percentage Correct	AUC	GINI
Total Sample		1739	70.73%	0.762	0.523
	Training	1203	70.91%	0.763	0.527
	Test	367	69.21%	0.760	0.519
	Validation	169	72.78%	0.755	0.510

Confusion Matrix

Sample	Observed	Sample size		Percentage	
		Predicción			
		0	1	0	1
Total Sample	0	170	85	66.67%	33.33%
	1	424	1060	28.57%	71.43%
Training	0	117	62	65.36%	34.64%
	1	288	736	28.13%	71.88%
Test	0	34	16	68.00%	32.00%
	1	97	220	30.60%	69.40%
Validation	0	19	7	73.08%	26.92%
	1	39	104	27.27%	72.73%

Source: Own elaboration.

GRAPH 2. Relative importance of input variables in the CHAID decision tree.

Predictor Importance

Target: finish_studies

Less important   Most important
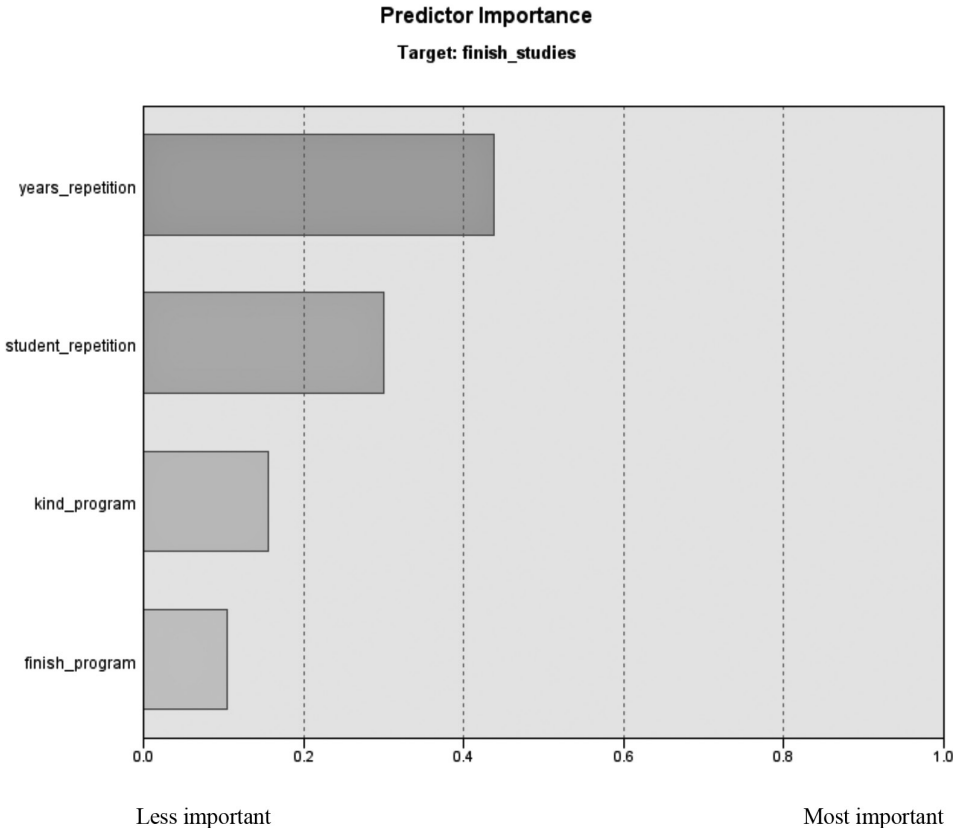
Source: Own elaboration.

ed, which can be used alternatively to the AUC, as they are closely related. The GINI coefficient represents twice the area between the ROC curve and the diagonal and ranges between the values 0 and 1. In our research, the GINI coefficient for the total sample has a value of 0.523, like that of the training, testing and validation subsamples of the model (0.527, 0.519 and 0.510 respectively).

Graph 2 shows the relative importance of each of the significant predictor variables in the CHAID decision tree.

The importance of these predictors is determined by calculating the reduction in variance of the target variable (completion or non-completion of the 4th year of ESO per student) that can be attributed to each predictor by performing a sensitivity analysis. (Saltelli et al., 2004). In this research, the variable that accumulates 44% of the relative importance is the number of years that the student has repeated (years_repetition), followed by the variable indicating whether the student has repeated or not (student_repetition) with an importance of 30%. Next, with

16%, is the type of programme in which the student participated (kind_program) and, finally, with 10%, whether the student completed the special support programme (finish_program).

3.2.2. First phase of the empirical analysis: Analysis of the results of the CHAID decision tree model.

The CHAID-based ML model produces a tree in which the first group, called the *root node*, represents the total set of the sample, in this case, the 1,739 students analysed. The algorithm divides this set into two or more categories called *parent or initial nodes*. Below the parent nodes, child nodes are linked to them. The categories at the last level of the decision tree are called *terminal nodes*. In terms of hierarchy, the *parent or initial nodes* exert the greatest influence on the *root node*, corresponding to the dependent variable it seeks to explain, while they exert a lesser influence on the *terminal nodes*.

The total number of nodes is 12, distributed as follows in three levels of depth: one root node (level 0), four parent nodes (distributed in levels 1 and 2) and seven terminal nodes (distributed in levels 2 and 3) (Figure Graph 1). Additionally, based on the model evaluation analysis carried out in the previous section, it has been shown that this model has a good segmentation and prediction capacity (ROC of 0.762).

3.2.2.1. Level 0 of the CHAID Decision Tree.

At Level 0 of the CHAID decision tree, Node 0 is the variable to be predicted, which determines whether the student has successfully completed the 4th year of ESO (finish_studies). At this level it is observed that, for the total sample, 85.34% have passed the course, while 14.66% have not.

3.2.2.2. Level 1 of the CHAID Decision Tree.

At this level, the most relevant variable to define the first two parent nodes (Node 1 and Node 2) is the type of programme in which the student has participated (kind_program). Each of these nodes will give rise to a sub-tree that will use different predictor variables to define the following levels. At this level, the most relevant variable is the programme in which the student has participated, whether he/she has completed it or not. Of the students who have participated in the C2 programme (accompaniment of the student throughout the 4th year of ESO), 90.51% have passed the 4th year of ESO, compared to 68.61% of those who have participated in the C3 and C2C3 programmes. Therefore, the programme with the greatest success in its objectives is C2.

3.2.2.3. Level 2 of CHAID Decision Sub-tree 1 (Left).

The next most relevant variable having participated in the C2 programme is the number of times they have repeated a year (years_repetition). In Node 1 90.51% of the students pass, but this percentage can vary greatly depending on whether the student has repeated a year or not previously: students who have not repeated a year increase their pass rate to 96.46% (Node 3), while those who have repeated once see it reduced to 86.27% (Node 4) and those who have re-

peated two or more times to 77.59% (Node 5). Non-repeaters obtain better results in the 4th year of ESO compared to those who have repeated a year at least once.

In this Level 2 we find the nodes Node 3, 4 and 5. On the one hand, the nodes Node 3 and 4, in which the students have not repeated a grade or have done so only once, give rise to the new subtrees of Level 3. In this Level 3 the most discriminant variable is the one that determines whether the student managed to finish the C2 programme in which he/she participated (finish_program). On the other hand, Node 5 of Level 2 is a terminal node (it has no more sublevels), which implies that the probability of passing the 4th year of ESO for the students in this group is independent of their performance in the C2 programme, contrary to Node 3 and 4.

3.2.2.4. Level 3 of CHAID Decision Subtree 1 (Left).

In Level 3 there are 4 terminal nodes: Node 8 and Node 9 correspond to students who, having participated in C2, have not repeated previously, and come from the sub-tree of Node 3. The students in Node 9 have completed the C2 programme and therefore 97.37% have managed to pass the 4th year of ESO, the most successful figure of all the segments of the CHAID decision tree. While in Node 8 they have not managed to complete the C2 programme, and their success rate drops to 93.71%.

Node 10 and Node 11 correspond to students in C2 who have repeated a grade once and come from the sub-tree of Node 4. Students in Node 11 have completed the

C2 programme and therefore 88.06% have managed to pass the 4th year of ESO, while those in Node 10 see this figure reduced to 80.39% because they have not completed the C2 programme. Therefore, students who complete the C2 programme obtain better results in the 4th year of ESO compared to those who have not completed the programme.

3.2.2.5. Level 2 of CHAID Decision Subtree 2 (Right).

In level 2 of subtree 2 (right, having been part of C2C3 or C3) is whether the student has ever repeated a year (student_repetition). We know that in Node 2 only 68.61% of the students pass, but this percentage can vary a lot depending on whether the student is a repeater or not. Students who have not repeated any year increase their pass rate in 4th ESO to 78.67% (Node 6), while those who have repeated a year see this percentage reduced to 58% (Node 7). Therefore, non-repeaters obtain better results in the 4th year of ESO compared to those who have repeated a grade. In this sub-tree 2 (right) there are no more levels, and this variable is the last relevant variable to generate more groups of students.

3.3. Second phase of the empirical analysis: Analysis of the robustness and predictive quality of the model.

In this research, a triangulation methodology is applied to test the robustness of the results obtained in the first phase. For this purpose, an ML predictive model based on a multilayer perceptron artificial neural network (ANN-MLP) is developed. Both models use the same database

rep

with the same input variables (student characterisation, performance and type of programme carried out) and output (student performance in the 4th year of ESO) (Table 1), but they are built using completely different ML methods, with the aim of verifying whether they obtain confirmatory results. (Wolszczak-Derlacz & Parteka, 2011).

ANN-MLP has the ability of neural networks to handle complex relationships between variables, both linear and non-linear, which makes them an alternative to more traditional predictive models such as logistic regressions where the variable

to be predicted is dichotomous. (Paliwal & Kumar, 2009). This ensures that no relationships are left unidentified.

While training the ANN-MLP it should be considered whether the distribution of the dependent variable is unbalanced. This bias in our sample could have a negative impact on the ANN-MLP training process. To avoid this, we applied an *oversampling method* on the underrepresented group to train the model with 70% (2,098 records) of the sample already balanced, ensuring that both groups of students are equally represented when training the model.

GRAPH 3. ANN-MLP architecture for predicting the success of programmes to support students to pass the 4th year of ESO.
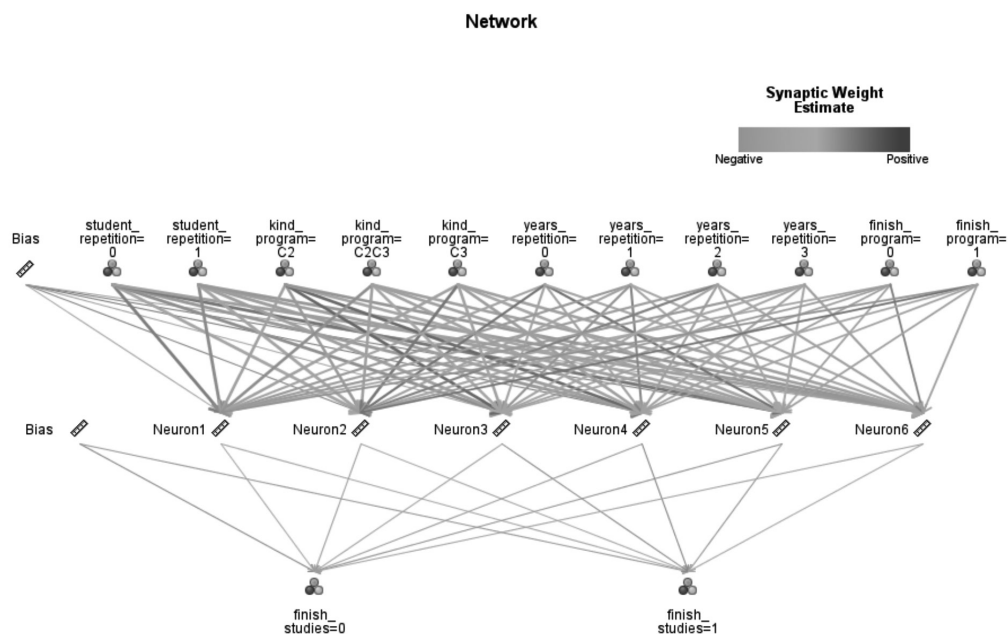
Source: Own elaboration.

On the other hand, the validation and testing of the ANN-MLP model is carried out respectively with 20% (367 records) and 10% (169 records) of the sample, this time, without balancing. We also follow a training, testing and validation (TTV) methodology.

Graph 3 shows the architecture used to predict the success of student support programmes for passing the 4th grade of ESO, consisting of three layers: the first input layer consists of eleven units, corresponding to the possible values of the four input variables related to the characteristics of the students, their performance and the programme carried out (Table 1). The middle layer, called the hidden layer, consists of six units or neurons. Finally, the last one consists of two units, corresponding to the prediction of student performance in 4th ESO (Table 1). The type of activation function of the hidden layer and the output layer correspond to a hyperbolic tangent and *softmax* respectively.

Table 3 describes the accuracy indicators and the confusion matrix of the ANN-MLP which show that the quality of this model is good: correct classification of 71.19% of the students and an AUC of 0.763. (Hosmer Jr., et al., 2013). Furthermore, it is also verified that there is no over-training as the indicators obtained for the total sample, as well as for the training, testing and validation subsamples are similar.

4. Discussion

The indicators we have used to assess the accuracy of the ANN-MLP as a pre-dictor of student success are the same as those used for the CHAID, thus facilitating the comparison between results, predictive quality, and robustness of both models.

Table 4 compares the classification accuracy and confusion matrix indicators of both models (Table 3 vs. Table 2). The predictions and accuracy of the ANN-MLP are consistent with those of the CHAID decision tree. The ANN-MLP correctly predicts 71.19% (8.81% error) of the students who will pass the 4th year of ESO. This figure represents a 0.46% (8 students) higher predictive capacity compared to the 70.73% of correct predictions obtained by the CHAID decision tree. For the rest of the indicators, such as sensitivity, specificity, false positives and false negatives, the differences are also statistically non-significant, ranging from -1.57% (difference in the classification of four students) to 0.81% (difference in the classification of 12 students). The same is true for the differences between the areas under the ROC curve (AUC) and the GINI coefficient. The AUC for the ANN-MLP and the CHAID decision tree, 0.763 and 0.762 respectively and the GINI coefficient 0.525 and 0.523 respectively. Graph 4 shows the relative importance of the ANN-MLP input variables or predictors following the variance method and in total they add up to 1.

Although it is true that both the CHAID decision tree and the ANN-MLP use the same database and variables in the model and manage to achieve very similar results, predictive capacity and robustness, the way of doing so is very different, both in the methods used

TABLE 3. Model accuracy and confusion matrix of the artificial neural network multilayer perceptron (ANN-MLP).

Model Accuracy

Sample	Sample Size	Percentage Correct	AUC	GINI
Total Sample	1739	71.19%	0.763	0.525
Submuestra				
Training	2098*	69.78%	0.767	0.535
Test	367	70.03%	0.755	0.510
Validation	169	69.23%	0.744	0,488

Confusion Matrix

Sample	Observed	Sample Size 0	Sample Size 1	Percentage 0	Percentage 1
Total Muestra	0	166	89	65.10%	34.90%
	1	412	1072	27.76%	72.24%
Training	0	720	354	67.04%	32.96%
	1	280	744	27.34%	72.66%
Test	0	31	19	62.00%	38.00%
	1	91	226	28.71%	71.29%
Validation	0	15	11	57.69%	42.31%
	1	41	102	28.67%	71.33%

*Oversampled to balance the sample.

Source: Own elaboration.

TABLE 4. Comparison of indicators: Classification accuracy and confusion matrix of the ANN-MLP compared to the CHAID decision tree.

| Indicators | ANN-MLP compared to CHAID Tree | |
	% change	Classified variation
Percentage Correct	0.46%	8
Sensitivity	0.81%	12
Specificity	-1.57%	-4
False positives	1.57%	4
False negatives	-0.81%	-12
AUC	0.001	-
GINI	0.002	-

Source: Own elaboration.

GRAPH 4. Relative importance of the input variables of the artificial neural network multilayer perceptron (ANN-MLP).

Predictor Importance

Target: finish_studies

Less important   Most important
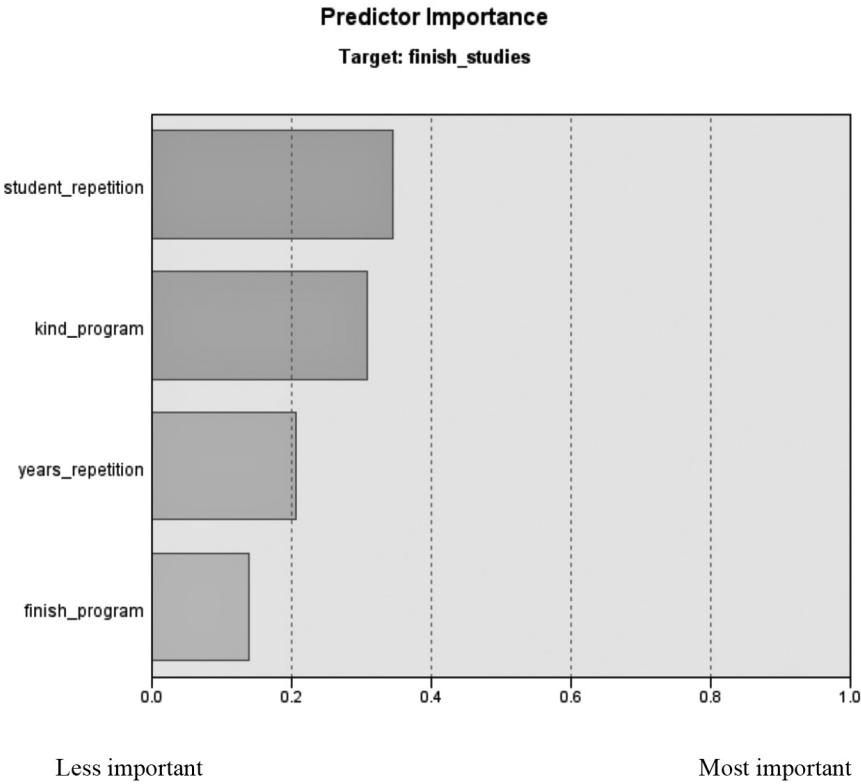
Source: Own elaboration.

and, in the handling, and importance of the variables that contribute to the model. In the case of the ANN-MLP, the variable with the highest relative importance accumulates up to 35% and indicates whether the student has repeated a year (student_repetition), followed by the type of programme in which the student participated with an importance of 31% (kind_program), next with an importance of 21% is the variable indicating the number of years repeated by the student (years_repetition) and, finally, with an importance of 13% is the variable indicating whether the student finished the special support programme (finish_program).

The application of the triangulation methodology concludes that the CHAID decision tree models and the ANN-MLP obtain similar results in terms of classification accuracy and prediction of the success of the student support programmes for passing the 4th year of ESO and, therefore, they are robust models that confirm their results. Of the three programmes analysed, the one with the highest success rate is C2, which accompanies the student throughout the entire 4th year of ESO, reaching a 90.51% pass rate, compared to 68.61% for the other two options C2 (extraordinary classes in July) and C2C3 (combination of the previous options).

In terms of educational evaluation, the results are striking: the economic and social return of an intervention can be evaluated according to the different characteristics of the students, such as course performance, the type of course or, of course, whether they are repeaters or not.

5. Conclusions

Through our research we have contrasted the need for an economic evaluation of the LOMLOE. The law started with the same budget allocation as the LOMCE for interventions such as the one analysed (45 million euros). The arrival of European funds opens up new possibilities not contemplated in its initial design, which in turn raises the challenge of using this additional investment efficiently.

Our analysis shows that it is possible to predict the probability of at-risk students passing the 4th year of ESO depending on the support programme they participate in. This can contribute to the design of more efficient programmes with higher success rates.

To complement the models already used by Public Administrations, we employ robust ML models such as CHAID decision trees and artificial neural networks to analyse the characteristics of the students, the intervention they have taken part in and the final outcomes. This allows us to maximise the social return of each programme and to support those students who are less likely to succeed.

For example, our results show that, in the *Programme for the Improvement of Educational Success* in Castile and Leon, regardless of the programme in which the student has participated, those who have never repeated a grade are more likely to pass the 4th year of ESO than those who have. The probability of passing the year increases when students, in addition to participating in special programmes, stay for the full support program. For this rea-

son, the group of students who achieve the best results is the group of non-repeaters who participate in and complete the C2 programme, with 97.37% passing the 4th year of ESO. While the group with the worst results is the group of repeaters who have participated in the C2C3 and C3 programmes, regardless of whether they have completed them or not, with a 58% pass rate in the 4th year of ESO. Our analysis also shows that providing educational support in July does not constitute a great added value since the C1 programme with accompaniment during the school year obtains better results than the C3 programme which combines this reinforcement during the school year with an additional reinforcement in the month of July. In the next phase of research, we will check whether these different results are due to the pupils themselves or to the characteristics of the programme.

As a corollary, we also show that ML models such as CHAID and artificial neural networks are good candidates for building models to answer the educational questions posed, such as the importance of mentoring the student to complete the programme and not drop out, especially in the case of young people who have repeated, for whom the programme is a very efficient tool to avoid school failure and an efficient way of investing public money.

Note

1 https://educationendowmentfoundation.org.uk/projects-and-evaluation/projects/the-impact-of-covid-19-on-school-starters/

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The quality of governance of the education evaluation system. The case of the LOMLOE*

La calidad de la gobernanza del sistema educativo. El caso de la LOMLOE

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Abstract:

In the context of a highly complex social and economic landscape, getting educational reforms right is a crucial part of governance understood as the ability of governments to design, formulate and implement public policies. This work focuses on the quality of governance in the education system. It starts by reviewing the concept of governance and its characteristic features. It then considers the quality of governance in education based on an integrated conceptual model, which is validated through a Delphi process of consultation of experts, and an international comparative analysis. The main results of an exploratory evaluation carried out in 2017 of the quality of governance in the Spanish education system are described next. Finally, the contributions of the LOMLOE legislation introduced in (2020) are analysed and evaluated in the light of the criteria derived from this conceptual model. The main conclusion that emerges from these empirical results is that the Spanish education system has a long journey ahead of it in terms of improving the quality of its governance.

Keywords: governance, quality of education, assessment, educational reform, educational legislation.

Resumen:

Ante un panorama social y económico altamente complejo, el acierto en las reformas educativas constituye un elemento decisivo de la gobernanza, en tanto que capacidad de los gobiernos para diseñar, formular e imple-

mentar políticas públicas. El presente trabajo se centra en la calidad de la gobernanza del sistema educativo. Para ello, parte del concepto de gobernanza y de sus rasgos característicos. Seguidamente, se detiene en la calidad de la gobernanza en educación a partir de un modelo conceptual integrado, y validado empíricamente a través de un procedimiento Delphi de consulta a expertos y de un análisis internacional comparado. A continuación, se describen los principales resultados de una evaluación exploratoria de la calidad de la gobernanza del sistema educativo español, efectuada en 2017. Y, finalmente, se analizan y valoran las aportaciones de la LOMLOE (Ley

Orgánica de 29 de diciembre de 2020, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación) a la luz de los criterios derivados de dicho modelo conceptual. La conclusión principal que emerge de estos resultados empíricos es que el sistema educativo español tiene por delante, en materia de calidad de su gobernanza, un amplio recorrido de mejora.

Descriptores: gobernanza, calidad de la educación, evaluación, reforma educativa, legislación educativa.

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1. Introduction

In the context of a society and economy that are increasingly knowledge-based, the quality of education and training systems is vital for personal progress, economic growth, and social development (Kairamo, 1989; OECD, 2015; CEOE, 2017; Hanushek & Woessmann, 2019). This situation, which has become increasingly apparent since the start of the current century, has been accentuated by the effects of the Covid-19 pandemic (Reimers, 2021).

In view of this complex panorama, the successful formulation of educational reforms and their implementation is undoubtedly a requirement of governance activities, insofar as it represents the ability to design, formulate, and implement public policies. The OCDE (2015) has highlighted some essential general

features: long-term vision, attention to the political management of reforms, and creating trust among members of the public.

The impact of the quality of governance on countries' progress has been established by econometric studies fostered, among others, by the World Bank (Kaufmann et al., 1999a, 1999b; Sebastián, 2016), that have empirically established that good governance is a causal factor of development (Kaufmann, D. & Kraay, A., 2002). Nonetheless, in the field of education, there is a lack of international studies that examine the impact of the quality of governance on students' results (López Rupérez et al., 2017, 2020).

Educational governance has an impact all parts of the system as its effects

cascade through the different organisational levels, reaching each pupil as an individual. Hanushek et al. also made a similar argument (2016) concerning the impact of the quality of school management. These arguments suggest that the quality of governance of educational systems will be a factor that predictably has a significant influence when explaining the results of the system as a whole.

This work starts by examining the concept of governance and the characteristic features of good governance. It then considers the quality of governance in education on a dual conceptual and empirical basis, the appraisal of the second of these bases draws on the results of a Delphi process and on a comparative international analysis. Next, the principal results of an exploratory evaluation of the quality of governance in the Spanish education system are described. Finally, it analyses and evaluates the contributions of Spain's Organic Law 3/2020, of 29 December, modifying Organic Law 2/2006, of 3 May, of Education (LOMLOE) in light of criteria derived from earlier studies.

2. The concept of governance

The word governance relates to "the exercise of authority within a given sphere" (Hewitt de Alcántara, 1998, p. 105). The end of the last century saw an increased interest in conceptualising it, led by the World Bank (World Bank, 1989, 1992, 1994). This new protagonism of "governance" as a term resulted in a proliferation of approaches and meanings, leading some authors to describe the expression as an umbrella term that can cover a wide variety of meanings (Porras, 2018).

In the World Bank's first approach, it identified three basic aspects of governance:

(i) The form of political regime; (ii) the process by which authority is exercised in the management of a country's economic and social resources for development; and the capacity of governments to design, formulate, and implement policies and discharge functions. (World Bank, 1994, p. xiv)

Kaufmann et al., on the basis of an empirical study commissioned by the World Bank, would later subsequently defined governance as

The traditions and institutions that determine how authority is exercised in a particular country. This includes (1) the process by which governments are selected, held accountable, monitored, and replaced; (2) the capacity of governments to manage resources efficiently and formulate, implement, and enforce sound policies and regulations; and (3) the respect of citizens and the state for the institutions that govern economic and social interactions among them. (Kaufmann et al., 2000, p. 10)

Another important contribution to the concept came from the United Nations, through one of its senior officials (Hewitt de Alcántara, 1998), who established that "… 'governance' involves building consensus, or obtaining the consent or acquies-

cence necessary to carry out a programme, in an arena where many different interests are in play" (p. 105).

After this concept had been developing for more than two decades, Spain's Real Academia de la Lengua added the following definition to its dictionary (RAE, 2017):

> The art or form of governing that has the objective of achieving lasting economic, social, and institutional development, promoting a healthy balance between the state, civil society, and the market economy.

3. Distinctive features of good governance

Although other aspects, dimensions, and approaches to governance have been developed in recent years (Snyder, 2013; OECD-CERI, 2015; OECD, 2016; Burns & Köster, 2016a; López Rupérez et al., 2017; López Rupérez, 2021), contributions by other international organisations such as the United Nations, the European Union, or the OECD, that are based on the foundations laid by the World Bank, mean that this institution's focus can be referred to as the "classical model" (López Rupérez et al., 2017).

From this focus, it is possible to move towards establishing what could understood by good governance. According to the World Bank (World Bank, 1994),

> Good governance is epitomized by predictable, open, and enlightened policy

making (that is, transparent processes); a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; an all behaving under the rule of law. (p. vii)

The UN (United Nations, 2007) adds,

> Governance is "good" when is allocated and manages resources to respond to collective problems, in other words, when the State efficiently provides public goods of necessary quality to its citizens. Hence, states should be assessed on both the quality and the quantity of public goods provided to citizens. (p. 4)

The OECD, through Fazekas and Burns (2012, p. 7), emphasises four activities of the state in the field of governance: "(1) articulating a common set of priorities for society; (2) providing coherence; (3) steering; and (4) accountability." This work is innovative in its explicit link between governance and the idea of coherent and responsible prioritisation of action, and the organisation subsequently returned to in the educational sphere (OECD, 2015).

In keeping with the body of institutional contributions that form part of what we have called the "classical model", it is possible to formulate a decalogue for good governance as follows.

Good governance:

A1. Is based on consensus building and on participation by agents.

A2. Places special importance on the selection of the people in charge.

A3. Manages resources efficiently.

A4. Involves performing functions thoroughly.

A5. Takes care of the quality of regulation.

A6. Ensures priorities are defined precisely.

A7. Promotes accountability.

A8. Guarantees ability in management.

A9. Promotes transparency.

A10. Assumes the principle of responsibility.

4. The quality of governance in education

There is sufficient empirical evidence for it to be possible to conclude that governance and its quality are factors that have a significant influence on the advance of social, political, and economic systems, and on their degree of development (Kauffman et al., 2002; Grindle, 2004; Sebastián, 2016). Although there is no similar body of evidence relating to educational systems, it is clearly acceptable to carry over the essence of this general conclusion and state that the quality of governance in education is a basic element for explaining how this system can improve as well. This is the assumption we accept below.

4.1. Integrating models

Along with the "classical model", and the possibility of it being transposed to the specific sector of education, at least two other relevant models have been described in the literature. These start from different but complementary perspectives, and integrating them might provide a more complete characterisation of good governance in educational systems. These two models of educational governance are, on the one hand, inspired by the paradigm of complexity (Burns & Köster, 2016a) and, on the other, by the broader notion of organisational intelligence applied to education (López Rupérez, 2021).

The complexity-based model has distant antecedents in the reflections by López Rupérez (1997) on the suitability of regarding educational systems as highly complex and conceiving them from the paradigm of complexity (Morin, 1991). The same idea was developed, two decades later, at some length by the OECD's Centre for Educational Research and Innovation (CERI) in its Governing Complex Education Systems (GCES) project (CERI-OECD, 2015).

An analysis of the available literature on this topic (Snyder, 2013; OECD, 2016; Burns & Köster, 2016a) allows us to extract the following characteristic features of governance in education in line with this focus (López Rupérez et al., 2017):

B1. It champions capacity building through training of intermediate levels of government.

rep

B2. It backs processes of accountability based on evaluation.

B3. It requires a strategic vision of where the system is being led.

B4. It adopts a holistic and multilevel focus on the system.

B5. It is flexible and adaptive.

B6. It focusses on processes.

B7. It is based on knowledge, empirical evidence, and research.

B8. It places importance on the national level.

The third model corresponds to intelligent governance (López Rupérez, 2021), not in the strict sense of political institutions (Berggruen & Gardels, 2012), but rather with regards to the more restricted domain of the educational system. This model is aligned with the idea of organisational intelligence on the one hand (Albrecht, 2002; Yolles, 2005; Haber-Veja & Mas-Basnuevo, 2013; Christmann, 2014) and with the principle of making people substantive allies of governance in education on the other (López Rupérez, 1994; Levin, 2010).

The two basic pillars of this model of governance are knowledge and people.

On the basis of the above, the principal characteristics of this third focus can be listed as follows:

C1. It places great importance on feedback and evaluating policies.

C2. It promotes adaptive responses.

C3. It pays special attention to implementation.

C4. It involves personal engagement by people in charge at a high-level.

C5. It promotes involvement of agents from lower levels, especially teachers.

C6. It is based on knowledge, empirical evidence, and research.

C7. It places importance on the national level.

Although the three models considered — classical, complexity-based, and intelligent governance — have different intellectual origins, all of them relate to the governance of the educational system.

TABLE 1. Integrated conceptual model for good governance of educational systems.

1.	Governance with a holistic and multilevel focus (B4)
1.1	It considers the existence of relationships and interdependencies between the different levels of the system (individual, institutional and governmental) (B4)
1.2	It preserves the importance of the national level (B8)
1.3	It seeks consensus (A1)
1.4	It promotes participation by agents from lower levels, principally teaching staff (A1 and C5)

2.	Governance with leadership ability (A8)
2.1	It has a strategic vision (B3)
2.2	It establishes priorities clearly (A6)
2.3	It places special importance on the selection of the people responsible for the policies (A2)
2.4	It involves strong personal involvement by people responsible for the policies with processes of improvement (C4)
3.	Process-centred governance (B6)
3.1	It manages resources efficiently (A3)
3.2	It carries out its main functions correctly (A4)
3.3	It develops appropriate quality regulations (A5)
3.3	It pays great attention to implementation (C3)
4.	Governance based on knowledge, empirical evidence, and research (B7)
4.1	It is flexible and adaptive (B5 and C2)
4.2	It promotes and uses knowledge and research to formulate policies better (B7)
4.3	It places great importance on feedback (C1)
4.4	It evaluates the impact of policies (C1)
5.	Governance based on capacity building (B1)
5.1	It establishes different formulas for sharing knowledge about policies and their implementation with stakeholders (B1)
5.2	It helps the main agents acquire and use relevant information for successful implementation of the policies (B1)
6.	Governance linked to accountability (A7 and B2)
6.1	It places great importance on transparency (A9)
6.2	It establishes mechanisms for accountability (A10)

Source: López Rupérez et al. (2017).

Therefore, when analysing their characteristics, some inevitable and even desirable overlaps can be found. Consequently, it is necessary to integrate them, eliminating overlaps and ordering and structuring the remaining elements hierarchically. Table 1 shows the results of this, which provides an integrated conceptual model. The structure shown in this table was validated in an earlier study (López Rupérez et al., 2020a) through a Delphi process of consulting experts (Landeta,1999).

4.2. A comparative international view

It is also necessary to subject this framework to another complementary validity test, based on individualised analyses of different developed countries that have been able to change for the better, to be blunt, in recent decades. Portugal, Singapore and Finland, despite being very different from one another, share this feature.

Some of the governance practices developed by these successful educational

systems will now be identified and compared with the characteristic features of quality governance typical of the integrated model that is summarised in Table 1.

The first case is Portugal, whose educational system has made internationally recognised advances over the last two decades (OECD, 2019). In an earlier

TABLE 2. Comparison of the features of educational governance in Portugal, according to the OECD evaluation, with the provisions of the integrated model described in Table 1.

Features of educational governance in Portugal according to the OECD evaluation	Comparison with the integrated model described in Table 1
- The process started with a preliminary phase of compiling knowledge and evidence on the demands of the context of the 21st century.	4.1 It promotes and uses knowledge and research to formulate policies better.
- It developed a detailed and coherent strategic plan.	2.1 It has a strategic vision.
- It seeks expert guidance and contributions from educational agents through consultations, debates, and careful communications.	1.1 It seeks consensus. 1.4 It promotes participation by stakeholders from lower levels, principally teaching staff. 4.1 It promotes and uses knowledge and research to formulate policies better.
- It achieved general agreement and, thus giving the reforms stability.	1.1 It seeks consensus.
- It is open to feedback associated with evaluation as a way to correct errors and learn from experience.	4.3 It gives lots of importance to feedback. 4.4 It evaluates the impact of policies.

Source: Own elaboration.

work involving a systematic comparison of Spain and Portugal (López Rupérez & García García, 2020), we concluded that, beyond the individual decisions Portugal had taken regarding educational policies, there was one very general feature that emerged from our detailed analyses and explained all of the rest. This feature was the quality of its governance in education.

When it evaluated the Portuguese curriculum reform, the OECD (2018) conclud-

ed with the description (p. 7) summarised in Table 2. Each of the five features described in the OECD assessment corresponds with one or more of the provisions of the integrated model of quality of the governance of educational systems shown in Table 1.

The second case is that of Singapore, a country whose advances over the last decade in large-scale international evaluations such as PISA (OECD, 2019) or TIMMS (TIMMS, 2020) have earned it a

TABLE 3. Comparison of the features of Singapore's educational governance, according to the analysis by Harris et al. (2014) and the provisions of the integrated model described in Table 1.

Features of Singapore's educational governance according to the analysis by Harris et al. (2014)	Comparison with the integrated model described in Table 1
- Its implementation is guided by a successive series of master plans.	2.1 It has a strategic vision. 3.4 It places great importance on implementation.
- Each master plan is informed by prior results of substantive research into its issues and objectives.	4.1 It promotes and uses knowledge and research to formulate policies better.
- The time scale can extend – in successive phases – over a total time greater than a decade.	2.1 It has a strategic vision.
- Its implementation avoids the superficial and pursues a deep integration of educational policies and practices; requiring sufficient time and a certain initial security provided by the results of prior research.	4.1 It promotes and uses knowledge and research to formulate policies better.
- It is supported by continuous evaluation of its development, and by formative feedback that enables changes to be made in the process of implementation and the promotion of data-based realignment regarding the actions of the people responsible for teaching policies and practices.	4.3 It gives lots of importance to feedback. 4.4 It evaluates the impact of policies.

Source: Own elaboration.

place among the so-called "high-achieving school systems".

Harris et al. (2014) analysed the implementation observed in Singapore of policies for developing digital technologies in schools and identified a basic model of action, the particular features of which are summarised in Table 3. As in the case of Portugal, and despite Singapore's distinctive political system, it is again possible to observe correspondence between the features of its educational governance and a significant proportion of the group of sub-criteria from the integrated model, summarised in Table 1.

The third case is that of Finland. This country is especially interesting in educational matters. This is not just because in the 1990s it still did not have the privileged position in the international panorama that it would occupy in the following decade (Sahlberg, 2015), but also because it has developed a model which, in the opinion of analysts, draws significant attention owing to the originality of its approaches, especially when compared with those of Britain and the USA (Hargreaves & Shirley, 2009). Table 4 summarises some of the features of educational governance in the Finnish system, according to the description by

TABLE 4. Comparison of the features of Finland's educational governance, according to the analysis by Sahlberg (2015), and the provisions of the integrated model described in Table 1.

Features of Finland's educational governance according to the analysis by Sahlberg (2015)	Comparison with the integrated model described in Table 1
- It has had a strong forward-looking approach that inspired what they aimed to be, "building a sound basic education for each child financed through public funds and locally governed". This has led political action towards the desired results.	2.1 It has a strategic vision.
- It started the process of change in the 1980s rethinking the theoretical and methodological foundations of teaching and learning.	4.1 It promotes and uses knowledge and research to formulate policies better.
- It has strongly backed key people in the fundamental task of teaching: it has put in place a very demanding system of teacher recruitment and training and has delegated significant responsibilities to them.	5.1 It establishes different formulas to share information with the main agents about the policies and their implementation. 5.2 It helps the main agents acquire and use relevant information for successful implementation of policies.
- It has developed effective strategies for implementing policies, with the involvement of teachers, school management, and people in charge at the local level.	3.4 It places great importance on implementation. 1.4 It promotes participation by agents from lower levels, principally teaching staff.
- It has reconciled centralisation and decentralisation, a national conception of the curriculum with a key role for other lower-level jurisdictions in accordance with the formula "central direction, local decisions".	1.2 It preserves the importance of the national level.

Source: Own elaboration.

Pasi Sahlberg (2015), a teacher, researcher, and international analyst of Finnish origin, as well as other national and international studies (Gordon et al., 2009; Finnish National Agency for Education, 2017).

In summary, all of the features of educational governance of the countries considered have counterparts in the integrated model of Table 1, despite this model having been developed through independent processes.

5. An exploratory evaluation of Spain

In the international sphere, there is abundant empirical evidence for the impact of the quality of teachers on student performance, and also on the influence the quality of school leadership on this performance (Hattie, 2003, 2009; Leithwood & Seashore, 2012; Branch et al., 2012; Hanushek et al., 2016; López Rupérez et al., 2020b). However, empirical evidence on the impact of the quality of governance of the system on educational attainment

has until now been lacking. This is partly because of an absence of suitable evaluation instruments.

In the study mentioned above (López Rupérez et al., 2017; López Rupérez et al., 2020a), an analytical framework was developed in an initial phase involving a Delphi process with a panel of 21 renow-

ned experts. The framework was structured around 6 criteria, 20 subcriteria, and 88 items for evaluating the governance of educational systems. This expert panel acquired a strong degree of familiarity with the questionnaire and its members had a high level of competence. Their recommendation was to use it as a convenience sampling tool to carry out a first evaluation

GRAPH 1. Evaluation of the quality features of governance (subcriteria of the questionnaire) in the Spanish education system by subcriterion and group of experts.
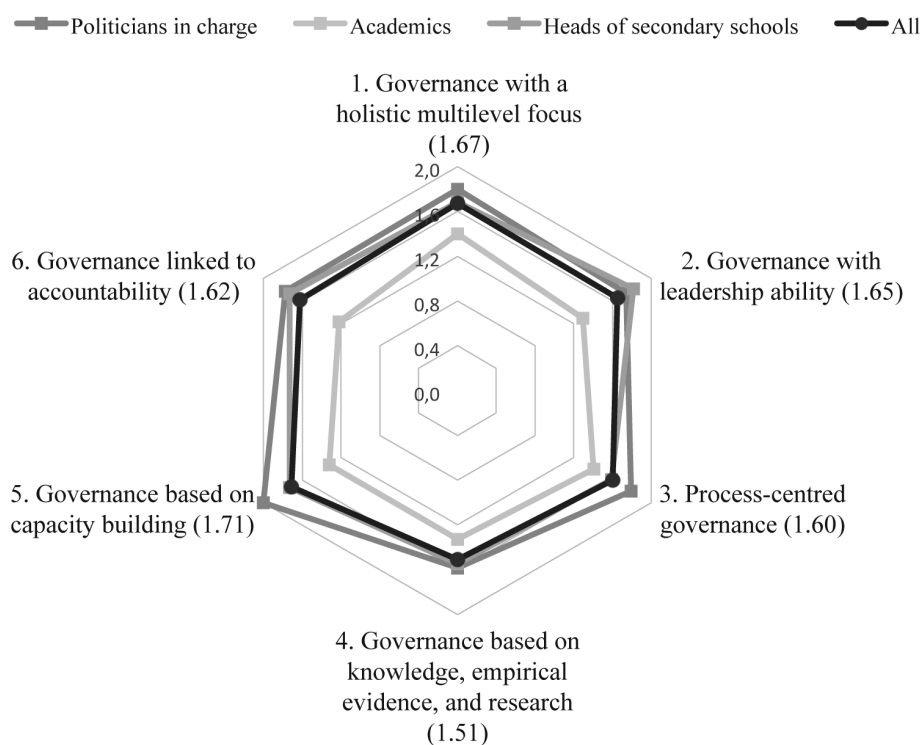
Source: López Rupérez et al. (2017).

of the quality of the governance of Spain's education system. Although the sample size means that this evaluation is merely exploratory, this second phase paves the way for a broader and more representative study. To illustrate this, the main quantitative results of this evaluation are shown in Graph 1[1].

This graph shows the average results obtained for each of the six criteria — described in Table 1 — from the questionnaire, measured on a five-point Likert scale relating to the level of quality of governance: (0) very low, (1) low, (2) medium, (3) high, (4) very high. It also shows their disaggre-

gated by the group of experts: the politicians responsible for it, academics, and directors of secondary education schools. In addition to the grading observed by group with regards to the strength of the opinion, a consistently low level of the results is notable, with the lowest value (1.51) corresponding to the criterion of *Governance based on knowledge, empirical evidence, and research*. However, and unlike Spain, this is a characteristic clearly present in the three international cases considered above.

6. An analysis of the LOMLOE in light of the preceding framework

The integrated framework for good governance of educational systems described in Table 1 can now be used to evaluate the governance approaches that have been associated with the most recent educational reform in Spain, formulated through Organic Law 3/2020, of 29 December, amending Organic Law 2/2006, of 3 May, regarding Education (LOMLOE). Even though, in this case, according to Adams et al. (2001), we are viewing an intermediate stage in the realisation of the reforms — between rhetoric and implementation —, we perform a qualitative evaluation below, carried out in light of the facts and taking as its basis the six criteria of the framework in question.

6.1. Governance with a holistic multi-level focus

Analysis of the content of this law shows a certain concern with an inte-

grated concept of the education system (1.1). This manifests itself, for example, in the assumption of the focus typical of lifelong learning as a paradigm for defining the policies, which takes into account not only the different stages of education, but also their interrelations (OCDE, 2001); or the explicit concern with the transitions between stages. This is apparent both in the preamble to the law, and in its provisions.

However, the actual governance of the process of formulating the new policies cannot be said to display the first distinguishing feature of good governance, as, when appealing to objective data, it is not possible to conclude that the importance of the state level has been preserved (1.2), that consensus was effectively pursued (1.3), or that the participation of agents from lower levels, principally teaching staff, was promoted (1.4) (see Table 1).

In relation to subcriterion 1.2, and as an example, an equilibrium has been broken which was born with the LOGSE (Organic Law on General Organization of the Educational System) and is maintained in the LOE (Organic Education Law) itself — the law to which the LOMLOE refers — regarding the division of competences between the central government and the educational administrations of the Autonomous Regions concerning "minimum teaching requirements", increasing the percentages that correspond to the regional administrations at the expense of the ones that pertain to the state (see section 6.4 of

the LOE in the wording in paragraph 4 of the single section of the LOMLOE). A similar claim could be made about the new wording of Additional Provision 38 which eliminates the explicit reference to Spanish as the working language throughout all of the state, which was present — along with the co-official languages in the respective Autonomous Regions — in the previous law. Most notably, it explicitly delegates guaranteeing the corresponding right to the regional educational administrations.

Owing to the difficulty of evaluating subcriterion 1.3, it is necessary to turn to objective data. So, for example, from a total of 156 amendments presented by the main opposition party in the Congressional stage of the legislative process, four were accepted by the government, while none of the 184 presented in the Senate were (BOCG, 2020a, 2020b, 2020c, 2020d).

Finally, and with respect to subcriterion 1.4, the fact that during the parliamentary process[2], the appearance of subject experts, enshrined in the Congressional Regulations (Congreso de los Diputados, 2020), was dispensed with for the first time is objective evidence of insufficient participation. While it is true that during the previous legislature the legislative proposal from which the LOMLOE derived was subjected to the compulsory expert opinion of the State School Council, as the highest participatory body from all of the sectors that make up the educational community, inspection of the indicators that reflect this subdimension

of the analytic framework relating to participation (López Rupérez et al., 2020a) confirmed that this too has not been a quality feature of the governance of the reform.

6.2. Governance with leadership ability

As Table 1 shows, this good educational governance criterion comprises four subcriteria. In relation to the strategic vision (2.1), the positioning of the LOMLOE has been summarised in the official literature (ME y FP, 2021) through the explicit wording of the following strategic focusses or pillars:

- It encourages gender equality.

- It fosters continuous improvement of educational centres and personalised learning.

- It gives a central role to digital competence.

- It recognises the importance of education for sustainable development.

- It recognises the higher interest of the minor and makes the rights of the child one of the governing principles of the system.

As analysis of the legal text reveals, it contains a complex vision of the relationships between the context, the educational system, and its development; the vision of the system is integrated in the short, medium, and long terms; and there is an attempt to anticipate the future of conformity with this vision (see

the third level of realisation of the framework in López Rupérez et al., 2020a). This future dimension, which is unmistakably present in the legal text, does not stop a return to the past being postulated, as expressed in the preamble which says "it seems it is necessary to reverse the changes promoted by the LOMCE" (BOE, 2020, p. 122870).

In relation to subcriterion 2.2, which concerns the setting of a relatively small group of priorities, the LOMLOE follows the Spanish tradition of enacting all-encompassing laws that run the risk of largely reducing educational reforms to their rhetorical level, according to the formulation of Adams et al. (2001), with a consequent loss of real efficacy. On the other hand, and as analysed below, the very limited appeal to evidence results in an interpretation of its priorities based on other types of foundations.

Finally, and with regards to the selection of the people responsible for the policies (2.3) and their personal involvement in their development or implementation (2.4), there are no objective reasons to deny that the process has proceeded successfully in this case. However, the fact that the critical phase of implementation of the new policies has still not started prevents us from making an informed valuation in relation to this last aspect.

6.3. Process-centred governance

The subcriteria that develop this criterion for the quality of educational governance (see Table 1) largely refer to a broader concept of educational reforms and their management that includes all of their phases or stages, including implementation (López Rupérez, 2021). Nonetheless, with regards to the third subcriterion (3.3)[3], since the second phase of legal formulation at the highest level, has ended, the process of reform can be analysed.

Even partially releasing the LOMLOE from responsibility for its highly specific approach to rules — which tends towards verbosity and excessive regulations — the new organic education law has returned to the legislative technique of "embedding" which was introduced, for the first time, in the history of Spanish education in the LOMCE. As the name suggests, this involves embedding or interweaving a variety of regulatory texts within a law or regulation. This sort of hybridisation results in an obvious loss of transparency and causes significant difficulties for the uninitiated when interpreting it. As the Spanish Constitutional Court observed in its judgment STC 46/1990 (cited by Segovia Marco, 2015):

The requirement of section 9.3 (of the Spanish Constitution) regarding the principle of legal certainty means that legislators must pursue clarity and not regulatory confusion, they must ensure that jurists and members of the public know what to abide by in relation to the matter on which they legislate, and they must avoid causing objectively confusing situations such as that which is undoubtedly created in this case given the highly complex set

of cross references between regulations found here. (p.13)

Although it refers to a different case, the Constitutional Court's admonition is applicable to the result of using this technique in an education law that concerns the exercise of a fundamental right. Surprisingly, the LOMLOE again falls back on embedding based on an earlier previously embedded corpus, obviously reducing the regulation's transparency even more and increasing the difficulty of reading it. This means that the new law does not comply with this subcriterion for quality of educational governance specified in the indicators of the third-level realisation[3] (López Rupérez et al., 2020a).

6.4. Governance based on knowledge, empirical evidence, and research

One feature of the education systems of developed countries is their complexity (López Rupérez, 1997; López Rupérez, 2021). Accordingly, it is worth noting the words of Burns and Köster (2016b) who said "With the growth in complexity, governance has become a knowledge intensive activity" (p.20). This same view has been taken into account by high-achieving school systems. This was also, to some extent, the practice in Spain in other times, which resulted in the development of a white paper as a forerunner to the organic laws regarding education. However, this practice has been abandoned and with it the rigorous support by the law for knowledge, empirical evidence, and research. When the four subcriteria of this feature are analysed, and also when

considering the indicators from the third level of implementation (López Rupérez et al., 2020), it is possible to conclude that the LOMLOE does not sufficiently comply with this characteristic feature of quality educational governance.

6.5. Governance based on capacity building

Capacity building is one of the instruments for supporting the successful formulation and implementation of policies, through training middle levels of government or the main agents. As it affects all phases of educational reforms, applying this criterion to the case of the LOMLOE is, for the moment, premature. Nonetheless, the limitations identified above regarding the participation of the main agents in the processing of the Law make it possible to note that some of the corresponding subcriteria have not been satisfied (5.1).

6.6. Governance linked to accountability

This characteristic feature of quality governance of the educational system is supported, in line with the model described above, by two basic pillars: transparency and responsibility, as accountability understood in a strict sense (see Table 1). And the fact is that the transparency of results, with all necessary precautions to protect individual rights appropriately, facilitates the implementation of accountability mechanisms.

A detailed analysis of the LOMLOE reveals a backward step when compared to its predecessor. For example, transparency of results is repeatedly men-

tioned in the preamble to the LOMCE as one of the principles that inspires the Law and is then set down in the wording of section 2b. 4 of the LOE (paragraph 2 of the single section of the LOMCE) where "transparency and accountability" are included among the principles governing Spain's education system. This principle is then reflected in the wording of section 147.2 of the LOE (paragraph 90 of the single section of the LOMCE) (BOE, 2013; p. 50-51).

The LOMLOE, even though it does not modify section 2b.4, does eliminate the reference to transparency — except for educational inspection activities — and largely corrects the wording of section 147.2 given by the LOMCE cited above (see the new wording of section 147.2 of the LOE, paragraph 77 of the single section of the LOMLOE).

In line with the above, the principle of accountability also decreases in the LOMLOE, which limits it to educational agreements by which funds are allocated to schools (the wording of section 116.4 of the LOE in paragraph 59 of the single section of the LOMLOE) and to the quality actions (the wording of section 122.2 of the LOE in paragraph 64 of the single section of the LOMLOE). Only the census-based diagnostic evaluations, carried out by educational centres in the fourth year of primary school and second year of compulsory secondary education (sections 21, 29, and 144 of the LOE in the wording given by the LOMLOE), could with some effort

be interpreted as including a certain degree of accountability.

7. Conclusion

When the LOMLOE is confronted with the typical criteria of the quality educational governance model described in Table 1, it does not reach an adequate level, nor does it reach this level when compared with the most frequent features of the group of countries analysed. These results, along with those derived from the exploratory evaluation of Spain's educational system described above, seem to indicate consistently that Spain's educational system has a long way to go to improve the quality of its governance.

Notes

[1] For other quantitative analyses, see López Rupérez et al. (2017).

[2] In the processing of the LOCE (Organic Teaching Quality Law, 2002) 25 experts appeared; in that of the LOE (2006), 43; and 50 appeared in the processing of the LOMCE (Organic Law for Improving Quality of Education, 2013). (See Diario de Sesiones del Congreso de los Diputados, numbers 569 and 587 from 2002; 375, 379, 396, 397, 398, and 399 from 2005; and 368, 370, 371, 373,375, 377, and 379 from 2013, respectively.)

[3] 3.3.1. They ensure that the content of the regulations is appropriate for the policies they are intended to control, without distorting them.

3.3.2. They take care with the consistency, correctness, and accessibility of their legal drafting, avoiding obscure wordings and errors or contradictions, whether internal or in relation to other regulations.

3.3.3. They seek to align the greatest possible number of relevant agents from the educational system with the objectives of the regulations through dialogue.

3.3.4. They incorporate contributions from lower levels that improve the drafting of the regulations.

3.3.5. They promote bureaucratic streamlining in the conception, application, and development of the regulations, avoiding excessive, superfluous, or redundant production of regulations that asphyxiate the creative capacities of the agents of the system..

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Curriculum reform to respond to the challenges of the future. Spain in international perspective

La reforma del currículo para responder a los retos del futuro. España en perspectiva internacional

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Abstract:

In recent years, many countries and international organizations have devoted significant efforts to designing a school curriculum that responds to the educational needs of the 21st century. In Spain, the LOMLOE (Organic Law 3/2020, of 29 December, which amends Organic Law 2/2006, of 3 May, on Education) has also proposed the renewal of the curriculum as a key element for the modernization of the education system. The aim of this paper is to analyze the Spanish curriculum reform from a comparative perspective, in order to assess whether it is in line with the current trends of change on the international scene and to detect the conditions that must be met to successfully achieve its purpose, in the light of what has been learned in other countries. To this end, a comparative analysis framework has been developed based on UNESCO (United Nations Educational, Scientific and Cultural Organization), OECD (Organisation for Economic Co-operation and Development) and EU (European Union) publications on this subject and on various comparative studies on recent curriculum reforms around the world. The results show that, in terms of the approach and architecture of the curricular model of the compulsory education, the Spanish reform follows the recommendations of international organizations and shares to a large extent the characteristics of the reforms undertaken in many countries around us. However, it is also possible to detect some relevant differences in terms of the strategy adopted for the change and the agents involved in it, which should be considered, as they could become obstacles to the achievement of the pursued objectives.

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Keywords: curriculum, educational reform, educational policy, comparative and international education, Spain.

Resumen:

En los últimos años, muchos países y organismos internacionales han dedicado importantes esfuerzos a diseñar un currículo escolar que responda a las necesidades formativas propias del siglo XXI. En España, la LOMLOE (Ley Orgánica 3/2020, de 29 de diciembre de 2020, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación) ha planteado también la renovación del currículo como un elemento clave para la modernización del sistema educativo. Este trabajo pretende analizar en perspectiva comparada la reforma curricular española, con el fin de valorar si se encuentra alineada con las tendencias de cambio vigentes en el panorama internacional y, a la luz de lo aprendido en otros países, detectar las condiciones que debe cumplir para alcanzar con éxito su propósito. Para ello, se ha elaborado un marco de análisis comparativo basado en las publicaciones de la UNESCO (Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura), la OCDE (Organización para la Cooperación y el Desarrollo Económicos) y la UE (Unión Europea) sobre este tema y en diversos estudios comparados sobre reformas curriculares recientes en todo el mundo. Los resultados muestran que, en lo que se refiere al enfoque y la arquitectura del modelo curricular de la educación obligatoria, la reforma española sigue las recomendaciones de los organismos internacionales y comparte en gran medida las características de las reformas emprendidas en muchos países de nuestro entorno. Sin embargo, es posible detectar también algunas diferencias relevantes en cuanto a la estrategia adoptada para el cambio y a los agentes implicados en él, que deberían ser consideradas, pues podrían llegar a traducirse en obstáculos para el logro de los objetivos previstos.

Descriptores: currículo, reforma educativa, política de la educación, educación comparada e internacional, España.

1. Curriculum reforms as a response to the challenges of the 21st century

The school curriculum covers what and how new generations are taught, questions that are as old as educational institutions themselves, but which are especially complex nowadays. At present, all educational systems face the challenge of meeting demands for training needed for a future that is hard to predict, without forgetting the importance of preserving the knowledge and values that make up the cultural repertory of society and must be transmitted in schools.

In recent decades, there have been efforts to react to these new demands on the educational system by adding new subjects and cross-curricular contents to the curriculum, in addition to the topics that progress in knowledge has made it necessary to add to more traditional dis-

ciplines. Nonetheless, it is clearly not possible to continue adding new content to the curriculum indefinitely as this would result in students having a broad spectrum of superficial learning during their education as teachers would otherwise not be able to cover everything in the available time (OECD, 2020a). For this reason, the need for an in-depth reconfiguration of the curriculum is currently under consideration, abandoning the model of accumulation of content on which previous reforms were based and prioritising the acquisition of competences by students as the cornerstone of the new educational model (Egido, 2011).

In fact, many countries around the world have undertaken curriculum reforms for the compulsory education stage in which "basic" or "key" competences play a core role, a concept that involves the integration of knowledge, skills, and attitudes and consequently involves the search for more ambitious learning goals than those in the past (Reimers, 2021a). For their part, various agencies and international bodies have also undertaken important work in this regard and have defined various "competence frameworks for the 21st century" to guide the renovation of the curriculum. The OECD's contribution has perhaps had the biggest impact, but UNESCO's contribution, developed fundamentally through the International Bureau of Education, is also important as is that of the European Union, which has established the European Reference Framework of Key Competences for Lifelong Learning (López-Rupérez, 2020).

In Spain, Organic Law 3/2020, of 29 December, amending Organic Law 2/2006, of 3 May on Education (LOMLOE) proposes curriculum reform as a key element in the modernisation of the educational system. The documents published by the Ministry of Education relating to the new curriculum explicitly set out the importance of considering the vision of international bodies and of countries in Spain's surroundings. So, the Ministry states that "a detailed review of international trends and of models for drawing up curriculums in other countries can provide points of reference for our curriculum development, once adapted and contextualised for our situation" (Ministerio de Educación y Formación Profesional [Ministry of Education and Vocational Training], 2020a, p. 11). The work done by the three international bodies mentioned above is referred to, and the cases of Portugal, Wales, Ontario, and Estonia are identified as successful models, as is Scotland less directly.

For this reason, it makes sense to consider in greater depth the proposal for curriculum change that accompanies the LOMLOE by analysing it from an international perspective. Is the Spanish reform in line with the recommendations of international bodies and with the reforms carried out in other countries? What can international experience teach us about curriculum reform? The aim of this article is to contribute to answering these questions by using a comparative perspective which, based on what has been learnt from other systems, indirectly makes it possible to evaluate the

chances for success of the Spanish reform and the predictable challenges it will face.

2. The framework for compared analysis of the curriculum reform

With the aim of examining the curriculum reform proposed by the LOMLOE from an international perspective, we have prepared a framework for comparative analysis based on consulting two types of sources. On the one hand, there are reports and publications on the topic by UNESCO, the OECD, and the EU. On the other hand, we review various pieces of research that offer comparative visions of curriculum reforms carried out in educational systems from different parts of the world over the last two decades.

In the specific field of international bodies, the analysis criteria UNESCO uses for comparing curriculum frameworks (Marope et al., 2017; Opertti et al., 2018) is con-

sidered in depth, as are the proposals and recommendations of the European Union regarding key competences (European Union, 2018; European Commission, 2018, 2020). In the case of the OECD, the documents about the curriculum that make up the framework of the Future of Education and Skills 2030 Project (OECD, 2018b, 2019, 2020a) are considered, including the review of the comparative curriculum analysis tools used in it, especially Curriculum Content Mapping (CCM) (OECD, 2020b). With regards to comparative studies of recent curriculum reforms, we examine works that focus on the European sphere as well as others that contemplate systems from other parts of the world (Isaac et al., 2015; López-Rupérez, 2020; Priestley et al., 2021; Reimers, 2021a, 2021b).

Based on the review of these documents, a comparative framework has been created that takes into account criteria relating to the content and process of curriculum change, as both are decisive for the result of

TABLE 1. Elements for comparative analysis of curriculum reform.

a) Content of the reform	Curriculum focus Architecture of the curriculum structure/Map of curriculum components
b) Contextual framework	Frequency of changes in the system Political and economic stability Perceived need and consensus around change
c) Strategy for design and implementation	Consultation, participation, and communication processes Previous experimentation Alignment with other reforms in the system Time planning and sequencing of changes Provision of necessary resources and support
d) Engagement of key agents for change	Political leaders Educational administration Schools and management teams Teachers Students/families

Source: Own elaboration.

the reform (Fullan, 2016). This framework features a group of parameters and indicators which, while they are closely interconnected in practice, can be grouped in four major dimensions (Table 1) for presentation:

The elements considered are used to compare reforms in Spain with the predominant international trends. This makes it possible to detect points of coincidence and divergence with the dynamics of changing and updating curriculums in place in other educational systems.

It is important to note that Spain's curriculum reform is still in the preparatory stage, and so the documents considered in the analysis are those that have appeared up to the time of writing: the LOMLOE itself and the background document for curriculum reform (Ministerio de Educación y Formación Profesional, 2020a), as well as the expected student profile at the end of basic education and the curriculum structure proposal for drawing up the *Enseñanzas Mínimas* (core curriculum) (Ministerio de Educación y Formación Profesional, 2021a; 2021b). A more detailed comparison with the international framework will be possible when the Royal Decrees on the curriculum have been published and the legal implementation of the reform has been completed.

3. The LOMLOE curriculum reform in an international perspective

The main results of the comparison are set out in the following sections, organised around the four major dimensions considered.

3.1. Content of the reform: focus and architecture of the curriculum model

The reform proposed by the LOMLOE opts for a competence-based focus in the curriculum, following the recommendations of international bodies and current trends in reforms carried out in educational systems internationally (Marope et al., 2017). In fact, this focus is not a novelty in Spain, as competence-based learning has been part of the educational system since the approval of the Organic Education Law (LOE) in 2006, at least at the legislative level.

The competence framework on which the new curriculum is based is specifically the one laid down in the Council Recommendation of the European Union in 2018, organised around eight key competences for lifelong learning (European Union, 2018). Other European countries have also adopted this framework, with different degrees of flexibility, while a smaller number, such as Finland, have opted to develop a national framework of transversal competences inspired by the contributions of the OECD (Lavonen, 2021). In the Spanish curriculum, small changes have been made to the naming of some competences, but their conceptualisation is essentially the same as that done by the European Commission, and so it enjoys the backing of the work done in this area in the European institutions (Valle, 2020).

With regards to the "architecture" of the model, the components of the curriculum structure after the reform of the LOMLOE include expected student profiles for stages and levels, defining teach-

ing areas or subjects, with their corresponding specific competences, essential learning, and evaluation criteria, as well as the methodological and evaluation guidelines. In general terms, these components are present in many of the countries that have carried out curriculum reforms in recent years.

In the case of Spain, except with regards to expected student profiles in higher-education qualifications, setting expected student profiles for the end of compulsory education is an innovation. However, these expectations already exist in other systems and the OECD does recommend preparing them. As this body states, student profiles lay down the skills, knowledge, attitudes, and values that must be achieved through learning at school, and so they are of use to help state the targets of the redesign of the curriculum. The expected student profiles respond to the questions of what sort of citizen we want and what results we hope to see at the end of compulsory education. Systems that use expected student profiles to direct the selection of competences include Canada, South Korea, Scotland, Hong Kong (China), and Portugal (OECD, 2020c). As an example, in this last case, the *Perfil dos Alunos à Saída da Escolaridade Obrigatória* (student profile at the end of compulsory education) sets out the principles that should guide educational action and the values and areas of competence that should be developed, including for each area a series of operative descriptors, as is proposed in the Spanish curriculum (OECD, 2018a).

The use of learning areas and specific competences associated with them is also a common way to organise the curriculum in educational systems in other countries, although in this regard differences can be found concerning the scope of this concept. In some countries they are broad areas, with a marked interdisciplinary character, while in other systems they refer to more specific subjects or disciplinary areas or a combination of disciplinary and interdisciplinary areas is used (Isaac et al., 2015). In the case of Spain, the subjects established for compulsory secondary education (ESO) broadly coincide with the disciplinary learning areas that the OECD's Curriculum Content Mapping envisages for the lower secondary education stage (OECD, 2020b).

For each area or subject, the new curriculum sets out the "essential learning", essential considered fundamental for understanding the world and provides the foundation for constructing new learning (Ministerio de Educación y Formación Profesional, 2021a). This focus matches that of the European Union, which in the 2018 recommendation summarised the essential knowledge, skills, and attitudes for each of the eight key competences (European Union, 2018). It is also a strategy used by various countries to reduce curriculum overload. Continuing with the example of Portugal mentioned above, in 2018 the *aprendizagens essenciais* (essential learning) were defined and linked to the student profile for each area of teaching. However, defining essential learning is a difficult process in all educational systems and

elicits concerns about the decline in students' level of education. The challenge in this respect is to prioritise concepts and ideas that are fundamental within a body of disciplinary knowledge and are more transferable across disciplines among the many elements that could potentially be present in the curriculum (OECD, 2020a).

The new curriculum structure will also include the criteria for evaluation by areas of teaching at the end of the second and third stage of primary education and by subjects at the end of the second and fourth years of ESO (compulsory secondary education). In the international sphere, some countries only set evaluation criteria, while others set criteria for learning standards formulated by year, cycle, or stage, in accordance with different levels of attainment (OECD, 2020b). Again, the degree of specificity with which the criteria and learning standards are formulated in each system varies, constraining the autonomy of schools and teachers in the field of evaluation. The EU has designed a series of frameworks for evaluating competences that might be of help to countries, although the map of eight key competences has still not been completed (European Commission, 2018).

The last of the components considered in the curriculum comprises guidelines on learning situations. Most educational systems regard questions relating to teaching–learning methodology as an area for decision by teachers and schools, and so these are not included as prescriptive elements in official curriculums. Nonetheless, it is common to find suggestions about teaching practices considered appropriate for the competence-based approach, such as service learning, project-based learning, and phenomenon-based learning, this last type being used extensively in Finland (OECD, 2020c).

3.2. The contextual framework of the reform

Among the contextual factors that affect the development of a curriculum reform includes the frequency of changes in the system. In the international sphere, some countries review their curriculums regularly at predetermined intervals, some make changes when they deem it to be appropriate, and others combine both types of reform (OECD, 2020c). Spain belongs to the group of countries in which there is no planned time interval for curriculum revision, but rather it is carried out at specific moments, which in recent decades have also corresponded to the beginning of a general reform of the education system. This has been the case since the LOGSE (Organic Law on the General Organisation of the Education System) education law of 1990, which was followed by the unfinished reform to the LOCE (Organic Law on the Quality of Education) law of 2002, the reform of the LOE law of 2006, and the reform established in the LOMCE (Organic Law for the Improvement of the Quality of Education) law in 2013. At this moment, the reform to the curriculum comes hand-in-hand with the new educational law, the LOMLOE, approved in 2020. The high frequency of changes in Spain has meant

that in all of the school community and especially among education professionals there is "reform fatigue" (OECD, 2020c). International experience underlines how reiterated curriculum reforms, interrupted by others before they have been fully implemented and their results evaluated, wear down even the most motivated teachers, reducing their commitment to implementing the planned change and their receptiveness to new changes in future (Reimers, 2021b).

Also, in relation to the context in which the reform takes place, it is interesting to ask how much the desirability of undertaking the change to the current curriculum is perceived, given that the prospects of success of any reform are greater when there is shared agreement on its appropriateness and its priority status for the system (Fullan, 2016). In this regard, it is possible to find generalised agreement between academics and teachers in Spain regarding the need to reformulate the school curriculum, which is regarded as being excessively overloaded, rigid, and fragmented into disciplines, among other weaknesses (López-Rupérez, 2020; Moya & Valle, 2020). The survey organised by the Ministry of Education in November 2020, which around 3,000 teachers completed, shows that teachers largely support the idea of an in-depth change to the curriculum, given that they regard its content as inadequate and virtually impossible to cover in full (Ministerio de Educación y Formación Profesional, 2020b).

This general consensus on the need to modify the curriculum is, however, not found with regards to the model that the reform should inspire. On the contrary, among education professionals there are two different concepts of the curriculum: a more academic-disciplinary one that focusses on content, and another more interdisciplinary or transversal one focussing on the development of students' basic skills and capacities (Colectivo Lorenzo Luzuriaga, 2020a). The survey cited above underlines these dual perspectives. In particular, among secondary teachers, there is no agreement on the appropriateness of a competence-based curriculum. Instead, these teachers support of assessing the students on the subjects taught more than the idea of the assessment on key competences acquisition (Ministerio de Educación y Formación Profesional, 2020b). As research has shown, these diverging and even contradictory views of the curriculum, can be major obstacles to achieving change (Gouëdard et al., 2020).

3.3. Strategy for designing and implementing the new proposal

The strategy adopted for carrying out curriculum reform includes the actions relating to the design and implementation of the change, as well as the time planning and sequencing of the necessary transformations. These actions and times affect the different stages of the reform, but they are especially important in the early stages, considering that decisions taken in this period shapes its future path (Reimers, 2021a).

The proposed reform must have sufficient justification to be seen as legitimate, and in many countries is it com-

mon to use procedures like prior review of the weaknesses of the curriculum, expert reports, the experiences of other educational systems, the recommendations of international bodies and the dissemination of good national practices to do this. Some systems, such as Finland, stand out in this respect for their effort in turning to research and rigorous analysis of the available evidence about the results obtained with the current curriculum (Reimers, 2021b). Using these procedures does not, however, mean that the change is designed from the top-down, but rather that it is vital to increase participation by all of the sectors affected by the preparation of the reform, with the aim of involving them in it. In line with the recommendations of UNESCO and the OECD, efforts have been made to base reforms on collaborative focusses, and so a large number of systems such as Scotland, Finland, and Ontario have organised long-term consultation and participation processes aimed at teachers, families, and other actors involved in the curriculum reform (Gouëdard et al., 2020; OECD, 2020c).

Some countries, in parallel with the consultation processes, have carried out trials ahead to the proposed change. For example, Portugal opted for a strategy of gradually introducing its new curriculum model, creating a pilot project in 2017 called the "Autonomy and flexibility project", which 235 centres took part in voluntarily (OCDE, 2018a).

The process followed in Spain to start the curriculum change has some simi-larities with those used in the systems mentioned above, such as references to international bodies and to other educational systems. However, there are also significant differences. For example, the short amount of time dedicated in Spain to consultation, participation, and communication processes relating to the reform has not really allowed for a calm debate about the new curriculum proposal open to the entire educational community (Luengo et al., 2021). Neither has there been a systematic dissemination of the experiments and trials that have been successfully carried out with the new competence-based curriculum in Spain (Moya & Valle, 2020), but rather, at best, particular aspects of some of them have been shared.

Without minimizing the above, in the reform design strategy an issue that comparative research shows as essential is the need to align the curricular change with the rest of the educational reforms necessary to achieve success. Given that educational policies are interdependent, it is only through a holistic or systemic view of the change that the desired results can be obtained (López-Rupérez, 2020). To do so, it is necessary to ask what other elements of the school system must be reinforced or reformed and establish a coherent sequence for making the required changes (Reimers, 2021a). In the international setting, curriculum reforms usually go hand-in-hand with reforms aimed at improving teacher training, increasing the autonomy of schools, and strengthening the pedagogical leadership of the school management.

The cases of Scotland, Finland, and Portugal mentioned above can illustrate this trend. So, in Finland, where schools already had a high level of autonomy, the most recent curriculum reform was accompanied by a new initial and ongoing training programme for teachers (Lavonen, 2021). In Portugal, the change to the curriculum is part of a broad collection of reforms that include the modification of the system for accessing and initial teacher-training programmes, as well as a notable increase in the autonomy of schools, which can decide 25% of the school timetable (OECD, 2018a). In Scotland, the Curriculum for Excellence, which was finally implemented in 2016, was accompanied by policies to strengthen the teaching profession and the pedagogical leadership in schools that were initiated in 2011 (OECD, 2020a).

In Spain the new law states that in the near future there will be a proposal of reform of the initial training, access to the profession, and professional development of teachers. There is undoubtedly an urgent need for this, given that only 43% of teachers feel prepared to teach interdisciplinary or transversal competences, putting Spain in one of the last places in the OECD (Ministerio de Educación y Formación Profesional, 2019). The competence-based focus must be accompanied by an in-depth reconsideration of teacher training and specialities if it is to be a success (Colectivo Lorenzo Luzuriaga, 2020a), but the sequence of the change planned in Spain, with the reform of teacher training planned to come after the curriculum reform, differs from that used in the successful countries mentioned above.

With regards to the autonomy of schools, the law and the documents about the curriculum published by the ministry emphasise the importance of this factor. The LOMLOE states that schools will be able to adopt various experiments, work plans, timetables, or forms of organisation while exercising their autonomy and that part of the timetable will be available to them to guarantee the integrated development of competences and the incorporation of transversal content. While this idea might involve an increase in school autonomy in Spain, the fact is that responsibility for this question ultimately lies with the autonomous regions. There is, therefore, a risk that differences will develop between different autonomous regions in the regulation of school autonomy and even that it will be understood that the work of schools aimed at developing transversal competences might be limited to a small percentage of the school timetable, with the rest remaining as it currently is.

Closely linked to the above is the critical role that school leaders play when facilitating or inhibiting change in schools (Fullan, 2016). School management can mediate in the incorporation of the new curriculum proposals, encouraging the adoption of innovations in the schools (Gouëdard et al., 2020). The new law, however, has not reformed pedagogical leadership by management teams, which in the case of Spain remains very limited (Ministerio de Educación y Formación Profesional, 2019).

Along with the importance of the holistic vision of the reform, international

experience also underlines the importance of appropriate allocation of time. The evidence shows that curriculum-change processes are necessarily long, as the reform must maintain its course until the political intentions settle into educational practices and remain there for enough time to become new shared ideas about how teaching is provided (Reimers, 2021b). It is estimated that a period of around ten years is needed to carry out a curriculum reform, two on average for decision making and eight for implementation, and in decentralised systems, like that of Spain, more time is required (OECD, 2020c). In contrast with this, the plan is for the Spanish reform to be put in place in a much shorter period, especially with regards to the implementation phase, which is expected to be done over two academic years.

3.4. Engagement of the key agents for change

In the long run, curriculum reforms affect society as a whole, but their design and implementation especially require the involvement of key agents inside and outside the school, such as political leaders, educational administrations, teachers, and students and their families. For the reform to be a success, it is vital that these actors, with their different roles relating to the curriculum, aim to achieve common objectives. For this reason, many countries include actions intended to achieve the greatest possible consensus among them in their strategies from the beginning (OECD, 2020a).

In Spain, the division of competences in education between the central government and the autonomous regions means that both levels of government share the political decisions relating to the curriculum. The Ministry of Education sets minimum teaching requirements, which establish the curriculum elements that are common to the whole country, while the autonomous regions have the power to develop the remaining curriculum elements that reach the schools. With the LOMLOE, following the amendment approved in the law's progress through parliament, *enseñanzas mínimas* will cover 50% of the timetable in the autonomous regions that have a co-official language and 60% in the others. Nonetheless, beyond this allocation of time that guides the curriculum design process, which is hard to transfer operationally to the reality of schools, the fact is that the role of the autonomous regions will be decisive in the reform of the curriculum. In fact, in Spain, control over the processes of implementation of the curricular change corresponds to a greater extent to those who carry them out, that is, to the autonomous communities, than to the Ministry of Education. This implies the need to start from a shared curricular model and a collaborative work between the ministry and the communities, which may be compromised in the context of political tension referred to earlier.

To facilitate joint work between the Ministry of Education and the autonomous regions, the LOMLOE allows for the creation of a unit aimed at developing the *Enseñanzas Mínimas* and continuously updating the curriculum. Other countries in Spain's surroundings also have similar agencies or institutions, al-

though one element that differentiates the Spanish initiative is that this unit will be created after the preparation of the curriculum proposal. This contrasts with the approach that underlies the law itself and with the functions that a curriculum development unit would be expected to perform, which would include advising on the preparation of the royal decrees on *enseñanzas mínimas* (Colectivo Lorenzo Luzuriaga, 2020b).

Despite the above, as in any country, teachers will undoubtedly be the central figures in the implementation of the new curriculum in Spain. International experience underlines the need to offer teachers simple, clear, and comprehensible curriculum tools, as well as assistance to help them produce pedagogical proposals focussed on developing competences. The reforms done all around the world underline the fact that resistance or fear of change that might affect teachers should not be underestimated, but that on the contrary, it is necessary to identify the barriers that teachers face and help them to overcome these by providing the required support (Gouëdard et al., 2020). This is what has been done in countries such as Finland, where in 2017 the National Education Council provided 100 million euros to hire 2,000 tutors to help teachers introduce teaching of transversal competences in the classroom (Lavonen, 2021). Finland, Scotland, and Portugal have all proposed school networks as a way of developing innovative teaching solutions (OECD, 2020c).

In the case of Spain, the importance of supporting teachers and providing the necessary resources to implement a competence-based curriculum reform is clear following the experience acquired from the earlier LOE and LOMCE laws (Moya & Valle, 2020). Some research indicates that teachers, especially in secondary education, report dissatisfaction with the support and guidance educational authorities provide for implementing the competence-based model, as well as with the material and human resources they provide (García-López et al., 2020).

In addition, it is worth noting that it is not just education professionals who have something to say about curriculum reforms. Students are also important and treating them as active agents in their learning is key in the curriculum redesign process. Therefore, systems such as those of Scotland, Finland, and the Netherlands, to mention just a few, have put in place mechanisms to hear their voices, their needs, and their interests (OECD, 2020c).

Conclusions

For more than two decades, educational systems all over the world have been making major efforts to redesign their curriculums to enable students to develop the competences needed to face the future with success. In this process, countries and international bodies have had the opportunity to learn from one another, with the result that some shared lines of change have become visible on the international stage, as well as lessons about the experiences of success and the challenges that must be confronted, which might be of use for

countries that seek to implement curriculum reform (OECD, 2020c). Starting from this approach, this work has considered in depth the curriculum reform initiated in Spain following the LOMLOE, analysing it from an international perspective. This analysis has been directed at identifying whether the reform is aligned with the trends of change in other countries and on detecting the requirements to be fulfilled to achieve its goal, considering the experiences of other educational systems.

The result of the study makes it possible to affirm that, with regards to the focus and architecture of the curriculum model, the Spanish reform is in line with the recommendations of international bodies and with the direction of the changes undertaken in other countries. Nonetheless, beyond these common elements, it is also possible to detect some significant differences in the strategy adopted for the change and the agents involved in it, which must be considered when inferring the chances of success of the reform.

Considering the content of the curriculum change, as is explicitly stated in the documents published by the Ministry of Education, Spain's reform clearly shows the influence of international bodies such as the EU, the OECD, and UNESCO, and educational systems regarded as successes, in particular Portugal. In this way, Spain is no exception, given that, in the current context of globalisation, the trends that shape curriculum reforms respond to converging patterns of change with the result that curriculums display a certain isomorphism all over the world (Lingard, 2021; Reimers, 2021a).

Among the lines of convergence, opting for a competence-based curriculum focus stands out, and at present this is the focus used in most of the international panorama. Closely related to this approach, there are also more and more systems that include some of the curricular elements that are new in the Spanish proposal, such as the student's exit profile and essential learning, While it will be necessary for the definitions of the learning objectives to be made public in Spain in order to judge how similar they are to the ones established in other countries, the fact is that the proposed components of the curriculum are in line with ones that are common in many of the curriculum designs found in other parts of the world. In fact, in the Spanish reform, areas and subjects are still a fundamental part of the organisation of the curriculum, and so there is no radical change with regards to the previously established model.

Taking into account the above, it is surprising that in Spain a good part of the debate on the new curriculum has once again focused on the competence approach, when this not only constitutes the general trend on the world scene, but is, since 2006, the determined commitment of the EU towards convergence in education, which no member country can ignore.

Regarding the divergences between the Spanish reform and those carried out successfully elsewhere, the most notable factors, which could become obstacles to achieving the planned objectives, are especially related to the contextual framework in which the reform begin, the timetable

established to carry it out and the planning and sequencing of the necessary changes in the school system.

In relation to context, once again in Spain an educational reform is being undertaken without consensus, in a political atmosphere of confrontation and even tension between seemingly irreconcilable positions. Even though mentioning this question is somewhat repetitive, the fact of the matter is that the lack of a basic agreement on the sense and direction of the reform will endanger its continuity in the event of a political change. In addition, during the debate and processing of the new law, Spain was in a highly uncertain social and economic situation because of the pandemic and so it seems clear that the social and political context in which the curriculum reform was started is far from stable, considered the ideal situation based on international experience (Altricher, 2005).

With regards to time planning, the timetable designed for preparing and implementing the reform is extremely short when compared with international experience. Little time has been spent on processes of consultation and participation with the educational community, and the autonomous regions will also have little time for its legal development and there is little time allocated to implementation in schools, as only two academic years have been provided for carrying this out in all compulsory education. It is probable that the political leaders in Spain, as has also happened in other countries, underestimate the time needed

to achieve curriculum change, as they regard it as a merely technical matter and do not consider the time really needed by those who implement the reform (OECD, 2020c).

In the case of the sequencing of the reforms in the system, Spain has chosen to initiate the curriculum change before undertaking the modification to the initial training of teachers and their further training in practice and also before the Curriculum Development Unit starts work. Other reforms that usually accompany curriculum change in the international setting, such as ones affecting school autonomy or management, have been approached indirectly or have not been considered. When we consider international experience, we find that delaying or disregarding other reforms in the system compromises the success of the curriculum reform (Reimers, 2021a).

From the point of view of involvement of key actors in curriculum reform, the role of schools and teachers is especially important. The experiences of other systems show that the essential unit of change is the school. The fact that in Spain, since the LOGSE was passed, curriculum development has been discussed in terms of levels, as though it were a vertical and even hierarchical process (state, autonomous regions, centres), should not mislead us. In practice, curriculum development is not linear. Instead, it is in schools that the official curriculum is reinterpreted and implemented, not always in predictable ways (Priestley et al., 2021).

In short, the curriculum reform proposed for Spain follows many of the habitual lines of change at this time in other countries regarding its approach and architecture. Nonetheless, it has been undertaken in an unfavourable situation and, if it is to be a success, it must also take note of some principles for the design and implementation of reforms identified by experts and international bodies. Among these, special attention must be paid to building capacity for change in schools and the alignment of the curriculum reform with the other changes required in the system. If these challenges are downplayed, we might find ourselves with a reform that does not achieve its objective of enabling Spain's education system to offer students the education required by 21st-century society.

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Heads of educational institutions and expansion of autonomy with accountability. The mediating role of pedagogical leadership*

Dirección de centros educativos y ampliación de autonomía con rendición de cuentas. El rol mediador del liderazgo pedagógico

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Abstract:

This article aims to develop a critical approach to three key aspects for the proper functioning of schools. First of all, school management, which includes collegial structures, the pedagogical leadership of the principal and the middle leadership of other educational leaders. Second, the autonomy of educational institutions, which lies between decentralisation and participation, and finally, accountability, as evidence of responsibility on the part of educational institutions. All three are considered substantive components, mediated through pedagogical leadership, for the promotion of continuous improvement of educational institutions. Thus, school management, autonomy and accountability create a logical structure of links that could improve the quality of such institutions. Various considerations that recognise the central position of pedagogical leadership in educational institutions derive from this analytical framework. These considerations lead to proposals capable of guiding policies aimed at improving the functioning of educational institutions in the context of the educational reform underway, towards which the LOMLOE (Organic Law 3/2020 of 29 December,

which amends Organic Law 2/2006 of 3 May on Education) seems to be heading.

Keywords: heads of educational institutions, increasing autonomy, accountability, pedagogical leadership.

Resumen:

Este artículo pretende realizar una aproximación crítica a tres aspectos clave para el buen funcionamiento de los centros educativos. En primer lugar, a la dirección escolar, que comprende a los órganos colegiados, al liderazgo pedagógico de la dirección y al liderazgo intermedio de otros líderes educativos. En segundo lugar, a la autonomía de los centros educativos, que se sitúa entre la descentralización y la participación y, finalmente, a la rendición de cuentas, como evidencia de responsabilidad por parte de las instituciones educativas. Los tres resultan ser componentes sustantivos, mediatizados a través del liderazgo pedagógico, para promover la mejora continua de las instituciones educativas. Así, dirección escolar, autonomía y rendición de cuentas dan forma a una lógica de vínculos que *de facto* pueden mejorar la calidad de tales instituciones. De este marco analítico se derivan diversas consideraciones, que parten de la posición central del liderazgo pedagógico en las instituciones educativas y que dan forma a propuestas susceptibles de orientar políticas dirigidas a mejorar el funcionamiento de los centros educativos, en el contexto de la reforma educativa en desarrollo hacia la que parece apuntar la LOMLOE (Ley Orgánica 3/2020, de 29 de diciembre de 2020, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación).

Descriptores: dirección de centros educativos, ampliación de autonomía, rendición de cuentas, liderazgo pedagógico.

1. Introduction

The implementation of Organic Law 3/2020 of 29 December, amending Organic Law 2/2006 of 3 May on Education (LOMLOE, Spanish acronym), will soon lead to changes in diverse areas of the educational system, affecting its levels, curriculum, educational approach to diversity and participation in and governance of educational institutions, to name a few. This article focuses precisely on these latter aspects, with the aim of analysing the functioning of educational institutions and exploring the implications of autonomy of schools and of accountability systems.

To this end, a critical analysis will be conducted of school management, which comprises collegial bodies, the pedagogical leadership of the principal and the middle leadership of other educational leaders. The autonomy of educational institutions, which lies between decentralisation and participation, and accountability, as evidence of responsibility, will also be addressed. All three are considered substantive components, mediated through pedagogical leadership, for the promotion of continuous improvement of educational institutions. Thus, school management, autonomy and accounta-

bility create a logical structure of links that could improve the quality of such institutions.

2. Heads of educational institutions

Within a broad participatory framework, school management is exercised specifically at the level of *individual action*, through the personal leadership of the principal and other middle leaders, and of *collegial structures*, consisting of two bodies -the School Council and each school's Executive Team-, which are responsible for the functioning of educational institutions. The aforementioned levels of action are described below.

2.1. The collegial structures for school management

In terms of collegial structures, the first relevant body is the School Council, which enables the educational community to participate in school governance and is composed of representatives of the teachers, the students and their parents, the city council and non-teaching staff, in addition to other executive positions within the school. Thus, it is an important body for decision-making and the educational community's professional, social and political participation; this is reflected in article 127 of the LOMLOE (2020), which assigns up to fourteen areas of competence to the School Council.

The second body, the Executive Team, is defined as a collegial management body of an executive nature in which professionals or specialists within the scope of the school itself participate. It consists of single-member bodies responsible for the functioning of the school (generally the school principal, head teacher and the secretary). The duties performed by the Executive Team are outlined and stipulated in general regulations (such as those set out in art. 131 LOMLOE), and further developed in frameworks of school organisation and management. Gento (1994) has summarised them in five categories, indicated below, to clarify their purpose. The first refers to *production of results*, which requires using the school's resources to accomplish the best educational product by means of appropriate didactic-educational processes. The second duty refers to *research and development* for the purpose of promoting the school's innovative interests and providing aid in the development thereof. Another relevant dimension has to do with the *organisation of human resources* through a robust framework that provides a functional structure and facilitates monitoring and motivation of the professionals who work at the school, particularly the teachers, to promote an ethos that fosters institutional excellence. Finally, two other dimensions should be noted: the *financial management* aspect, for forecasting, distributing and accounting for resources, and the dimension related to *administrative treatment*, which entails active intervention in the school's internal management and taking part in institutional relations with other external bodies (such as the national, regional or local education departments, in addition to other sectors).

Therefore, the importance of the collegial structures for *proper* management of the educational institution within a framework of stakeholder participation at numerous levels becomes clear. Of course, in order for their actions to create a ripple effect, the internal relations between these bodies must be flexible, constructive and, ultimately, geared towards the institutional development of the school and the promotion of the best ways of driving student development (Ibáñez-Martín, 2009).

2.2. The pedagogical leadership of the principal or head

Besides the involvement of the School Council in an educational institution's management and the provision of expertise that is generally entrusted to the Executive Team, the legislation regulating the functioning of these institutions allows for active, customised leadership through the exercise of school management at the individual level by the principal or head of the educational institution. This figure is tasked not only with calling and presiding over all academic acts and meetings of the school's collegial bodies but also with performing executive duties in a customised manner. However, school management is not exercised within a void but rather quite the contrary, as it takes place within the framework of a specific legal and administrative organisation and is subject to national and regional regulations.

From this perspective, the general duties entrusted by regulation to school principals are those inherent to a position of leadership over a group or team of people.

Although the principal relies on the necessary collaboration provided by the members of the executive team, these general duties can be summarised as follows (Gento, 1994): forecasting, planning, management, organisation, coordination, innovation and control. As Fullan states (2014): "implementing relevant knowledge, solving complex problems and building a relationship of trust" (p. 59).

In sum, a head or principal with pedagogical leadership capacity (Bolívar, 2019; Gento, 2013; Llorent et al., 2017), who has significant opportunities to decisively influence a series of factors (resource management, setting and assessing educational targets, support for teaching quality, collaboration with the surrounding community, etc.) through which educational plans and programmes are implemented (González-Fernández et al., 2020; Shaked and Schechter, 2016; Wang et al., 2016), as well as promoting, through their work, the career development of the teaching staff, all of which has an indirect impact on the students' learning.

While a direct relationship between management leadership and students' academic results has not yet been proven (Grift, 1990; Mortimore et al., 1988; Sugrue, 2015; Wellisch et al., 1987), there is evidence about the indirect impact it has, seen in improvements in the workplace climate at the school (Er, 2021; López-Rupérez et al., 2020a; Pan and Chen, 2020). Thus, an indirect relationship does exist, given that the head or principal can have a decisive influence over the teaching staff while also providing the con-

ditions, context and resources that are needed for quality education. Through this mediated effect, according to Philip and Rolf (2011), "good principals are a necessary requirement for a good school" (p. 30). Indeed, the principal is considered an important driver of the components of an educational institution (Day et al., 2010; Leithwood et al., 2020). In fact, diverse studies have shown that the activity of the executive team represents the second most important factor, after the teaching work done by the teachers, in terms of impact on students' learning (Hattie, 2009, 2011; Leithwood and Riehl, 2009; Pont et al., 2008).

2.3. Distributed middle leadership

It is also worth noting that leadership approaches focused exclusively on the principal display certain limitations due to the highly demanding nature and degree of responsibility required (Harris, 2013), while distributed leadership models have also been developed (Bush and Glover, 2014; Chi-Kin y Day, 2016; González-Fernández et al., 2021; Lipscombe et al., 2021; Tian et al., 2015). Under distributed leadership, relevant duties are assigned to middle leaders holding diverse formal positions which, in the Spanish system, include head teachers, department heads or similar roles (González-Fernández et al., 2020). These leadership roles, which mainly fall to the Executive Team, have a stronger direct influence over the teaching staff while also offering a link for cooperation with management. This entails not only a leadership position in the midst of the system, but also represents leadership

from the middle through a participatory approach that promotes collective responsibility and joint action by the teaching staff, thus making it possible to create professional communities that take the initiative instead of merely implementing what they are ordered to do (Hargreaves and Shirley, 2019; Harris et al., 2019; Netolicky, 2021).

It is important to note that, in addition to the roles of management and the middle leaders, distributed leadership models also include teaching staff leadership, the study of which has become consolidated in recent years as a relevant topic of research, as shown in the latest systematic literature reviews (Gumus et al., 2018; Nguyen et al., 2020; Schott et al., 2020). In this regard, the decisive control that teachers have over what happens in the classroom and with the students entrusted to them must be taken into account (Balduzzi, 2015; González-Fernández et al., 209; López-Gómez et al., 2020).

At least formally, these international trends are included in the spirit of the LOMLOE (2020), as evidenced in its preamble in reference to school management as a "key factor" and a "priority" for the quality of the educational system, through the explicit mention of the figure of the principal, who must "combine the institutional responsibility of the school's management as an organisation, administrative management, management of resources and leadership and pedagogical revitalisation, through a collaborative approach and seeking the log-

ical balance between administrative and pedagogical duties" (LOMLOE, 2020, article 131).

3. Autonomy of educational institutions and accountability systems

With regard to the functioning of educational institutions, paragraphs 3 and 4 of article 120 of this law also contain new elements about the autonomy of schools.

Thus, paragraph 3 is worded as follows: "the educational authorities shall promote the autonomy of schools so that their financial, material and human resources can respond to and ensure the feasibility of the educational projects and organisational proposals they draw up, after being evaluated and assessed accordingly. Schools supported by public funds must report the results obtained" (art. 120). The novelty in this point is the accountability, which is defined as a *duty* for schools supported by public funds.

In turn, paragraph 4 of said article has been updated to include the autonomy to promote "pedagogical innovation", "educational programmes" and "rules of coexistence", along with other aspects that have been carried over from the previous legislation, in a clear reference to fostering a broader sense of pedagogical autonomy. Therefore, the new law emphasises the autonomy of schools, particularly in terms of organisational and pedagogical autonomy, as well as accountability, as discussed below.

3.1. The autonomy of educational institutions: between decentralisation and participation

The idea of autonomy is linked to the decentralisation movement and to the admission of diverse proposals (including those of a private nature) within the field of education. While it is true that decentralisation is a relevant topic in the discussion on educational policies, centralised control over certain processes has been eased in diverse settings while at the same time the central authorities are exerting increasing influence on control over the system's results, seeking this intended accountability.

The autonomy of educational institutions must necessarily be fostered through a dynamic of participation. Indeed, autonomy arises from participation in the sense that participating means actively taking part, intervening in decision-making rather than merely discussing via multi-directional channels of communication and consultation. Autonomy is actually a requirement for participation, which could hardly take place without it, given that it implies that the stakeholders can accept a share or part of the actual decision-making. Based on Lowin's postulates (1968), full participation only occurs when decisions are made by the people who must execute them at each step affecting a scope of action: from establishing responsible units to restructuring them, decision-making and execution of decisions and assessment of processes and results, in addition to analysing the impact of said results.

The concept of autonomy, applied to a school or educational centre, can be understood as that entity's possibility to carry out, with a broad degree of freedom, an educational plan or project that is contextualised, defined, executed, monitored and assessed by those involved in the educational institution's mission (Gento, 1994). Thus, autonomy enables each school to construct its own project through shared decision-making, which affects the school as a whole, i.e., the teaching staff, students, non-teaching staff and other sectors involved. In this way, the school becomes more efficient at decision-making and has a greater capacity for developing its specific scholastic context.

Although evaluation and accountability to society are required for autonomous decision-making in an institutional setting, a lack of autonomy exempts its actors from responsibility for the results obtained, which limits their commitment (Casanova, 2021). This can happen, for example, when school management is judged (or held liable) for the results of actions over which autonomous decision-making was not possible. Therefore, autonomy means granting more institutional responsibility, which requires the professionals working at an educational institution to be committed to producing and executing initiatives that improve that school.

In this regard, school autonomy involves, firstly, granting teachers (within the school's concept and rules) a margin of freedom in their professional action to enable them to teach their own students in an original, personal manner (Gento, 1998), especially when it comes to methodology (Gento et al., 2018), and in the provision of the didactic materials and means to be used. Besides teaching staff, however, other professionals and sectors that also have a reasonable degree of autonomy and freedom in their decision-making have an impact on the functioning of a school. Here, non-teaching staff (specialists on diverse topics, social educators and others), students' parents (who are part of the governing bodies of all non-university institutions) and, in a certain sense, municipal representatives should be mentioned. A certain degree of autonomy should be given to those running private schools and to the range of social bodies that might have an impact on these institutions.

Furthermore, autonomy is developed at three main levels. On the one hand, there is *managerial autonomy*, which entails the capacity to act freely to forecast needs and internally manage and obtain resources. On the other, *organisational autonomy* stems from the specificity of the general orientation of the institution through its mission, as an expression of its aim or purpose, which gives rise to the way in which it plans for the diverse resources it has as an organisation (Gento, 1996). Finally, there is *pedagogical-didactic autonomy*, which refers to the way in which the institution acts to develop its basic educational approach and the way in which it strives to establish educational processes, the promotion of learning and the development of its students. The Educational Project can be mentioned as a basic reference on which to base pedagogical-di-

dactic autonomy, and it is also a driver for focusing on continual improvement and promoting quality within the institution (Gento, 1999).

Within the field of education, the dialectic between external control over educational institutions (and over the agents that work at such entities) and the levels of autonomy of such institutions and the professionals involved with them is becoming increasingly important. Although it may seem utopian or inappropriate to abandon one component or the other, the fact is that the relevance of progressing in the autonomy of educational institutions and professionals is becoming increasingly clear, thus granting them higher rates of self-control. This is even more necessary if one considers that teachers and education leaders are better prepared professionally.

Obviously, the room for freedom entailed in autonomy must be balanced with the need to keep educational institutions within the limits of the applicable legal framework. Effectively, there are guidelines and policies in place that affect and determine what can be done and to what extent autonomy can be exercised as part of a system. Therefore, the recognition and exercise of autonomy at schools leads one to consider that the educational authorities should play "a guiding role, which should be the blanket under which to comfortably exercise the approach and decision-making of a professional nature" (Darling-Hammond, 1997, p. 214).

3.2. Accountability as evidence of responsibility

The international discourse on new policies for regulating education is shifting from concepts of governing or management toward the idea of governance, which seems to imply that this development has not taken place unilaterally, but instead represents a complex, multi-level, multi-mediated process (Altrichter, 2010). In this way, the concept of governance aims to move beyond reductionist ideas of direct management to focus on procedures and mechanisms for coordinating actions within the educational system. The origins of regulatory governance date back to the 1980s when certain, mainly English-speaking, countries introduced structural reforms in the public administration in line with the convictions of neoliberalism. Subsequently, as economic globalisation expanded, other countries began to adopt similar policies as a means of evaluating and bolstering the competitiveness of their educational systems (Verger et al., 2019).

The focus on performance, equality and efficiency in educational systems has prompted social and political leaders to address the reform of governance in education (López Rupérez et al., 2020b). The contributions to this subject endeavour to analyse the relationship between several procedures of action at different levels in the educational system: in addition to expanding the aforementioned functional autonomy of educational institutions, they have the added responsibility of meeting certain requirements

included in what is known as *account-ability*. This term, originally coined in the United States, refers to the reporting of accounts and was initially used in reference to «the use of funds earmarked for a certain purpose».

A review of the literature on the topic leads to the conclusion that there are a number of concepts of accountability due to its multifaceted nature (Fernández González et al., 2018), and that these depend, to a great extent, on the values and experience of those promoting them. Some authors identify the term with gathering information about schools' performance, while others see it as redesigning the governance structures in education; it can also be viewed as a performance contract or educational bonus, or a part of the educational systems (Levin, 1974); still others relate accountability with the auditing firm concept (Hopmann, 2008). Applied to the field of education, one essential purpose is usually mentioned, namely, to discern whether an educational system or its components account for their actions by achieving results in precise, objective, terms. To this end, a series of mechanisms and instruments is established, which the education authorities (central and regional governments) implement in order to estimate the extent to which other members of the educational system (such as teachers, managers, administrators or owners of educational institutions) fulfil the required responsibilities. In this way, accountability renders visible and intelligible the experiences, behaviour or results of individuals, groups or an educational institution as a whole. In sum, this is a social, public process that acts as a kind of external legitimation that can promote the effective functioning of organisations.

The approach to accountability in relation to school performance entails interpreting results arising from state evaluation programmes and other information, such as the socio-economic breakdown of the students and the comparison of results from different regions. This concept is comparable to a financial and performance audit, which affords information about many of the school's results and about the distribution of expenditure, the teaching staff and other variables linked to programme descriptions.

However, the reporting on performance raises two serious questions. The first is related to the unanimity of the objectives of education and the concern that the information obtained should be useful to all educational leaders, which entails accepting a highly questionable concept: that all the political processes lead to appropriate objectives for all the stakeholders. The second question revolves around whether merely gathering information can highlight results and, further still, begs the question of whether the data obtained actually guarantees proof of shortcomings in educational results.

However, the accountability "system" is complete when the data and information gathered is conveyed to the teaching staff, the executive team or man-

agers and, ultimately, to society. Based on this communication process, objectives and strategies can be formulated to address each institution's situation. At any rate, it is worth recalling how important it is that evaluations involving accountability processes be conducted in a systematic, regular and longitudinal manner, so that they generate relevant, meaningful data that can be used to guide decision-making and well-informed action.

What may occur in practice is that the agents who are to do the reporting (teachers or executive team at diverse levels) endeavour above all to improve their scores in accountability evaluations rather than engaging in a reflection and analysis to shed light on processes of change and improvement. Be that as it may, the requirements imposed on educational institutions may, in practice, represent a limitation of their autonomy and constrict their flexibility in terms of functioning by creating obligations that, in most cases, are controlled by the competent educational authorities.

In Spain, the term 'accountability' appears for the first time in Organic Law 2/2006 of 3 May on Education (LOE), while Organic Law 8/2013, of 9 December on Improving Educational Quality (LOMCE) expands the external evaluations. At present, the LOMLOE (2020) establishes a diagnostic evaluation of the competencies acquired by students in the fourth year of primary school (and in the second year of compulsory secondary school) which, as

indicated in the preamble of the law, "shall be indicative, formative and guiding for the schools, the students and their families and for the educational community as a whole". Therefore, "educational institutions shall take the results of these evaluations into account when designing their plans for improvement" (article 144.1) but "under no circumstances shall the results of these evaluations be used to establish classifications of schools" (article 144.3). These are clearly noble aims which, if implemented effectively, could lead to institutional improvement processes at the schools (Godfrey, 2020; Hutt and Polikoff, 2020).

4. Final comments: The central position of pedagogical leadership

This article aimed to develop a critical approach to diverse key aspects for the proper functioning of schools, such as school management, autonomy and accountability. Various considerations are presented below, deriving from this analytical framework, that recognise the central position of pedagogical leadership in educational institutions. These considerations lead to proposals capable of guiding policies aimed at improving the functioning of educational institutions in the context of the educational reform underway, towards which the LOMLOE (2020) seems to be heading.

The intended pedagogical leadership of the principal is clearly at risk of being eclipsed by management tasks,

which monopolise this figure's duties. When the most common tasks of a principal have to do with organising human resources, often unnecessary formal routines, drafting descriptive reports, extensive discussions on relatively unimportant decisions or responding to large volumes of e-mails, to name few, there is a radical problem of priorities that limits the capacity of school management and the ability to exercise pedagogical leadership (González-Fernández et al., 2020).

If this occurs, at least four direct effects could arise from this situation: a decline in energy and time to focus on what matters, a weakening of the principal's commitment to a role that in practice is not what was expected, a challenge in retaining school leaders and, finally, a lack of appeal in relation to exercising school management. In fact, considering that the principal's work is visible among the educational community, there are sometimes few teachers willing to accept the position and, while the reasons for this are diverse, they may be related to the restrictive conditions for exercising pedagogical leadership. In light of this situation, one significant challenge will definitely be accomplishing something that is noted in the preamble of the LOMLOE (2020): that the executive role be "stimulating and motivating, so as to encourage the best qualified teachers to accept this responsibility".

Therefore, three lines of action are proposed, which could prevent the principal from being overwhelmed by bureaucracy.

The first is to clarify the job description of a principal and decide whether the most relevant aspect of this person's job is the aspect to which the greatest efforts are devoted. The second has to do with raising awareness among principals about time management, which could give rise to ad hoc training plans to focus their priorities on pedagogical leadership. The third line of action, of an organisational nature, refers to redefining structures, which could, in practice, mean hiring new administrative staff to provide support for operational tasks, and to open up other middle leadership positions related to the head (a vice-principal or deputy head, for example) to strengthen distributed leadership.

These initiatives will be meaningful in the transition towards a greater professionalization of the executive role, through pedagogical leadership, which renders the position more attractive. This will be a significant challenge that should be addressed in the implementation of the LOMLOE and, to a great extent, it will entail providing structural and formal, as well as material, conditions to ensure that the exercise of the pedagogical leadership unequivocally referred to in art. 132 of said law arises from a greater professionalization of the executive tasks (Bolívar, 2021).

This professionalization requires, firstly, reflecting seriously on the procedure for hiring principals or heads. It also entails promoting initial training in pedagogical leadership and arranging appropriate resources for effective continuous training where there is the greatest need and de-

mand, as well as training about the most relevant issues for properly functioning schools in relation to bolstering strong, productive ties within the educational community, particularly with teaching staff. Finally, the implementation of professional and wage-related incentives should be considered.

In an era featuring high levels of responsibility and numerous tasks to be completed, it is easy for the principal to fall into a managerial leadership style in which the middle leadership structures are used for the delegation and distribution of duties, neglecting their potential as a framework for distributed leadership, which refers to sharing responsibilities and creating capacity within the school (Sugrue, 2015). Pedagogical leadership cannot be disguised as middle management, but rather, it must facilitate significant decision-making on the purpose and progress of the school in a *good* direction. Such decision-making occurs in a model that seems increasingly destined to shift from a centralised perspective to another view that fosters greater institutional autonomy, from which degrees of responsibility are expected through accountability. Obviously, when it does happen, greater school autonomy may also entail an increase in related responsibilities that do not always have to do with the genuine, original concept of pedagogical leadership. To reduce this indirect effect, some of the lines of action described above could be considered.

At any rate, autonomy enables the best decisions to be made for each school through structures of participation and management, setting shared targets, establishing strategies and roadmaps and organising reasonable resources to accomplish this. In the effort to decentralise and promote participation, greater school autonomy makes it possible to increase the response capacity of the local setting, meet the students' needs better and to foster a more effective use of resources to meet those needs. Such autonomy also helps reduce bureaucracy and affords schools greater potential for innovation, in a broad sense. In this regard, it is essential for schools to have a degree of freedom to responsibly make decisions that affect curricular and pedagogical matters (relating to the curriculum and educational projects) and financing and material resources (reflecting the way of allocating and managing resources), which have a relevant impact on the teaching and learning. Granting schools autonomy should help improve student performance, although diverse studies have shown that the context can be a decisive mediator (Hanushek et al., 2013; Kameshwara et al., 2020).

In sum, the proposal consists in promoting a functional model for schools that harmoniously combines autonomy with accountability through educational policies that respond to the demand for educational institutions to report fulfilment of their responsibilities while also fostering cooperation instead of competition among students, teachers and schools. To this end, in addition to stable policies, it is also urgently essential to enable distributed, intelligent and creative pedagogical leadership to *let go* of administrative work and to avoid bureaucratic types of leadership.

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Book reviews

Escámez-Sánchez, J., & Peris-Cancio J.-A. (2021).
La universidad del siglo XXI y la sostenibilidad social
[The 21st century university and social sustainability]
(Ramón Mínguez-Vallejos).

Grupo SI(e)TE Educación (2021).
La calidad en la educación
[Quality in education]
(José Antonio Jordán).

Santos-Rego, M. A., Lorenzo, M., & Mella, I. (2020).
El aprendizaje-servicio y la educación universitaria. Hacer personas competentes
[Service-learning and university education. Making competent people]
(Alexandre Sotelino Losada).

Book reviews

Escámez-Sánchez, J., & Peris-Cancio J.-A. (2021).
La universidad del siglo XXI y la sostenibilidad social [The 21st century university and social sustainability].
Tirant Humanidades. 281 pp.

This book represents a firm commitment to the vigorous and potential ethical engagement that should be driven by the university in response to the unstoppable process of degradation of the Earth and the life that inhabits it. For several decades now, considerable scientific evidence has shown that the future of our planet is in serious danger: the threat of destroying biodiversity and the risk of being destroyed.

Not surprisingly, there is an uneasy sense of discomfort, and public opinion polls quite often remind us of the fact that environmental deterioration is one of the most urgent concerns of the global population in this century. Meanwhile, as an institution that promotes a better future, the university cannot stand by and do nothing, allowing the matter to progress along such a dangerous path.

The contributions contained in this book are inevitably the result of a humanistic vision inspired by a different paradigm for the relationship between human beings and nature, which entails a way of civilisation that is more loving, respectful and fraternal to Mother Earth. Inspired by Pope Francis' Encyclical, *Laudato Si*, this book emphasises a preoccupation with caring for our shared home, deemed to be a mother and sister, with which we share our existence; it is a mistreated home that is demanding greater attention, along with all those who are excluded and rejected in this world.

From this perspective, the book focuses on three basic, but intimately related, scenarios: the conservation of natural resources to ensure life, the decent development of nations and the profound social inequality gap.

Given that we are not facing two problems, one human and the other natural

resource abuse, but rather one single human-environmental problem, the authors of this book are aware that a profound change is needed in our minds and hearts, because ensuring a sustainable lifestyle is only possible within the framework of a new sense of inter-dependence and global responsibility.

In light of the overriding need for general sustainability that will ensure a social agreement between humans and nature, and because the issue is so serious that it has become a matter of life or death for both parties, this work turns to normative ethics as a general criterion for determining when an action is correct and when it is not in response to the cries of the Earth and of the impoverished in today's context of uncertainty, diversity and inequality.

Thus, with the intention of driving real change at this decisive moment in our most recent history, the book's authors expound on certain crucial topics. One such topic is as follows: What is the mission of the university in this century and in relation to the environment? (chap. 1). Prof. Escámez, in a fruitful dialogue with the writings of Ortega y Gasset, argues that the most pressing mission of the university is to educate individuals in "lively ideas", that is, "the repertoire of convictions about what the world and fellow man is" (p. 22), including an assessment of what is more or less worthy. In sum, to train professionals to judge the culture of their moment in history and to decide whether they respond to its vital needs. It is also important to teach a type of normative ethics (deontological, consequentialist

or utilitarian) that promotes the common good so as to fulfil their role as citizens. This chapter ends by establishing new lines of research on the university's mission in this century.

Closely linked to this chapter, prof. Peris-Cancio discusses the commitment that the University must make with respect to social sustainability (chap. 2). Academicism or an openness to personal development? This is one — perhaps the most endemic — dilemma that persists at this honourable institution. In these pages, a critique is made of the excessive self-absorption of the university, which must accept the challenge of abandoning academicism that breeds resistance to change, and the impossible task of training competent professionals who are abreast of the times. Instead, the proposal here is that the university needs to determine the values, attitudes and knowledge that university students must possess in order to develop adequately as professionals, as well as the promotion of students that are "active, with critical thinking skills, involved in social transformation" (p. 56). A call is made to the moral rearmament of the university toward social sustainability geared toward the common good of everyone that inhabits this planet.

Chapter 4 is devoted to human rights and social inclusion. According to the authors, the university is an ideal setting in which to put forth arguments to resolve unjust situations and to promote a more attentive way of viewing others, focused not only on oneself but also endeavouring to nurture lives prone to precariousness

and rejection. In this regard, the university could be a space for rational deliberation with a view to treating others with benevolence and care.

Expanding on the previous section, Chapter 5 focuses on postulating that the university must contribute to the formation of citizens for robustly democratic societies. If human rights are inalienable universal safeguards for all people, then the democratic space is the ideal setting in which to debate and become committed to promoting and achieving fundamental rights for humans. Therefore, the concepts of participation, citizenship and civil society are analysed here with a view to understanding the need to weave social networks that act as a buffer to aggression and manipulation of economic and political power. Teaching how to condemn injustice and promote the pursuit of fundamental rights is one of the educational aims for which university students learn and exercise active citizenship.

The list of chapters devoted to key issues about the university's mission ends in Chapter 9. Here, the topic addressed is whether university education should be dedicated to cultivating "the values of its political community" or, instead, should convey "the values of the human community" (p. 221). The very title of this chapter hints that the authors are more inclined to educating cosmopolitan citizens. They put forward reasons to support the idea that, as a result of the recent pandemic, we are citizens of one large human community. Without surrendering our local identity, it is necessary for them to learn to "recognise humanity wherever they find it; […] and to be willing to comprehend humanity, no matter how strangely it is disguised" (p. 228). They conclude with the idea of promoting politics and education aimed at "safeguarding human unity and diversity: the treasure of human unity is human diversity; the treasure of human diversity is human unity" (p. 242).

The remaining chapters focus on current issues directly involved in achieving balanced sustainability. Chapter 3 addresses the issue of inequality as the root of unsustainability, running the risk of destroying ways of human life and life on the planet itself. The university institution should promote critical citizenship that leads to human development, reducing inequalities and constructing a more just world.

In turn, Chapter 6 analyses the problem of poverty from the approach of human capacities (M. Nussbaum). This approach "not only prepares for life but also for work" (p. 159), thus rendering capacity development one of the main objectives that should be sought by the university at this time. Furthermore, this approach would help to reduce or even eradicate poverty, given that developing capacities is like equipping a person with all the resources needed to live a decent life in conditions of equality and respect.

The following chapter is devoted to analysing the phenomenon of migration. Beyond socio-political implications and data, the focus is on value judgements of this phenomenon, resulting in a proposal of ed-

ucational lines of action at the university, opting for inter-culturalism, cultivating rights from a universal ethics stance that recognises the values of equality, equity, environmental conservation, educating university students in dialogue for multi-cultural co-existence, the moral responsibility to reject all forms of exclusion (social, economic, cultural, gender-based, etc.) and the creation of respectful relationships with the natural and urban setting (p. 188).

The final topic addressed in Chapter 8 is gender equality in relation to sustainability and human dignity. One striking feature of this chapter is the interesting way of handling this social problem, which is generating no small amount of violence and inequality; these issues should be addressed at the university in order to generate sustainable human development. A set of guidelines is described to make it possible to progress appropriately in this matter as part of university education.

The book ends by giving a summary of an empirical research project that describes the reality of one sector of the university student body. The results of this study are highly interesting. Notably, these university students can be seen as having basic knowledge about sustainability, claim to have high regard for ethical values and accept those norms that correspond to the desired sustainability; however, imbalances are detected in their attitudes and skills, which is linked to a widespread sense of indifference for sustainability or for participating in activities committed to promoting the environment.

Overall, without wishing to stem the great flow of ideas and educational lines of action that appear in these pages, I encourage you, dear reader, to take a closer look inside this book because the authors have managed to create a brilliant pedagogical text about one of the most pressing issues of this century.

It might have been enriching to take this editorial opportunity to start an exciting debate with other ethical and pedagogical views that are removed from the decidedly idealistic tone found in normative ethics and its related pedagogy. Perhaps this could spark a new challenge.

Ramón Mínguez-Vallejos ∎

Grupo SI(e)TE Educación (2021).
La calidad en la educación
[Quality in education].
Horsori. 166 pp.

In this era of standardisation and improvement in all areas of personal and collective life, it is especially necessary to discuss the topic of quality in relation to education, just like quality is demanded in the fields of health, food, communication, transportation, etc. This is even more important, if possible, when it comes to education, given that the aim is to optimise the possibilities of human development and communal living. Therefore, we are pleased to welcome a work that seriously addresses the topic of quality and offers specific proposals to education professionals. In this book, each chapter is penned by a different author, analysing

important aspects of the complex structure that is quality education.

The first, signed by Professor Antonio Colom, provides a historical overview of the main authors and ideas that have undoubtedly influenced today's conception of quality education, noting how concepts that have actually been in use for a long time often seem to be revived as if they were novelties. For example, within the New School movement, the methodological proposal by Montessori, which arose in the slums of San Lorenzo (Rome), is now "the latest pedagogical trend in the most exclusive settings of Manhattan or California", among other places. At the end of his text, Professor Colom perceptively notes that today "Pedagogy seems to be devoid of its own model of educational quality". Without falling into useless pessimism — because the scholarly institutions of our time do indeed fulfil their purpose and, "they apparently don't do such a bad job" — it is also true that "the *commercialisation of knowledge* cannot be considered educational quality, despite what international organisations would have us think, given that a quality educational system should not focus exclusively on STEM (science, technology, engineering and mathematics), as certain generations of technocrats seem to be demanding […]. And the reason for this is quite simply that their fundamental commitment should continue to be educating with a focus on values and the moral development of people.

The second chapter, by Professor Gonzalo Vázquez, focuses on the concept of deep learning, which includes distinguish-

ing between action and activity, noting that the former is of a prior, more profound, nature because it exceeds mere activism in learning, for example. Thus, *deep learning*, defined as "authentic learning of higher-order cognitive processes", can be achieved. It also enables the learner to think for him- or herself and to gradually obtain wisdom, which goes beyond mere knowledge to become the "most elaborate fruit of education". The chapter goes on to discuss numerous other highly topical issues: the role of technology, the selection of valuable learning, the evaluation of learning from a competency perspective, etc., revealing the complexity of these times and the need to reflect on the fundamental issues of so-called quality education.

Chapter three of this book brings back an old topic of debate and updates it: the role of learning objectives in a quality educational process. With remarkable clarity, Professor Sarramona outlines the background of the debate about behavioural objectives, going so far as to precisely detail the current conception of competency objectives as the integrating feature of the trio composed of knowledge, skills and attitudes. This chapter also sheds light on a fundamental topic: justification of the proposed objectives, which is sought in more personal needs as well as in social needs. The chapter offers detailed theoretical reflections as well as practical guidance, following this author's sensible custom.

In turn, the fourth chapter, by Professor Petra María Pérez, focuses on an aspect that is no less relevant in quality education: the "comprehensive well-being of the stu-

dents", which is a key matter both for their own good and for their academic success. Her contribution mainly relies on data arising from analyses of the PISA tests. However, other equally important issues arise from the criteria argued by this author and others about the positive effects of student participation seen at diverse levels of the educational institution, given that institutionalised education aims to prepare students to actively participate in democratic, and therefore participative, society.

In his chapter, Professor Touriñán discusses the need to distinguish the concept of quality of education from other similar concepts, such as quality in education, emphasising the expert status to be given to education professionals, who are clearly involved in the educational processes, and this involvement represents an activity that is shared with the learner. The chapter outlines numerous pedagogical criteria put forward by the author in other publications, as can be seen in the bibliographical references, which converge in this text about the concept of quality.

Chapter six focuses on quality in relation to university institutions. Here, Professor Alfredo Jiménez starts with the legislative framework from the 1990s and continues to provide a detailed account up to the present time with a view to revealing initiatives and ways of putting into practice very specific proposals for improving quality at university level, focusing on the European framework that Spain is part of. In this regard, special emphasis is placed on the evaluation system in our universities, detailing regulations and

aspects that are linked to this evaluation. On the whole, the author recognises that there are benefits to accreditation processes for university institutions but he warns that certain critical aspects have not yet been considered, particularly as regards teaching activities themselves, both inside and out of the classroom.

The high point of the book is found in the appendix that Professor T. R. Neira devotes to José Gaos. The text was originally presented at a conference given at the Ateneo de Gijón in early November 2020, the last academic act performed by the author before he died. The author was quite familiar with Gaos and, on this occasion, focused his attention on the concept of individuality as the basis for presenting his own views in this regard. The text is an example of Professor T. R. Neira's unique way of expressing himself, always using quotes from relevant contemporary authors on the subject matter at hand for support, while at the same time presenting his own views clearly and in a bold manner. Here, the topic that he touched on the most was the reaffirmation of the substantially individual dimension of the person, which we know was one of his primary concerns in recent years. This text affords added value to the book by contributing one last demonstration of the strong analytical capacity and worth of Professor Teófilo Rodríguez Neira, who will always be remembered.

Besides the contents mentioned above, the book also contains an introduction expressing the authors' desire to pay tribute to Dr. Teófilo Rodríguez Neira, who sad-

ly died from COVID in November 2020 and was an active member of the SI(e)TE academic group, which is composed of highly reputable professors of Spanish universities working in the field of Theory and History of Education, most of them having earned emeritus status for their age, even though they have all made numerous significant contributions to Pedagogy today. The preface offers a perfect description of the group's motivations and characteristics, in addition to showing heartfelt appreciation for the fondly remembered Professor Teófilo, as everyone affectionately called him.

José Antonio Jordán ■

Santos-Rego, M.A, Lorenzo, M., & Mella, I. (2020).

El aprendizaje-servicio y la educación universitaria. Hacer personas competentes [Service-learning and university education. Making competent people].
Octaedro. 193 pp.

Research and literature about service learning have increased in recent years, experiencing exponential growth in this decade. The vast majority of publications emphasise the potential that this experiential methodology has for the participants to learn, as well as the social impact deriving from the related projects. But we must not forget that this is a didactic methodology with a clear pedagogical objective. We stress this point because many of the practices labelled as SL seem to resemble volunteering projects or field practices instead. Therefore, those of us

in the pedagogy field must ensure that certain epistemological criteria are met so as to guarantee the quality of the initiatives; otherwise, there is a risk of trivialising this method, as is the case when any group project is prone to be called cooperative learning.

SL seems to have taken hold particularly at university level. Thus, in recent years, numerous research projects, scientific events, publications... and of course experiences have come to light involving a range of fields of knowledge. There are even specific networks for teachers and researchers in the field of higher education. The danger in all this is when SL shifts from being a useful methodology within the framework of competencies to being implemented as a sort of fad playing to interests that are unrelated to the teaching-learning process. Therefore, we must continue emphasising a gradual consolidation while also ensuring sufficient guarantees of pedagogical efficiency and efficacy.

In this regard, professors Miguel Ángel Santos Rego, Mar Lorenzo Moledo and Igor Mella Núñez have presented a work that progresses in the knowledge of service learning while maintaining a perspective that is, at once, critical and proactive. This can be seen in the title of the book itself.

A browse through the chapters of this book takes us from general to more specific aspects, starting with a conceptualisation of learning in higher education in the 21st century and ending with a proposal for the institutionalisation of service learning.

For its readers, the journey on this ocean of knowledge that is SL begins on an island shared by many areas. Thus, it touches down, first of all, on the epistemological foundations on which today's European Higher Education model is built, based on the creation of the European Higher Education Area (EHEA). Obviously, given the contextualisation of the book, it also discusses the Spanish university system, which has faced this challenge in the midst of social change. Subsequently, the authors address the concept of educational innovation, which, in today's scenario, revolves around competency-based learning. In this latter aspect, the authors' work around understanding this new approach is particularly striking, as is their way of explaining to the uninitiated a world that is sometimes hard to comprehend from the perspective of pedagogical atheism.

At the second port on this academic voyage, the authors outline the methodology that is the focus of the book: service learning. Thus, they emphatically set out the conceptual frameworks of this type of programme, in turn distinguishing it from other educational proposals. In addition, given that SL is by no means a new concept, the work discusses the origin, evolution and adaptation of this methodology with a narration that starts with the pragmatism of the Chicago School, led by John Dewey.

The journey continues, its third stop taking the reader to a specific space in which service learning is applied. The university setting is one of the areas in which this methodology is being implemented most widely, as shown by numerous publications, meetings, training events, and more, on the topic. Therefore, the authors have devoted a specific chapter to this aspect. This work offers us an in-depth understanding of the criteria to be used in designing, implementing and evaluating service-learning projects in higher education, affording the certainty that we are doing so with the required pedagogical rigour. To achieve this goal, reflection is proposed as a basic feature of this kind of initiative, thus tying the service performed to the academic content of the different subjects. This section ends by linking the aforementioned competency-based learning approach to service learning, highlighting the potential that this experiential methodology has in fostering the achievement of competencies through a more dynamic, contextualised process. Another relevant matter is the endorsement of SL as a proposal that aids in the insertion of university students in social and work life, given that it connects them to their surroundings and to networks of contacts that place them directly in the job market.

The final stop on this journey, in the fourth chapter of the book, is devoted to the process of institutionalising service learning in Higher Education, identifying the stakeholders, models of action and levels of achievement. In this regard, the process implemented at the University of Santiago de Compostela is taken as a starting point and reference; two research projects were conducted there within the framework of the Esculca Group, thus fostering the effective consolidation of

the method at this institution. The authors therefore advocate the evaluation of SL projects as a basic requirement for displaying their quality patterns and enabling these patterns to be presented as best practices in higher education. At this point in their voyage, readers will also learn about 19 different projects that can illustrate how to create new proposals in other lands and destinations.

We would also like to point out the attached survey contained in the book ("CU-COCSA – Cuestionario sobre competencias cívico-sociales y autoeficacia del alumnado universitario", the survey on civic and social competencies and self-efficacy of university students), which is placed at the disposal of the scientific community in an exercise of academic solidarity and knowledge transfer. This instrument contains four scales that refer to matters related to university education, social participation, civic and social competencies and self-efficacy. Therefore, it is a validated benchmark for evaluating projects of this nature.

In sum, with this work, the authors combine experience and sound research in order to create an irrefutable line of reasoning with regard to the academic and social potential of service learning. Thus, they have presented a book that must be consulted by anyone in the academic community wishing to learn more about SL, moving beyond a simplified discourse in which the weight of the argument falls merely on rhetoric without being grounded in the pedagogical knowledge that has brought service learning to where it is today. It should also be noted that this book is useful in teaching university students, offering them options to help them optimise their academic journey based on experiences of this nature, which afford pragmatic nuances to cold curricula. Therefore, this work may be of interest to a wide-ranging audience, from students and/or novice researchers to teachers and others with academic management responsibilities, or even professionals working at tertiary sector organisations. In this way, the book represents a step forward in the service-learning methodology, and could even become a benchmark in this field, although one thing clearly distinguishes it from other discourses: this work is rooted in the pedagogical rigour of the arguments expounded by its authors.

Alexandre Sotelino Losada ∎