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Chapter 1

Freedom of Education as an Interplay of Forces

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Introduction

The Dutch education system is often seen as a vivid example of great freedom of education and a high degree of autonomy for parents, teachers, and school boards. Freedom of education has long constituted the backbone of the Dutch education system. It is the outcome of a fierce, more than a hundred years long political battle along religious and social lines, referred to as the 'school struggle'. Freedom of education was originally intended to give parents and private communities/parties in society the right to establish and operate their own schools based on religious, ideological or educational convictions or on 'general interest'. It exists in the Netherlands in an ideal or theoretical sense until the present day. When education policy is implemented, freedom of education works out differently for the various parties involved. Two mechanisms are discussed that play a role in this. First, the use of policy instruments other than legislation and regulations to implement education policy. Second, the so-called 'substitution effects'; that is, the partial bureaucratization of this freedom at the intermediary level of governance between schools and the government. These mechanisms mean that in practice, the freedom of education involves a complex interplay of forces.

Historical Context

Freedom of education and equal financial footing of both publicly run and privately run and publicly funded schools lie at the heart of Article 23 of the Dutch Constitution, on which education legislation is based. They have their origin in the school struggle and the ensuing Pacification of 1917.

The school struggle took place during the formation and development of the Dutch nation state in the late 18th and 19th centuries. At that time, the Kingdom of the Netherlands was characterized by deep social and religious polarization. Initially, the school struggle played mainly between the prospering Protestant majority and the disadvantaged Catholic minority. In the middle of the 19th century, equal treatment of the Catholic minority and the dominant Protestants was gradually ensured in the Dutch nation state. The constitutional amendment in 1848 that established formal freedom of education, i.e. freedom to provide education, symbolized a compromise between the two religious parties.

From then onwards, the school struggle moved to the realization of the achieved formal freedom of education, i.e. the funding of schools. Also, 'neutral' public education became an issue, because until then, public schools were of Protestant character in line with the Protestant character of the Dutch royal house. To the annoyance of all non-Protestant parties, it proved difficult to turn the traditionally 'Protestant' public schools into genuinely 'neutral' public schools. The debate focused on the right to public funding of religious schools, claimed by religious parties, and the

ideal of a single public school, articulated by liberal parties. With the creation of a constitutionally sanctioned system of publicly and privately operated schools that are all eligible for government funding in 1917, more than a century of school struggle was brought to an end.

Since freedom of education was laid down in Article 23 of the Constitution in 1917, about two-thirds of the schools are privately run, which means founded by private initiative, e.g. by parents and private communities/parties though publicly funded. About one third of the schools are public, i.e. founded by local government. Every local government is expected to provide public education in a sufficient number of schools, thus ensuring that every child is able to attend a publicly run school. The Netherlands has only a small number of privately operated schools that are privately funded (approximately 7% of all pupils in primary and secondary education attend private schools). Nevertheless, during the last decade, private education has grown substantially in the form of private schools and institutes providing homework supervision and exam training, and mentoring and guiding children with special education needs. The amount of private schools and institutes that provide schooling and training in addition to standard education, and therefore referred to as 'shadow education', has doubled in 2016 compared with 2009. The emergence of 'shadow education' is seen as evidence of the failure of the standard education system in the Netherlands and as a threat to overall accessibility of education and equal opportunities.

Tension between Freedom of Education and Government Intervention

Typically, Article 23 reflects tensions between freedom of education and government intervention, because it both protects against, and legitimates, government intervention in education. On the one hand, freedom of education is practiced according to the 'principle of the three freedoms', i.e. that freedom of education can only be achieved when the freedom to give schools a specific religious, ideological, educational or 'general interest' character (*vrĳheid van richting*) is accompanied by the freedom to establish schools (*vrĳheid van oprĳching*) and educational and organizational autonomy (*vrĳheid van inrichting*). This principle was intended to protect the educational rights of school organizations and those of parents and pupils against too far-reaching government intervention in education. On the other hand, Article 23 expresses the government's responsibility with respect to education, formulated as 'education being a subject of continued attention for the national government'. This legitimates government intervention, as it requires national government to set statutory requirements (*deugdelĳheidsisen*) to ensure a minimal level of educational quality, and as it demands that all schools are under the scrutiny of the Dutch Inspectorate of Education, which acts as a government agency. The government has the right to translate the statutory requirements into organizational requirements relating to school subjects, class schedules, final attainment levels and examination regulations. The requirements relating to the expertise, understanding, skills and professional attitude of teachers

also fall under the organizational requirements, as do requirements relating to management and the internal organization of the education. In the Pacification of 1917, the statutory requirements were interpreted as minimum standards, whereby the government is bound to do 'that which is essential'. This basic-standards approach requires self-discipline from the state when interpreting the statutory requirements, as well as a sophisticated understanding of the meaning of Article 23 of the Dutch Constitution.

The above tension between freedom of education and government intervention can be interpreted as a tension between the freedom of groups and individuals on the one hand, and collective aims and aspirations in relation to education on the other. When designing educational policy and legislation, the desire to adjust the statutory requirements in line with political and social views and requirements may be in conflict with the interpretation of the freedom of education, something that continues to cause political and social controversy in the Netherlands repeatedly to this day. At present, important points of discussion are government measures with respect to, for example, public funding of Islamic schools and the issue of eliminating school segregation, or education governance and quality assurance interfering with school board autonomy¹. With respect to the latter, it is noteworthy that over the last years, the legal powers of the Inspectorate of Education have been extended by introducing an integrated approach of monitoring school quality, financial management, compliance with rules and regulations and checking that schools ensure educational quality effectively. Since 2010, the law allows for government intervention if the Inspectorate finds schools to be at risk of underperformance (see Chapter 5).

Autonomy for Parents, Teachers and School Boards

A large amount of freedom of education implies a high degree of autonomy for parents, teachers and school boards. In this paragraph I'll address the question: What kind of autonomy does each actor have, and to which degree?

Parents

Although not explicitly mentioned in Article 23 of the Constitution, free parental choice of schools, and the major role parents play in the establishment and the governance of privately run and publicly funded schools, have long been significant consequences of the Dutch freedom of education.

From an international perspective, Dutch pupils and their parents enjoy a unique freedom, namely the freedom to choose a school. In the past, philosophical and religious preferences played a major role in this. In recent decades, however, quality-related considerations have become increasingly important. As it is difficult for parents to gauge the quality of a school, in

¹ Waslander, 2010

practice their choice of school is determined by the school's image and reputation. The latter is partly dependent on the level of education and the social background of the pupils who attend the school, as well as that of their parents. In general, parents consider schools with a high concentration of disadvantaged and high-risk pupils to be less suitable for their children, and for middle and higher educated parents, it is important for a school to be in keeping with their ideas on education and upbringing.

The freedom to choose a school is sometimes limited by local arrangements that oblige parents and pupils to choose a school within their own postcode region, or to participate in a system of lottery or a matching system. In addition, the fact that parents have to choose from existing schools also limits their freedom of choice. Since the early 1990s, there have been very few real possibilities for founding and securing funding for new schools. Yearly, ten to twenty new primary schools are established out of 6,700, and one to three secondary schools out of 1,400². If parents and/or other parties and groups in Dutch society wish to establish a new school, they must demonstrate the need of pupils and parents for a new school based on a specific religious, ideological, educational or 'general interest' approach, in the Dutch language referred to as *richting*. Today, there is a strong debate on what exactly can and should be understood as a specific *richting*, and which role *richting* should play in establishing new schools. A growing voice is calling for the abolishment of the concept of *richting*, as it is often experienced as an impediment to establish new innovative schools. The process from idea to effective start of a new school may take long, especially because local government has five years to offer suitable accommodation.

Historically, parents are both constituents and beneficiaries of privately run and publicly funded schools, and play a major role in the governance of 'their' schools as members of school boards, of governing bodies and through participation structures. However, parent participation has decreased over the last decades, partly due to processes of restructuring and professionalising school governance and the upscaling of school organizations, and also because parents are less willing to participate. In 1990, 80% of school boards of privately run and publicly funded schools consisted of parents, compared with 30% of school boards in primary education and 15% of school boards in secondary education twenty years later³. The Dutch Onderwijsraad (Education Council) has repeatedly voiced its concerns about the low degree of interest and expertise of parents and pupils regarding participation. Parents are not always seen as equal partners, and schools are not always able to involve parents who are difficult to reach, often parents from immigrant backgrounds or with a lower level of education.

In response to these developments, the position of pupils and their parents has been strengthened by various means. Schools are being forced to take greater account of pupils and their parents, because the transition from a reimbursement-financing model to lump-sum funding established a linear relationship between a school's finances and the number of pupils attending the

² Klein, Waslander, Hooge, Imandt & Bisschop, 2014

³ De Bruijn, van de Linden, van de Vegt & van der Aa, 2012; Honnigh & Hooge, 2012

school. In addition, the school's obligation to account for its policy to parents, in the form of the school guide and the annual report, as well as the information on school quality provided by the Inspectorate of Education, have increased the onus on schools to take account of the users of education. In 2007, the Wet Medezeggenschap Onderwijs (Education Participation Act) was updated, requiring every school to have a council composed of employees, students and parents that is entitled to take part in governance processes. Very recently, in 2016, the Wet Versterking Bestuurskracht (Administrative Power Reinforcement Act) was introduced to further strengthen the position of the employee and student/parent council. Transparency and openness in the appointment and dismissal of education administrators, and the involvement of the council in these procedures, is one of the main proposals.

Teachers

From an international perspective, Dutch teachers, like parents, enjoy a unique freedom, namely, the freedom to choose their employer. Rather than being assigned to a school, as is the case in many other countries, they are free to apply to the school of their choice. This means that they can choose the school that best fits their preferred form of professional practice and – owing to the decentralization of fringe benefits – their preferred terms of employment. A shortage of teachers, especially in particular subjects or types of school, which occasionally occurs in the Netherlands, further strengthens this freedom to choose a school.

Another freedom that is enjoyed by teachers could be called the 'freedom to teach and educate'. Due to the freedom of education, central government has little direct control over teachers and their teaching practice. Traditionally, the Constitution only holds the Dutch State responsible for 'the ability and morality of those teaching (delivering education)'. In consultation with their colleagues and managers, teachers are free to organize their teaching by using methods and teaching aids at their own discretion. However, this freedom to teach and educate has always been limited. The government, school boards and – at the level of the school organization – managers, internal and external advisers, exercise what is known as 'professional oversight'. This oversight is manifest in the establishment of human resource policies, the development of the teaching profession and requirements relating to expertise. With the introduction of the Wet op Beroepen in het Onderwijs (Education Professions Act) in 2006, the control of central government over teachers, indirectly via school boards, has grown slightly. This act requires the Inspectorate of Education to check on school boards establishing human resource policies for their schools, keeping competency files for teachers, and ensuring that teachers' competencies are maintained. Regulations require regular performance interviews with all staff. However, there is little central guidance on how teacher performance should be evaluated. School boards have the power to design and implement strategies and policies to achieve objectives with regard to human resources, organizational development and the quality of education. It is also up to school boards to take measures to promote professionalization and the learning and collaboration of (teams of) teachers.

School Boards

All privately run and publicly funded schools are under the auspices of school boards which are structured in private legal forms. In the last few decades, local governments have set up separate entities to govern their public schools, so that they now seldom fall under the direct control of local government. However these separate entities operate schools with a public character on behalf of local government, in practice they act and look like school boards of privately run and publicly funded schools.

There is large variation in governance models. Today, the majority of school boards have provided for professional governors (receiving a salary), whilst the number of school boards that have voluntary governors (often parents and other laypersons receiving a honorarium) rapidly decreases. Professional governors are appointed by their internal supervisors. Since the introduction of the Wet Goed Onderwijs Goed Bestuur (Good Education, Good Governance Act) in 2010, all school boards are required to arrange for internal supervision and guarantee a clear separation between governing and supervising functions⁴. Internal supervision can be executed in various ways through either a two-tier or a one-tier structure. The two-tier structure encompasses two separate boards: a governing board that governs, and a supervisory board that executes the supervision function. The two-tier structure is a legal requirement for the entire Dutch private sector and it is widely accepted and approved of in the Netherlands. The one-tier structure, which is conventional worldwide, includes just one board in which the governing and supervision functions both are executed by respectively executives and non-executives. In the Netherlands, it is generally agreed that the internal supervisory function in the governance of public sector organizations involves three tasks: 1) decision control, 2) acting as the employer of the governors and 3) assisting with advice and acting as a sounding board. The internal supervisors are laypersons (parents, citizens, stakeholders, members of a religious or life philosophy community or professionals with specific expertise such as law, finance, HRM or education) who are appointed by co-optation, which means that the current internal supervisors jointly recruit and appoint a new board member in case of a vacancy.

Voluntary governors (parents) often delegate their executive tasks and responsibilities to the school director(s), and limit themselves to the broad outline when formulating and controlling policies. Voluntary governors are appointed by co-optation and obliged to provide for internal supervision.

Since they all are appointed either way, school board members in the Netherlands function as trustees rather than as representatives. In many other countries (e.g. the USA), members of school boards are elected officials and therefore operate in a political environment in which they are held accountable through such means as elections. Compared to this, school boards in the Netherlands lack democratic accountability mechanisms and operate at a relative distance from (the dynamics of) government.

Dutch school boards have more autonomy than school boards anywhere else in the world. Data provided by the Organization for Economic Co-operation and Development (OECD) show⁵ that, in the Netherlands, 85% of the decisions are taken by school boards and only 15% by central government, as can be seen in Figure 1.1. Compared to other European countries, we see that in England, Estonia and Belgium (FL), 70% or more of the decisions is also taken at school (board) level, whereas in Belgium (FR), Switzerland, Spain, Germany, Portugal, Norway, Luxembourg and Greece less than 30% is taken at this level.

Traditionally, school boards in the Netherlands enjoy all three types of freedom: the freedom to establish schools, the freedom to give schools a specific religious or philosophical character, and educational and organizational autonomy. The freedom of the school board to appoint teachers, shape the content and form of teaching in accordance with its own vision and choose its own teaching aids, are all important aspects of this autonomy. School boards in the Netherlands have a significant degree of autonomy concerning the allocation of resources, personnel matters, infrastructure of buildings, and curriculum and assessment. School boards' decision-making power has grown during the 1980–2000 period, as a result of decentralization and increased school autonomy policies. However, Figure 1.1 shows that since 2003 the degree of autonomy has decreased slightly. This is due to growing government control with respect to content of education, didactics and quality of education in general⁶.

A large amount of freedom for school boards does not automatically mean that school directors and managers of schools that fall under their authority also enjoy greater freedom. School boards can claim considerable scope for policymaking, leaving little room for the levels below (individual schools or colleges).

⁵ OECD, 2012

⁶ Hooge, 2013

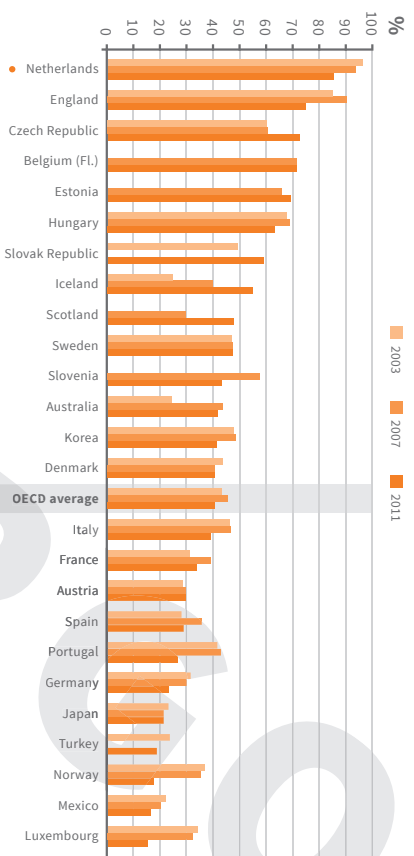


Figure 1.1 Share of decisions taken at the school level. Countries are ranked in descending order of the percentage of decisions taken at the school level in 2011. (Source: OECD, 2012, p. 509.)

Freedom of Education in Practice

In the preceding section, a general sketch is provided of the extent to which parents, teachers and school boards enjoy freedom of education. It shows that there is a difference between freedom *de jure* and *de facto*. We will now look in more detail at the differences between legal freedom and actual freedom. In practice, schools' educational and organizational autonomy is the outcome of a complex play of forces between the government, school boards, policymakers, school managers, teachers, parents and pupils and other stakeholders. Two mechanisms shape the legal freedom of education in practice. First, there are mechanisms other than legislation and regulation, referred to as soft governance. Second, apart from the government there are other influencers that determine the scope of the freedom. We will now outline these mechanisms.

Soft Governance

The dominant doctrine of freedom of education and autonomy runs like a thread through the Dutch practice of policymaking and steering in education. The Pacification of 1917 requires a self-disciplined central government that is only doing 'that which is essential'. To this day, the Dutch Ministry of Education is therefore walking a fine line, being very reluctant to steer education too ostentatiously or to control school boards too directly with law and regulation. If central government oversteps the mark, this draws heavy criticism and triggers controversy from religious and private political/societal parties.

As the development and introduction of education policy in the Netherlands is a complex undertaking, as suggested above, the government uses 'soft' policy instruments such as communication and incentives for this purpose rather than legislation and regulation. More flexible and less visible forms of steering and policymaking offer the Dutch government a way out of the constitutional tensions between educational freedom and state intervention. These forms, in literature referred to as 'soft governance', represent steering in or via networks and 'horizontal' non-hierarchical steering mechanisms such as using discourse that includes persuasion, negotiation, framing and sense giving, and that convinces, supports and empowers. Instead of command and control, Dutch government and other steering actors in networks make extensive use of soft governance modes while steering education. They do this in a variety of ways, including consulting, connecting parties, engaging in conversation and dialogue, listening, supporting, launching websites, videos, blogs and vlogs, reflecting, inspiring, connecting, giving examples, developing tools, models and frameworks, organizing networks, giving impulse, disclosing information.

This approach is used, for example, since central government has been aiming at improving language and numeracy education and raising achievement levels in secondary and vocational education and training (VET) schools from 2011⁷. As the freedom of education limits central governments' possibilities for formal steering of educational processes and content in schools, legislation has only been used to set reference levels as examination norms for language and numeracy proficiency of students. Steering the improvement of language and numeracy education is mostly done by means of soft governance. This includes the establishment of a national support centre specialized in 'language and numeracy education' (Steuropunten Taalen Rekenen), setting up independent committees to advise on how to operationalize and implement 'language and numeracy education improvement' policies in schools, and (financially) supporting and commissioning a tight network of educational consultancy and support centres to develop exemplary assignments, tests and exams, to launch websites providing teaching material and good practices, to advise schools on their language and numeracy education, to organize informational conferences and webinars, to develop frameworks and models to implement good quality language and numeracy education etc.

This example of how central government steers improvement of language and numeracy education and raising achievement levels illustrates that the government opts for policy instruments such as group pressure and the transfer of information, in addition to legislation, when introducing the substantive and educational-didactical aspects of educational improvement. Particularly striking, in this regard, is the use of an intermediary national support centre and independent committees, which are tasked with promoting, directing and administering the introduction of the improvement. The improvement of language and numeracy education and raising achievement levels thereby assumes a more compelling and specific nature than that set out in the legislation.

⁷ Hooge, Waslander & Drewes, 2017

Other Influencers

School boards do not operate in a void, but in consultation and deliberation with a large number of organizations and institutions at the intermediate administrative levels. A great diversity of organization forms exists, such as independent administrative bodies with policy responsibilities or administrative tasks in education, regional administrative authorities, municipalities, sector organizations (representing employers in education), trade unions (representing employees in education), (associations of) occupational groups in education, consultancy and support organizations, process and project management organizations, platforms, think tanks and knowledge centres. In varying degrees, the parties at this intermediate administrative level engage in policymaking and steering in the education field, resulting in a great deal of activity and influence that affect school boards' autonomy and room for policy and decision making.

To develop and maintain legitimacy, school boards must take all legislative and regulatory conditions into account, whether or not central government is the source. This is leading to so-called 'substitution effects', whereby other institutions are assuming the regulatory role of government. The scope for policymaking vis-à-vis central government has indeed become greater, but a new layer of bureaucracy has emerged with rules and regulations and various soft governance modes at the intermediary level. The assessment frameworks and quality standards that are used by the Inspectorate of Education are one example of this substitution effect; they go further than the criteria that are set out in existing legislation. Another example is that of schools' dependence on educational publishers, product developers such as the Stichting Leerplan Ontwikkeling (a national expert centre on curriculum development), educational consultancy centres, education support services, process management and other advisory agencies for organizing, modernizing and improving the learning process in schools. The degree of dependence, of course, is determined by the so-called policymaking or innovative capacity of the schools themselves; schools differ in this respect. In addition, the delimitation of the scope of policymaking by intermediary organizations is not only seen as a constraint by school boards and school leaders, but also welcomed as a means of supporting schools' individual strategies and increasing support and commitment among the teaching staff.

Negotiated Freedom of Education

To this day, the tension between the principle of the freedom of education and government intervention is expressed at the level of national politics in the development and introduction of education policy. In practice, educational and organizational autonomy emerges as the result of a complex play of forces between the government, intermediary organizations, school boards, school managers, teachers, parents and pupils and other stakeholders. Its outcome – which actors enjoy educational and organizational autonomy, and the scope of this autonomy – is thus no simple matter. This means that the way in which the government interprets the statutory requirements is not the only important factor. Although the government, by virtue

of the Constitution, does have the last word in conflicts over the interpretation of the freedom of education in the constitutional article, this last word is not always definitive when it comes to the introduction of education policy. Who ultimately enjoys educational and organizational autonomy depends, to a large extent, on their position, motivation, expertise and ability to utilize this autonomy. When parents, teachers and school boards do not, or are unable to, do so, other actors in the intermediary layer of governance will take advantage to make their own contributions.

Key Questions

- How can it be avoided that Dutch school administrators, educational staff and teachers use freedom of education as an excuse for backing out of education improvement and innovation?
- How, and by which parties, should school boards be held accountable for accessible and good quality education?
- How can modes of soft governance be justified from a transparent and democratic point of view?

About the author

Prof. Dr. Edith Hooge is full professor of Boards and Governance in Education at TIAS, Tilburg University in the Netherlands. Her research activities revolve around governance and management in education systems and organizations, drawing on social network theory and the concept of governmentality. She teaches in the TIAS programmes for professionalization of (non-)executive board members, regularly presides in monitoring committees of governance codes and advises boards in different public sectors.

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