

## **Inheritance, Choice and Change**

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‘Inheritance before choice’ is a recurring theme in Richard Rose’s work. He begins his article of the same name (Rose, 1990, 263) with characteristic pithiness: ‘[p]olicy makers are heirs before they are choosers’. When they enter office politicians take responsibility for processes of government established by laws, institutions, structures, procedures, and arrangements covering vast ranges of economic, social, political, and cultural activity. Some were created or established before the Second World War or earlier, and the great majority before the prime minister of the day entered parliament, but all form part of the inheritance of any government. Governments must make choices about what they want to change—introduce new programmes or terminate old ones. Even so, as he wrote in a study of the postwar corpus of primary legislation in the UK, ‘the stock of [existing] laws has a far greater impact upon government than does the smaller flow of legislation’ (van Mechelen and Rose, 1986). The emphasis on the legacy of the past is an observation that underpins many of his insights in a range of different contexts.

The ‘juggernaut of incrementalism’ (Rose and Peters, 1978) is key to understanding the growth of government. The impact of parties on government is constrained among other things by sheer scale of existing policy commitments and only few can be changed (Rose, 1985). In the United States, initiatives aimed at asserting presidential objectives have to be weighed against the wealth of programme commitments of executive agencies (Rose, 1976). The point about inheritance is not that it serves to limit change but also that it shapes its nature. Some inherited commitments, such as social security entitlements or the provision of health services, themselves develop through inertia as governments meet open-ended obligations entered into by predecessors. Over an extended time period the scale and nature of such programmes can become transformed, even without deliberate political intention or design, as the number of people entitled to such open-ended benefits increases and the cost of services rises with inflation. Some change results from ‘fringe tuning’ existing commitments, as Rose and Karran (1987, 33) point out in their study of taxation by inertia. Certainly some policies, such as the creation of an independent Bank of

England after Labour's 1997 election victory, are more clearly novel than inertia-driven, and such policies are of course politically important (see Rose, 1984). Yet an understanding of the nature and impact of inheritance is crucial for understanding the portfolio of policies for which the government of the day is responsible.

The issue of policy inheritance has been well covered in the social science literature. From Tocqueville's (1955 [1856]) vision of post-revolutionary France as the inheritor of *ancien régime* institutions through Wildavsky's (1979) discussion of 'policy as its own cause' to 'historical institutionalism' (Béland and Schlager, 2019) policies of the past have been understood to be a constraint or stimulus to subsequent policy making. One of the difficulties with the observations in these literatures is that they develop very plausible mechanisms for understanding how inheritance might work yet, for the most part, do so on the basis of few selected examples. By contrast, van Mechelen and Rose (1986) base their conclusions on a complete census of laws and policies persisting, introduced or repealed over more than a quarter-century.

Probably the last thing the study of policy inheritances needs is another think-piece about the theories and insights that abound in this area (excellently reviewed and assessed in Béland, Campbell and Weaver, 2021). So instead of trying to synthesise existing material I will follow a course set out by Richard Rose on many occasions. Just as he analysed general theories about party manifesto promises, presidential objectives or government programmes by deriving empirical indicators of these hard-to-measure concepts and examining their characteristics, I will explore more precisely what the policy legacy of a government might look like by taking a limited tranche of 'policies' and tracing them through. Though the number of 'policies' (53) looked at in this exploratory examination is limited, this is larger than conventional samples of policies. While it cannot offer a definitive account of policy inheritances, it can highlight ways in which inheritance works that tend to be missed by approaching understanding them through one, two or a handful of selected policy examples.

The paper starts with two broad views of how policy inheritances work. It points out that one of the central problems of analysing inheritances is identifying what a 'policy' is. Another problem is that of defining what a 'change' is (see Dempster and Wildavsky, 1979). These are not insuperable problems and I set out how it is possible to isolate novel arrangements (hereafter 'novelties') that policy initiatives seek to make work. Such novelties can be seen in the legislative output of government and to explore

how they can be analysed I look at one calendar year's worth of legislation passed in 2002. I then go on to examine how the two different views of inheritance fare in the face of the analysis of these 53 novelties and draw conclusions about the nature of policy inheritance.

### **How Inheritance Works: Two Perspectives**

There are, in brief, two very broad sets of mechanisms that transmit policy legacies from one government to another: inertia-based mechanisms and feedback-based mechanisms. I use 'one government to the another' for ease of exposition, while recognising that it is quite possible for governments to bequeath things to themselves, as Brexit has shown. Under inertia, policies carry on from one period to the next because they continue to have an effect as long as they are not withdrawn or in another way undermined (say starved of funding). The laws, organisations, manpower, norms, procedures, practices and whatever else goes to make up a policy have life of their own. This is the main sense in which Richard Rose outlines inheritance. Having been created, a government would have to devote resources such as time, effort and/or money and possibly political resources, to reverse or challenge a policy. The more resources it expends on changing existing policies, the less time it has for other priorities, so policies tend to persist. For example, the Thatcher government policy of selling council houses in 1980 to residents would have been politically costly for a subsequent government to end (still less reverse). Governments come to accept the status quo even when composed of policies it may have opposed at the time, and this is what Rose (1984) terms the 'dynamics of a moving consensus'.

Feedback-based mechanisms of inheritance derive not from the direct impacts of the policies themselves, but from the policy processes they either set in train or sustain. It has long been argued that 'policies shape politics' (Lowi, 1972); policies shape constellations of support and opposition (whether among political elites, interest groups or the public) that shape demands for subsequent policies. Feedback in this sense is usually divided into two broad types, positive and negative (I am basing this discussion on the account set out in Béland, Campbell and Weaver, 2021). 'Positive feedback' arises when past policies have an effect because they either create or reinforce a particular direction of travel. As Pierson (1990, 253) puts it, '[e]ach step along a particular path produces consequences which make that path more attractive for the next round' of policy making. For example, it may be argued that policy measures

aimed at improving air quality stimulated the demand for further and more stringent measures (Defra, 2014). ‘Negative feedback’ is where a policy causes some form of discontent within policy communities that then causes policymakers to look for ways of addressing the perceived drawbacks—Béland, Campbell and Weaver term this ‘self-undermining’ because of the terminological imprecision that has grown up around the notion of ‘negative feedback’. In both positive and negative feedback the impact of the policy is above all through agenda-setting on subsequent governments: a policy creates constituencies of support for more of the same kind of policy or for a change in the way a policy is structured if not its reversal.

Both mechanisms sound plausible but they suffer from a fundamental flaw when we come to consider them as empirical accounts of how policies have lasting effects: empirical discussions of them tend to have a very heavy selection bias. The typical way of justifying empirically these categories is through the use of examples, much like I have tried to do in the preceding paragraphs. Here examples of policies that persist are likely to be selected as evidence. Yet not all policies passed can be expected to survive into subsequent eras. Some may not make it through to subsequent eras: they might be easier to reverse than we think, they may wither through lack of use, simply ‘evaporate’ for no immediately apparent reason or suffer some other form of demise that we do not really know much about. So, while it is possible to hypothesise these broad mechanisms of inertia, positive and negative feedback, we do not know much about how they work. We do not know whether they are at all empirically identifiable in anything like a systematic way and if ‘positive’ or ‘negative’ feedback offers a good account of how policy impacts persist through time.

### **First Catch Your Policies**

There is no easy remedy for this selection bias problem because we don’t really have a population of ‘policies’ from which we may make a random selection to examine. One easy way of coping with the sampling frame question is to focus on one published source that contains a good population of policy changes if not the entire universe of them. In Rose’s (1985: 7) formulation of the ‘programme approach’ to the growth of government, policy programmes are ‘packages of three resources—laws, money and personnel’ (see also Hood’s 1983 discussion of ‘Nodality, Authority, Treasure and Organization’). Typically, policy changes involve changes in personnel and money, yet laws are especially important as an indicator of new policies as they

often (though not invariably) accompany attempts to make significant changes in the way that policy regimes work. Moreover, it is easy to identify the body of laws issued by any government and their development, impact and subsequent fate are often well covered by some sort of documentation, commentary, and analysis.

While we might know where to catch our policies, in the lists of laws government produces, we don't really have a definition of what constitutes a 'policy'. We can conceive of policies as regimes: bundles of measures, arrangements and practices surrounding a particular set of functional services which can be aggregated at almost any level we choose. So, for example, using *Halsbury's Laws of England* (2014) that classifies legislation according to relevant policy regime, bee importation rules could be part of an 'eradication and prevention of animal diseases' regime, part of a bigger 'animal health' regime, part of an even bigger 'animals' regime and so on. The aggregation issue is made somewhat easier if instead of focussing on a 'policy' or regime change we focus on what I have termed 'novelties': defined changes brought about or intended by the measures within a statute.

New statutes do not, however, invariably produce significant policy change. Much primary legislation contains small alterations to the status quo that hardly count as change. For instance, the 2002 National Heritage Act primarily transferred responsibility for underwater archaeology from part of the Department for Culture, Media and Sport to an executive non-departmental public body sponsored by the same department. Using Hall's (1993) definition of types of policy change this constitutes a lower type of change in policy regimes: a change in 'settings' characterised by routine bureaucratic changes to instruments while the broad structure of the policy regime and its goals remain the same. We are especially interested in changes that come closer to Hall's 'second order' change which bring in new instruments or significant changes to old instruments while maintaining policy goals. Thus, for example, we might include as one novelty in the 2002 Proceeds of Crime Act the series of powers to sequester criminal assets without a criminal trial. The same law can have more novelties than one: the same Act has another novelty of creating a new body supposed to take a lead in sequestering criminal assets. There is a third category of change in Hall's classification, 'paradigm change'. Since this is especially difficult to mark off from 'instrument change' and also extremely rare (see Cairney, 2019, 230f), I use the distinction between

‘settings’ and ‘instrument/paradigm’ as the simple definition of what constitutes a novelty.

The examination of the survival of novelties conducted here is exploratory. On the negative side it is just one year (Acts receiving the Royal Assent in 2002). It has to be a long time ago since the analysis has to have a reasonable time for a novelty to have died, disappeared or generated the kind of positive or negative feedback suggested in the literature. Twenty years is a somewhat arbitrary time period, but time periods are rarely specified in general discussions of inheritance, so there is no *a priori* reason to suspect that this period is either too long or too short. On the plus side, it contains 53 novelties which is enough to give some indication of how hard or easy it is likely to be to find evidence of inheritances surviving or falling as well as how they live on or die. The precise period chosen comes straight after the re-election of a New Labour government and contains a range of initiatives that were included in the 2001 Labour election manifesto, so we might expect some key policy priorities to be included.

### **The Policy Novelties of 2002: The Finishers and the Fallers**

Classifying a novelty, like any coding, involves judgment. It involves answering the question of whether a clear change to the regime surrounding a particular policy was intended that goes beyond the routine adjustment or upgrading of existing measures. It is also important to note that some of the novelties were formally enacting things that were already happening and appeared not to need legislation to bring them into effect. For example, the creation of the Police Standards Unit (supposed to spread good policing practices nationwide), the granting of extended powers for ministers to order the slaughter of animals to combat foot-and-mouth disease, and the rights of same-sex couples in adoption appeared to exist before the 2002 acts that covered these novelties. Yet they were included as separate novelties as they signalled that these apparently permitted actions were explicitly put on a statutory basis (see for example Marsh, 2022) or ended controversy about whether existing law allowed for these things (Connolly, 2014).

Some of the novelties thus coded appear particularly big (e.g. the European Communities (Amendment) Act 2002 incorporates the Nice Treaty into UK law). Others appear particularly small (e.g. the Divorce (Religious Marriages) Act 2002 which makes it easier to dissolve religious marriages in the context of a civil divorce). Moreover, some novelties are simpler than others: for instance, the incorporation of the

Nice Treaty could possibly have been subdivided into the different aspects of EU procedures changed by the Treaty. Overall, it was possible to identify 53 novelties in the 38 acts of parliament (excluding five finance, consolidated fund and appropriation acts). 13 acts contained no novelties. 14 acts were one-novelty acts and 11 had more than one novelty. The National Health Service Reform and Health Care Professions Act had the most novelties (seven) followed by the Adoption and Children Act (six).

These 53 novelties largely persisted for the 20 years after 2002.<sup>1</sup> Of the 53, 10 were no longer there in 2022: so an extinction rate of only 19 per cent after 20 years. A significant portion of the casualties (four of 10) seem to be novelties that involved setting up new organizations or transforming older ones. Six similar organizational novelties were among the 43 that survived. Setting up an organization to deliver a policy is treated as a separate novelty from anything the organization might have been expected to do, indeed the Office of Communications Act sets up the organization with minimal functions in preparation for legislation planned for later. Among the organizational novelties that failed to survive were the Primary Care Trusts (finished 2013) and the Police Standards Unit, a separate national unit supposed to identify and ‘enforce’ ‘good practice’ in policing survived until around 2008 before its work became part of the Police and Crime Standards Directorate within the Home Office.

It is possible to say something about the costs of removing or ending existing policies, presumed to be high and a cause of their persistence? We can get some idea of the actual costs by looking at how these 10 non-survivors ended their days. The evidence here is rather mixed. Of the 10 it is possible to argue that five met their end following the expenditure of significant costs, whether in terms of time, political capital or financial or legislative resources. The law incorporating the Nice Treaty was repealed by the European Union (Withdrawal) Act 2018 as part of arguably the most politically and administrative costly episode in peacetime UK political history. Two welfare benefits, the Working Tax Credit and the Child Tax Credit were replaced by a similarly administratively costly and contentious reform of social security through the Universal Credit reforms not expected to be completed before 2024 (see Steele, 2021 for an extensive bibliography of analysis and commentary associated with this reform). The ‘centralising’ aspirations of the National Police Plan disappeared following the shift toward greater ‘localism’ after the introduction of Police and Crime Commissioners in the Police Reform and Social Responsibility Act 2011, whether this

was indeed a ‘decentralisation’ or a change in the nature of central control is not directly relevant to this question of costs (see Jones and Lister, 2019).

In the case of the other five fallers it appears that something close to simple administrative decisions sealed their fate without any costly process or even consequences in terms of significant political or public criticism. The Assets Recovery Agency set up by the Proceeds of Crime Act had attracted significant criticism for not having recovered many assets, above all from the parliamentary Public Accounts Committee, was achieved by a largely non-contentious addition to the 2007 Serious Crime Act (Alldrige, 2018; Peck and Danby, 2007). The statutory adoption register was ‘paused indefinitely’ by a decision of the (then) Department for Education in 2018 (see House of Lords 2019 Appendix 1). Similar low-cost processes of change account for the other three novelties to be abandoned.

The remaining 43 novelties persist in recognisable form in 2022. It is unlikely that we can come up with a general account for their longevity. Some remain on the statute book but do not appear to have much effect. The Commonhold and Leasehold Reform Act created a new form of property tenure (commonhold) which was intended to become the standard form of tenure for all newbuild flats but has been used rarely; the International Development Act mandates that UK government international aid be exclusively linked to poverty reduction and is a vague ‘judge proof’ law; ‘no meaningful case has proceeded through the courts’ despite strong signs that much aid does not conform to what it seemed to intend (Campbell, 2021; McAuslan, 2003).

A large number, 13 by my calculation, appear to conform to what is often termed ‘permissive’ legislation (see, for example, Busby, 2003, 250) in the sense that they are contingent on people, whether citizens or officials, taking up the possibilities they offer—allowing a minister to develop a scheme for preventive slaughter of cattle during a foot-and-mouth crisis, permitting developers to set up commonhold tenancy arrangements, making it possible for divorcees to ensure their civil divorces are followed by religious divorce. Since only one of the 10 non-survivors could be classed as ‘permissive’ this might indicate some greater resilience of this group. But 30 surviving novelties are not ‘permissive’ even by a broad definition of the term; these include the regime for judicial appointments in Northern Ireland, creating new crimes associated with mobile phone theft and introducing Pension Credit. Each survivor must have a story helping explain why it survives, it is just unlikely that such stories conform



to any theory more specific than suggesting that there is some sort of need or demand for them or, in some cases, nobody has bothered to abolish them.

### **Searching for Feedback Effects: The Life of Laws After Royal Assent**

It is much more difficult to find a *direct* impact of one policy on another, whether positive or negative, when we look from the perspective of the individual policy innovation. If positive feedback is about the creation of constituencies for expanding a programme, and negative feedback is about the programme being ‘cut back, terminated, or radically transformed’, identifying what broad policy or programme any individual novelty is part of is in many cases unclear. For example, the impact of the novelties in the 2002 Adoption Act might be explored from the point of view of their impact on adoption law, or on a more general body of general children’s law or even, in one view, on the wider movement towards ‘deprofessionalising’ social service workers (Kirton, 2013). And even if we can define what broad ‘programme’ any novelty is part of, ‘expansion’ and ‘contraction’ are not always easy to assess. Using the same example, ‘expansion’ could take the form of subsequent initiatives aimed at expanding the number of people likely to want to adopt a child, it might involve strengthening the rights of the child in the adoption and post-adoption process or it might concern expanding the role of non-government agencies in it. The same sorts of arguments could be made about cutback, termination or radical transformation.

Rather than pursue a novelty-by-novelty discussion of why feedback is exceptionally difficult to detect, let me first present four detectable ways in which the laws that created the novelties of 2002 live on as a legacy for subsequent policymakers apart from as an inertial constraint; the legislative process involved can have a long tail, laws can be part of a series, they can be frameworks on which new generations of novelties are developed and they can be unfinished business. I will then go on to discuss why these are difficult to characterise as positive or negative feedback; in a nutshell because it is difficult to find any direct impact on subsequent policy of the individual policy novelties themselves as opposed to the broader policy conditions that produced them.

#### *The Long Tail of the Legislative Process*

Some laws generate a range of further measures that are needed to put them into effect including regulations, guidance, codes of practice and instructions. In the absence

of any precise definition of the term (Pressman and Wildavsky, 1984), whether one calls such things matters of ‘implementation’ or not is a matter of preference. Either way, three things make them distinctive from the exercise of administrative discretion, often associated with ‘street level bureaucrats’, that usually forms the focus of implementation activity (see Hupe, 2019). First, while implementation tends to emphasise what happens after a law has been passed, many of these subsequently-developed measures are themselves legislation or have the force of law. Delegated legislation, laws passed without the full parliamentary procedures of primary legislation, is one obvious example of this type of legislative tail. Of the 25 laws containing our novelties, 11 were followed by 10 or more items of delegated legislation, with the Proceeds of Crime Act followed by 130.

A second reason for distinguishing such measures from conventional understandings of implementation is the long timescale. Seven of the 25 laws had their latest piece of delegated legislation passed in the time after the Labour Government responsible for them left office in 2010, the latest being the Nationality, Immigration and Asylum Act 2002 (Commencement No. 15) Order 2023. A third reason for regarding these measures as distinct is that they frequently involve deliberative processes rather than the exercise of discretion by implementing officials characteristic of street-level bureaucracy. The 2023 order cited above was part of a consultation launched in the ‘New Plan for Immigration’ (Home Office, 2022). Such deliberative processes can bring consultation and bargaining with the different interests involved, albeit the ability of those outside the executive and/or bureaucracy to change the shape of the proposed measures is usually very limited (Page, 2001).

Among our 53 novelties of 2002 (here we must include even those that no longer exist in 2022) it is possible to point to 45 for which one can reasonably suspect some degree of deliberative consultation of the kind outlined above. Since such procedures are usually not well documented, evidence that they have taken place was sought in the existence of significant secondary legislation, guidance or official statements about the novelties involved. This is admittedly a very broad interpretation of deliberative processes. Even so, in 18 of them it is possible to argue that the long tail had important effects; for example, some local authorities otherwise mandated to produce a report on homelessness in their areas by the Homelessness Act 2002 were exempted by the Local Authorities’ Plans and Strategies (Disapplication) (England) Order 2005 (although this

only proved temporary), The Tobacco Advertising and Promotion (Point of Sale) Regulations 2004 relaxed the prohibition of advertising for some shops and the character of the ‘Memorandum of Understanding’ with referral partners for the Assets Recovery Agency following its setting up in the Proceeds of Crime Act was widely regarded as a significant reason for its failure (NAO 2007).

#### *Laws as Frameworks for New Policies*

A second way in which the laws producing novelties live on is as the statutory framework for new policies which take the form of amendments to them. We can only offer an approximate account of this. Of the 25 laws, only three were not amended by subsequent primary legislation (figures here are based on calculations derived from the ‘changes to legislation’ search facility at [legislation.gov.uk](http://legislation.gov.uk)) A further three were amended by subsequent Acts that repealed or replaced them. The 19 remaining were amended an average of 280 times each by subsequent primary legislation. This only offers an approximate account of the degrees to which legislation provides a framework for future legislation because most of the changes do not seem particularly large, they include things such as applying provisions of a law to the Isle of Man and changing the text to reflect the change in name of an enforcing organization.

Some laws contain very significant extensions of powers of enforcing organisations or changing definitions of what is to be enforced. Ten of the 25 laws had over 50 subsequent amendments, of these three had over 500, with the Proceeds of Crime Act coming in at the clear top with 1,861 amendments followed by the Police Reform Act (1,367) and the Nationality, Immigration and Asylum Act (505). Key items of subsequent legislation (e.g. Economic Crime and Corporate Transparency Act 2023, the Nationality and Borders Act 2022, the Policing and Crime Act 2017) take the form of amending these 2002 laws. Some changes might correspond closely to Rose’s notion of ‘fringe tuning’ in the sense that the basic goals and structure of the policy remain largely unchanged. Yet it is also clear that some Acts become the targets for amendments, significant or minor, because they provide the basic framework for the law governing particular policy areas, with substantial new legislation in those policy areas taking the form of amendments to such Acts. Thus the Proceeds of Crime Act of 2002 provides a basic framework for laws around the recovery of criminal assets. Later innovations such as the creation of “unexplained wealth orders”, aimed at facilitating

the seizure of assets in the Criminal Finances Act 2017, take the form of a series of amendments and additions to the 2002 Act.

#### *Laws as Part of a Series*

Many of our 53 novelties are part of a longer-term policy thrust. The mandate that prisons and NHS bodies work together in the National Health Service Reform and Health Care Professions Act was not the first law that involved the NHS bodies taking responsibility for prisoner health yet this collaboration developed in a series of initiatives stretching forward to 2011 (outlined in NHS England 2015: Appendix A) eventually transforming the role of the NHS in the provision of prison health services. Many of our novelties were the subject of subsequent legislation or other policy initiatives in a similar area; sometimes, as discussed above, even taking the form of amendments to the 2002 laws. One area that produced particularly strong activity is in the field of the Proceeds of Crime Act as successive governments have sought to make it easier for government authorities to confiscate the assets of criminals and more difficult for criminals to hide their assets. By my calculation 39 of our 53 novelties involved subsequent policy action in a similar or directly related area and as such offer circumstantial evidence of feedback of one kind or another, to be discussed further below.

#### *Laws as Unfinished Business*

Any measure that is disliked by anyone, produces disappointing results or does not go far enough could be classified as ‘unfinished business’ for some individuals or groups. However, some novelties that disappoint produce a recognition of this disappointment from governments and a willingness (if not a firm commitment) to do something about it. Two of our novelties fall squarely into this category. Successive governments have recognised that legislation in 2002 attempting to set up e-conveyancing for property transactions and the separate legislation seeking to create a new form of commonhold tenure for home ownership have disappointed and both have produced expressed willingness to address the specific failing of earlier novelties, with further legislation in both areas apparently mentioned as a possibility.

#### *Are These Feedback Mechanisms?*

There might well be other potential types of legacy which were not found in this 2002 sample. For instance, legislation might contain hidden time-bombs in the form of

innocuous clauses that only with hindsight gain significance and stymie or constrain subsequent policy development. Rozenberg's (2022) discusses the 'imprisonment for public protection' (IPP) scheme, allowing those convicted for seriously violent crimes to be imprisoned indefinitely. The way the scheme was set up (a year after our sample in the Criminal Justice Act 2003) posed severe problems when government wanted to abolish the IPP scheme after 2012 as simply abolishing it would involve setting hundreds of potentially dangerous prisoners free, and successive governments since been trying to deal with the consequences. This is not to seek to introduce cherry-picked examples into the discussion, but to illustrate that a larger sample might throw up different forms of legacy. On the basis of the sample itself, is it possible to characterise any of these forms of legacy as positive or negative feedback?

The central mechanism of feedback is in shaping the constituencies of support for more or less of the same kind of policy in a later policy-making episode. The long tail of the law does not qualify as feedback as this form of legacy is effectively part of the same legislative process rather than a later one. Rubin argues that legal and political science scholarship has suffered from a too narrow and outdated view of what the legislative process is; in the reality of the 'modern administrative state' legislation is a 'continuous interaction between the legislature and the agency' (Rubin, 1989, 424) that includes a range of administrative actions, including but not limited to regulation making, and statutes are only part of this process. This argument has many implications for our understanding of the administrative state, but one that concerns us here is that we are not really talking about feedback from one process to another, but the unfolding of a single process, albeit frequently ramshackle and convoluted.

Laws continuing to serve as frameworks for subsequent policies are hard to classify as instances of 'feedback' because such a legacy emphasises, at best, the influence of technical constraints of the way the statute is structured rather than the knock-on effect of any policy measure within it via constituencies of support. Laws as unfinished business in general is rather an indeterminate group since it is the nature of policy puzzling (Hecl, 1974) that there are officials, policy specialists and groups that are concerned about developing improvements, as they see them, in the way almost any policy regime works. Thus to say that there are policy communities interested in the development of adoption, social security, money laundering and proceeds of crime or any of the topics in the novelties covered here is not to say much about policy

development. The more restrictive definition I have offered above, where government is on record as acknowledging an issue as unfinished business, comes closer, perhaps, to negative impact, but since the two particular 2002 novelties still remain unfinished business it is not possible to say what effect this acknowledgement has in practice.

The most promising legacy as a possible form of feedback is the tendency for our novelties to be followed by other novelties in a series appearing to build on them. Taking the 39 novelties for which there was subsequent legislation, in 17 cases it is possible to argue that they have been ‘expanded’, though expansion means rather different things. In the case of the requirement that Northern Ireland voters provide identification before they vote this has been extended (at least in part) to the rest of the UK in the 2022 Elections Act; in the Sex Discrimination (Election Candidates) Act 2002 the provisions were extended in time (they were subject to a sunset clause originally) under the Equality Act 2010; a range of provisions in the Proceeds of Crime Act have been extended and developed in subsequent laws including the Serious Organised Crime and Police Act 2005 and the Criminal Finances Act 2017 which are designed to make it easier to confiscate proceeds of crime (and indeed do so significantly by amending the 2002 Act).

The question is whether it is possible to argue that these 17 constitute ‘positive feedback’ in the sense that subsequent legislation was significantly prompted, shaped or constrained by these novelties. In some cases the link between the novelties and the subsequent legislation can be considered tenuous; the requirement for voter ID in Northern Ireland may have been used as an example by those advocating voter ID in the rest of the United Kingdom, but the constituencies of support involved in each appear very different and the impetus for voter ID extension to the wider UK appears to be almost exclusively the priorities of the Conservative leadership as it was a manifesto commitment in 2019. More commonly what links the 2002 novelties to later legislation is a much longer-term trend that seems to be a strong candidate for explaining both 2002 novelties and subsequent related measures. It was not feedback from the Adoption and Children Act 2002 that created the Children and Families Act 2014; a long-standing process of reform aimed at regulating, promoting, opening up adoption to wider groups in ways similar to those developed in the 2002 Act can be detected in a range of earlier measures since at least the 1975 Children Act running through the 1989 Children Act. The Proceeds of Crime Act 2002 tapped into and reinforced an

‘ideological’ belief that developing measures connected with ‘money laundering’ are an effective way of dealing with crime whether or not the evidence supported such a view (Chistyakova, Wall and Bonino, 2019).

Such tendencies are often characterised as broader policy ‘moods’ or ‘waves’ (Mayhew, 1991; Kingdon, 1985; Stimson, 1999). The 2002 Proceeds of Crime Act might have been early this wave or mood, but it did not create it (there was indeed a Proceeds of Crime Act in 1995 which also sought to facilitate the confiscation of criminally-acquired assets). Certainly, it cannot be doubted that perceived successes seem likely in a very general sense to encourage advocates and discourage opponents of broad policy directions, yet it is very difficult to single out any particular novelty among the 2002 sample that can be seen to have directly caused or triggered a fundamental additional change in the policy regime in a subsequent period.

In sum, while we can identify a range of legacies of the sample of policies from 2002, these do not seem to conform in any particularly close way to the kinds of ‘feedback’ mechanisms often identified by expositions of them based upon selected examples and illustrations. This might be because 2002 was just a bad year and that other years are more promising for feedback approaches. It could also be, as Richard Rose (1980) pointed out in his essay on ‘government against subgovernment’, that the UK with a system of government dominated by the executive has less powerful or stable ‘subgovernmental’ policy constituencies that might be expected in the US literature to be the main conduits for feedback effects. Or it may be that whenever policy is tweaked, mainly after those in government become convinced that the novelties don’t work in the way that they want them to work, feedback of a sort is taking place. But such observations, as well as the observation that legislation comes in batches that can be characterised as ‘policy moods’ or ‘waves’ do not really establish the kind of direct causal linkage between one policy and another invoked by conventional understandings of ‘feedback’.

## **Conclusion**

One characteristic of Richard Rose’s public policy work is his development of systematic and original ways of exploring theoretical propositions using distinctively designed units of analysis and measurement, such as party manifesto pledges, presidential objectives and government programmes. Here I have tried to explore another significant theme of Rose’s work, inheritance in public policy, through tracing

inheritance forward in time rather than backward on the basis of selected examples. The conclusions of this exploratory study offer significant support for Rose's emphasis on inheritance before choice in two ways. The first way, and in line with expectations, new policies introduced a long time ago do tend to live on. It is possible to qualify this conclusion by pointing out that the costs of discontinuing or reversing policies is not always very high, with some initiatives abandoned or radically changed by administrative decisions requiring little political or administrative expense.

A second and less expected way in which the examination of 2002 legislation endorses Rose's inheritance argument is that in looking for feedback we find, instead, more evidence pointing to a different kind of inertia-based legacy. It is not only the content of the policy legacy, the old novelties, that is handed from one government to the next, but also structural features of the legislative process are also passed on. The settings in which new policies are created are passed on as well as the policies themselves. The legislative framework, above all with its long tail and its ability to persist as the central reference point that structures subsequent policy changes as they are created through new legislation, can act as a further inheritance-based constraint on policymakers' choices.



## Notes

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- <sup>1</sup> In tracing through the novelties I have, where they apply to different parts of the UK, traced through the story as it applies in England only. Two novelties in the Justice (Northern Ireland) Act and the novelty in the Electoral Fraud (Northern Ireland) Act apply to Northern Ireland only, otherwise the remainder are traced UK-wide or for England only. Identifying and tracing the novelties relies heavily on two sources: the research briefings produced by the House of Commons Library on most of the Bills before parliament in 2001-02 session and, where relevant, subsequent sessions and the website *legislation.gov.uk* for the text of the legislation and subsequent amendments.

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