

The Opting Out Revolution

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Education reform, it seems, is a continuous industry. But the surge of new law making since 1980 has been unprecedented in scope. The 1988 Education Act alone has probably effected the most radical change since the famous Forster Act of 1870. But what is the real direction of all this frantic legislation?

Since 1980, the central government has repeatedly declared its intention of widening parental choice, and generally restoring taxpayer/citizen influence and control. Reversing the burden of proof in favour of parents, the Education Act of 1980 obliged local education authorities (LEAs) to show why a parent's preference for a school should not be satisfied. Local appeal committees have since been established to hear the complaints of aggrieved parents on behalf of their children. The same limits of their physical capacity. By specifying that the allocation of delegated budgets should be primarily student based, the Education Reform Act 1988 has ensured that parental choice directly influences individual schools in the sense that the more pupils a school attracts, the larger its budget becomes.

The 1980s saw the emergence of the individual school's governing body as an independent unit, and the movement to greater school autonomy at the expense of the Education Committee of the LEA. It was the Education (No. 2) Act 1986 that defined for the first time a clear and distinctive job for each separate school's governing body on which parents and teachers would always be represented. The Education Reform Act 1988 carried this process further through delegation via local management of schools.

Schools have now been made more accountable to parents, employers and the wider community. Education Act of 1980 took the first step towards requiring the publication of performance data in school prospectuses.

That requirement was strengthened in 1986; again in 1988; and was completed in the Education (Schools) Act 1992 which, in line with the Citizen's Charter, made provision for the publication of data about performance and school attendance, as well as four-yearly inspection reports. Annual meetings with parents to consider a report from the governing body and the publication of financial data under the local management of schools are part of the same process.¹

The Government also now insists that examinations and testing are the main keys to monitoring, raising standards and informing parents.

At first sight the reforms just described look impressive and they have certainly drawn enthusiastic praise from many observers. According to Martin McLean, Britain's Education Act of 1988 shifted the role of central government from provider and manager of public education to legal arbiter and protector of consumer rights.² As is well known, given a stipulated minimum in favour, parents in England and Wales can now opt out of the current local education system by reorganising their schools under individual trusts run by managements of parent-governors. The trusts are directly financed by the central government. This pressure to bypass local authorities is seen by McLean not as a new departure, but a resuscitation of the social-contract philosophy of governmental responsibility for social services that prevailed between 1830 and 1870, a philosophy, according to him, that derives largely from Bentham, J.S. Mill and Naussau Senior (and to which list could no doubt be added Robert Lowe).

McLean appears wrong in some respects and right in others. He is mistaken in linking the 19th century period to a social contract. The masses appear to have been manipulated rather than consulted by the 19th century Utilitarians and others; and

¹ Choice and Diversity, A New Framework for *Schools*, Department for Education. London. HMSO. July 1992, p.5

² Martin McLean 'The Conservative Education *Policy* in Comparative Perspective: Return to an English Golden Age or Harbinger of International *Policy* Change?', *British journal of Educational Studies*. 36.3, October 1988. pp. 200-17.

consultation, after all, is the essence of any social contract. On the other hand, McLean is undoubtedly correct in drawing some parallel between 19th century Benthamism and the structure of the 1988 British Education Act. For despite its claim to be largely a movement for parental choice, the initial four clauses of this Act place extraordinary, and in some cases unprecedented, powers with the Secretary of State.

The second clause provides that for every maintained (CM) school the methods of teaching shall follow precisely those laid down by central government. This clause fulfils the highest aspiration of the 19th century founder of the English public system, James Kay. The first and third clauses establish and describe a national curriculum such that government leaders will determine, for instance, whether French is better than German, or the new maths is better than the old, an arrangement that, in principle, was close to the heart of John Stuart Mill. Bentham would have been pleased that nowhere in the description of the national curriculum is there any mention of religious education. Finally, Robert Lowe would no doubt approve of the provision whereby methods of assessment (examination) will follow those laid down by the central government. He would have been disappointed, however, by the absence of any payment by results. In addition he (and Senior) might be somewhat surprised that over a century after he had expressed the need 'to compel our future masters to learn their letters', government compulsion and provision still dominates.

Parents who, under the new British legislation opt out in order to have their school controlled by themselves, will face many problems. Generally they are better consumers than managers. And consumers prefer wide and meaningful choice. But this in turn requires competition via a positive-priced system. Modern British authorities, just like the 19th century Benthamites however, dislike this. The charging of fees by maintained schools is forbidden under the 1983 Act. It is this Act more than any other that brings into question McLean's argument that the British central government has now become a protector of consumer rights.

Clearly many aspects of Benthamism in education retain a firm hold. It certainly seems to have ingrained itself into the very bones of the British civil service from

which successive ministries of education receive constant advice and guidance. This is not to say that there is at present any obvious official desire to promulgate or implement Bentham's central pleasure/pain philosophy. What remains is the *machinery* of Benthamism, the mechanisms of central administration, curricula selection, and examination. Many writers in the field of public choice conclude that those who benefit most from a government school system are the suppliers of education since they have been granted the privileges of protected incomes and jobs. The Benthamites did not want free trade in working-class education. But the absence of internal free trade implies monopoly. And to the economist at least, this and the survival of a strong and ambitious central bureaucracy, is still the chief inherited legacy.

The recent legislative thrust in Britain has amounted to a struggle for power between two types of bureaucracy, local and central, with the latter emerging triumphant. The new powers it enjoys are not likely to be reduced dramatically in the near future. Indeed the economics literature predicts strong growth of a bureaucracy's budget once it has removed or reduced the power of competing bureaus. But it is the growth of the budget that provides senior bureaucrats with greater income and job security prospects.

Evidence potentially supporting such predictions is contained in yet another education bill introduced in Parliament towards the end of 1992. The main context of its proposals relates to the opting-out by parents of the control of local education authorities. The danger is that parents will merely be switched from the dominance of one form of government to the greater one of another. It is certainly pertinent that the 'opted-out' grant maintained schools come under the continuous watchful eye of the Secretary of State. Indeed in addition to his powers over the curriculum he has discretion to put forward his own proposals concerning changes to the character of any GM school 'if he judges it appropriate'.

The power and budget size of the central government bureaucracies can be expected to increase in proportion to the number of schools that transfer from LEAs to GM status. By mid-1992 only about 300 schools had made this transfer and this situation

was obviously disappointing to the Government. As a result plans were afoot to make the ballot procedures simpler and to achieve more flexibility and perhaps generosity in financial support for GM schools in the future. The Government expressed hopes in 1992 that the totals of GM schools would reach 1500 by April 1994.

Some potentially significant influence in reaching this total will occur through central government action to close what are deemed to be very inefficient schools in the LEA sector. More precisely such schools will be given the blunt option of closing down or opting out. When a school is judged by inspectors to 'require special measures', the local authority will have the right to appoint additional governors and suspend the school's right to run its own budget. If these measures fail, the education secretary will send in a 'hit squad' in the shape of a temporary body of at least five outside managers to prepare the school for GM status; and all this *without* a parental ballot.

Returning now to the bill before parliament at the end of 1992, it proposes a powerful new bureaucracy to take control of education as schools opt out of LEA control. It will take the form of what is called the 'Funding Agency for Schools'. This body, comprised of 15 members appointed by the education secretary, will monitor the finances and management of the GM schools. It will also gain powers over the allocation of places and admissions in the LEA sector once 10% of its pupils are taught in GM schools. Clearly there is considerable scope for central government contained in this planned legislation. Indeed the education secretary was hoping to gain as much as 44 new powers from it.³

The argument of the bill is that the cost of the new agency will be met by savings in the education department. The sceptic, however, will believe this when he sees it. One is reminded of the education bureaucracy in New Zealand in 1988 after it had been given the task of implementing a prestigious report that had recommended strong decentralisation. Legislation was subsequently passed replacing the Depart-

³ See *Choice and Diversity*, Department of Education, 1991

ment of Education by a small ministry, but in effect, the old department soon reappeared under five new labels. At the end of the exercise, moreover, most civil servants in education had benefited financially.⁴

There is one relatively neglected aspect of the legislation of the 1980s that has interesting parallels with the British system of direct grants to independent schools that was employed between 1833-1870. The system lingered after 1870 and remained in a very attenuated form right down to 1976 by which time it was confined to a few superior, mainly secondary schools. When in 1976 the direct grant system was terminated, 59 of the existing direct grant schools entered the state system, while 119 became completely independent schools. These latter schools subsequently benefited from the resuscitation of the direct grant principle when, in 1981, the Assisted Places Scheme was established. The objective was to provide a ladder of opportunity for able but poor students. Under the scheme today low income parents can obtain assistance with independent school tuition fees if the school has been approved by the Department of Education and Science.

In 1992 there were about 27,000 students receiving assisted places at 295 specified independent schools in all parts of England and Wales (there is a separate system for Scotland). About 5000 new pupils enter the scheme every year but mainly at the ages of 11 or 13.

One consequence of the scheme is that 'funds follow the child', a principle that today's government insists it wishes to follow because it encourages 'market discipline'.⁵ The question arises, therefore, why the Assisted Places method cannot be relied on much more than it is. Why are the places limited mainly to 'able pupils' who can show that they have the potential for high academic achievement? Such pupils can expect a higher than average life-time income whether they are in assisted places or whether they remain in government schools. Such discrimination does not evidently square with the objective of promoting equality of opportunity.

⁴ Stuart Sexton, *New Zealand Schools: An Evaluation of Recent Reforms and Future Directions*, New Zealand Business Roundtable, Wellington. N.Z –1990.

⁵ See *Choice and Diversity*, Department of Education 1992

But this embarrassment would be removed if the Assisted Places Scheme were extended to the whole population of school age children. The demand for independent places would, of course, vastly expand, but with reasonably free entry the supply of new schools could also increase, and often perhaps via the transfer or renting of assets of state schools that were closing down.

There has been a heated debate recently about whether the Assisted Places Scheme has been meeting its objectives. One well-known investigation has concluded strongly that the legislation has not been benefiting the pupils for which it was intended.⁶ The main reason is based on findings from a derived sample showing that on the whole, pupils from the lower social classes are under-represented among the assisted places pupils. Critics of this research, on the other hand, object that the sample employed was unrepresentative and too small.⁷

Much of this debate misses the central point. Even if it was found that the lower income groups were fully represented among the assisted places pupils, all this would imply is the use of the unjustified criterion of the current income of the pupils' parents. The correct criterion, in contrast, is the expected lifetime income of the pupil. Because only able students are selected for the Assisted Places Scheme, and since there is a well-known positive correlation between ability and income, the legislation is unworkable from the start if its main objective is to benefit low income individuals. The expected lifetime income of any 'able student' awarded an assisted place is well above average however poor his or her parents and whether or not he/she accepts the award. The appropriate strategy of the critics is not to condemn the Scheme in principle but to urge participation in it that is all inclusive. Those who are in favour of meaningful competition, meanwhile, will prefer a universally accessible Assisted Places Scheme to the currently haphazard process of creating GM schools. They will not fail to notice that, on average, opting out occurs least in Labour controlled areas. Inefficient LEAs in these locations would face much stiffer

⁶ Tony Edwards, John Fitz and Geoff Whitty, *The State and Private Education: An Evaluation of the Assisted Places Scheme*. The Falmer Press, 1989.

⁷ John Marks, *Opportunities for Excellence: An Appraisal of the Assisted Places Scheme*, Independent Schools Information Service. London, 1992

parental resistance from a fully expanded system of assisted places in fee-paying independent schools.

The economist would see the main virtue of such a change to be the return to the price system in education. For without positive prices competition and market discipline is never really effective. If, moreover, the Government is serious in its stated quest for and competition, it must recall another key condition: freedom of entry. But nowhere in the current white papers or official announcements is this point emphasised, Continuing silence on it will only encourage the view that the unspoken objective is not to encourage newcomers but to protect the existing state schools (which includes the GM establishments). And this objective, of course, is consistent with maintaining, if not expanding, the power and the incomes of present members of the bureaucracy.

For all the Government's talk about 'opting out', the strongest version of it has been avoided. This is opting out in the sense of having the family's tax contributions to education returned to it so that it can once more spend its own funds directly on the purchase of schooling. And there are several ways of doing this, a system of education tax credits being an obvious one, credit being given not only for income taxes but also for indirect taxes that all income groups pay.

The present system of 'opting out' simultaneously obliges a family to 'opt in' - to another form of government provided school. The question why parents should not be given the fullest of options as just described, is never addressed.