FORUM
Volume 52, Number 3, 2010
www.wwwords.co.uk/FORUM

Ever Reducing Democracy?
A Comparative View of the Legislative Events Surrounding the Introduction of New-style Academies in 2010 and Grant-maintained Schools in 1988

ROZ STEVENS

ABSTRACT In terms of reform of domestic policy, the Conservative election campaign of 2010 was predicated on the idea of citizen (or consumer) power and a reduction in the role of the government in decisions effecting people's lives. The Academies Act appears to be taking this idea in the opposite direction. In comparing and contrasting the provisions of the Education Reform Act (ERA) 1988 concerning grant-maintained schools with the Academies Act's introduction of new style academies in 2010, this article traces the growing disconnection between constitutional and democratic values and notions of how Parliament should scrutinise legislation and how schools should be held accountable by their local communities.

Introduction

Since the mid-1980s, Prime Ministers across the political divide have expressed the hope and expectation that they could use legislation to liberate schools from the 'dead hand' of the local authority. In the period leading up to the passing of the 1988 Education Reform Act, Margaret Thatcher thought that most schools would opt out of local authority control and that it would be as big a revolution as the sale of council houses (*Independent*, 14 July 1987). Between 1992 and 1997, John Major presided over further legislation to re-invigorate the rather sluggish level of opting out, and, at a speech to grant-maintained headteachers in Birmingham in 1994, pronounced that he 'looked forward to the day when all schools will become GM' (Tomlinson, 2001, p. 55). Seldon et al (2008, p. 22) considered that Tony Blair 'later regretted' the DfEE abolition of grant-maintained schools. In expressing his ambitions for his new academy schools, Tony Blair said that he wanted to 'make every school an independent state school.' On 2 June 2010, during the second reading of the Academies Act,

Michael Gove, Secretary of State for Education in the new Coalition government, in picking up the policy baton from Tony Blair, quoted the then Prime Minister in a speech delivered on the eve of the publication of the 2005 White Paper, *Higher Standards, Better Schools for All: More Choice for Parents and Pupils*:

> We need to make it easier for every school to acquire the drive and essential freedoms of Academies, and we need to do so in a practical way that allows their rapid development to be driven by parents and local communities, not just by the centre […] We want every school to be able quickly and easily to become a self-governing independent school.

Between 1988 and the present, there has been a steady stream of legislation enacted to give schools far more control of their own affairs and to restrict the local authority role to one of co-ordinating and commissioning. Despite these changes, there is still a discourse running that the school system suffers from local authority interference. This discourse ignores the oft-quoted complaints from school leaders that the bureaucratic demands and flow of directives from central government 'bear down heavily' (Ball, 2008, p. 3). For instance, Simon Jenkins (*Guardian*, 28 May 2010) mentioned that in 2001, in a year of 'demented centralism', 'David Miliband sent 3,840 documents to each school, embracing 350 policy targets'.

Despite Prime Minister Thatcher's view that grant-maintained schools would quickly become the norm, progress in the early years was slow. This was partly due to lack of parental enthusiasm with reports that sixty-six percent of parents opposed the opt-out proposals contained in the Education Reform Bill (*Daily Telegraph,* 7 October 1987). Within the year following the ERA, only 30 schools had converted to grant-maintained status, many of which opted out for defensive reasons. For instance, falling schools rolls and the avoidance of closure. By 1993, there were 500. This climbed to a peak of 1,155 in 1998, representing just below nineteen per cent of secondary schools (Chitty, 2009, p. 57).

During the 1990s, the Conservatives introduced further pieces of legislation to jump-start the sluggish growth of the grant maintained schools:

- In the White Paper, *Choice and Diversity* (DfE, 1992), a further loosening of constraints concerning balloting rules and the curtailment of LEA canvassing against schools moving to grant-maintained status was proposed. It is interesting to note that in the consequent 1993 Education Act responsibility for school admissions would be shared between the LEAs and the newly established Funding Agency for Schools (FAS) at the level of ten per cent of GM schools, but to be run by FAS alone at the point of seventy-five per cent of schools transferring (Tomlinson, 2001, p. 54). This gives some indication of the extent of the Conservative government's ambition for grant-maintained expansion.

- The 1997 Education Act's main proposal was to enable state schools to select more of their pupils; that grant-maintained schools should be able to select fifty per cent of pupils; specialist schools thirty per cent and local authority schools select twenty per cent (ibid, p. 71). This Act was later made void by New Labour's School Standards and Framework Act 1998 when GM status was terminated.

Despite the Conservatives' previous challenging experience with grant-maintained schools, the new Coalition government is attempting to greatly increase the number of schools opting out of local authority control through the legislative route of the Academies Act 2010. The Secretary of State for Education, Michael Gove, hopes that the new-style academies will 'be the norm' within the term of this Parliament although, rather more modestly, his officials at the DfE, in their impact assessment published alongside the Academies Bill, are predicting that 800 schools will convert over the next four years at the rate of 200 a year. Michael Gove is so enthusiastic in his vision of the future that on 2 June 2010, in advance of the Academies Bill's journey through Parliament, he gave the following progress report:

> The response has been overwhelming. In just one week, over 1,100 schools have applied. Of these, 626 are outstanding schools, including over 250 primary schools, nearly 300 secondary schools (over half of all the outstanding secondary schools in the country) and over 50 special schools.

Since then it has emerged that Michael Gove's phrasing of 'has applied' should have been the more precise 'registered an interest'. At the time of writing DfE figures suggest that, so far, 153 schools rated 'outstanding' by Ofsted have applied for a transfer to academy status.

This article will demonstrate that a number of criticisms surrounding the provisions in the ERA relating to grant-maintained schools have been repeated during the recent passing of the Academies Act. It will suggest that the scale of such criticisms is far more pronounced in the Academies Act and that this is a consequence of the increasing erosion of the place of constitutional and democratic values and practices in public service reform. Such erosion gained traction during Margaret Thatcher's radical re-forming of the state but has accelerated exponentially since then, with the growing utilisation of mostly unelected quangos and organisations in the private sector in the implementation of social policy. The multiplicity of players in this market place has complicated the ability of citizens and governments to hold such entities to democratic account.

Comparatively speaking, despite the criticisms of the relevant provisions in the ERA concerning opting out to become grant-maintained schools, the arrangements then for consultation and balloting look like democratic luxury when compared with the arrangements in the Academies Act. For instance, the opting out clauses in the ERA paid some regard to the idea that local

communities should have a say in determining the future of their schools and structures for consultation and parental balloting were laid down in the legislation. In contrast, the current Coalition government, using a route normally reserved for emergency legislation, has produced an Academies Act giving rights to schools to opt out that is underpinned by a far more feeble version of local consultation and no parental balloting provision whatsoever.

It would be premature to predict the exact rate of increase of schools to become academies but this article's conclusion will present the point of view that the 'relaxation' in requirements for democratic consultation, when compared to the arrangements contained in the ERA, may well result in a significant number of schools eventually transferring, certainly beyond the level of increase of the grant-maintained schools.

The body of this article first examines the wider context of public service reform since the time of the ERAand the resulting impact on the constitutional relationship between central and local government. It then, using a selectively comparative approach, examines the legislative events surrounding the relevant provisions of the ERA and the Academies Act and discuss the following key areas: parliamentary scrutiny, the opting out of schools and local democratic consultation. The article concludes with a brief discussion on the possible consequences of a rapid expansion of the new-style academies on school governance and on the level of fairness in the distribution of education – as a national resource – to all children.

Part 1. ERA and the Academies Act: constitutional implications of the changing relationship between central and local government

Constitutional observers have long noted the general increase in power of the central government at the expense of other parts of the democratic state. This may apply more to England since degrees of devolution have been introduced to Scotland, Wales and Northern Ireland, with varying influences on the balance of power.

The idea of power and how it is distributed preoccupied the debates in Parliament surrounding the 1944 Education Act and a substantial amount of time was invested in considering how to best ameliorate the growing power of the Secretary of State for Education through creating 'a triangle of tension' between central government, local government and schools, all of whom would co-exist in 'a national system, locally administered' (see Chitty, 2009, pp. 21-22, 115-116). The concern shown at the time partly stemmed from a fear of the consequences of the exploitation of over-centralised education systems by fascist states in the 1930s and 1940s, As Brighouse (in Ranson & Tomlinson, 1986, p. 172) stated:

> The ease with which the Axis dictatorships had been able to mould the minds of the young through their highly centralised systems was fresh in people's minds at the time of the passage of the 1944 Act.

In 1988 Haviland published *Take Care, Mr Baker*, an edited selection of submissions to the consultation process. This contained a submission from Patrick McAuslan, Professor of Public Law at the London School of Economics and Political Science, entitled *The Constitution: does the Bill offend it?* In his submission McAuslan made the point that although Britain had no written constitution, 'we do have constitutional principles against which the laws, actions and decisions of government may be, and frequently are, measured.' Two principles were particularly important to him: the sovereignty of Parliament and the idea of the separation of powers.

In considering the contents of the Education Reform Bill, McAuslan raised the criticism that 'a very significant transfer of powers is being made from local elected authorities to the Secretary of State.' This, because the Bill contained a number of clauses whereby the Secretary of State, poised to assume a further 451 powers (Chitty, 2009, p. 51), would also be able to make future legislative changes to the Act without recourse to Parliament. Edward Heath held the same constitutional reservations. In the second reading of the Education Reform Bill, when the proposed substantial increase in the powers held by the Secretary of State over schools was under discussion, he said:

> The extent of the Secretary of State's power will be overwhelming. Within the parliamentary system, no Secretary of State should ever be allowed to hold such a degree of power. He should surrender that power (Hansard, HOC, Vol 123 No 55 1 December 1987, p. 795).

In terms of the separation of powers, McAuslan was extremely concerned about the potential erosion of the principle in the hands of the proposed legislation. He thought that it would inhibit a:

> […] dispersal of governmental powers among different governmental institutions and bodies so they can act as a check on each other and help avoid undue concentrations of uncheckable powers in the central government, experience having shown that such concentrations tend to be abused.

In a significant statement he made the case for the place and purpose of schools in a democratic society and for their necessary connection to the local authorities:

> […] For all their deficiencies, local authorities are elected, and the electoral principle is at the root of our democratic traditions. For 150 years, since the Great Reform Act of 1832, the extension and use of the franchise have been a major driving force behind the development of an informed citizenry and a representative and responsible government at both local and central levels. The extension of the franchise and the universal provision of education went hand in hand.

In McAuslan's view, the Education Reform Bill 'offended' both the above constitutional principles. It is interesting to note that these constitutional values still held common currency in mainstream politics in the lead up to Thatcher's radical public service reforms. For instance, in 1986, the Widdicombe Committee's investigation into the role of local government concluded that it held important advantages, namely, the idea of pluralism in terms of the distribution of power and the facilitation of the practice of citizen participation at a local democratic level.

The increasing powers of the Secretary of State for Education since 1988 and the ease with which the Academies Act might now enable schools to slip their moorings from their local authorities, need to be seen in the broader constitutional context of the changing relationship between central and local government and particularly of the impact of the Thatcher reform of public services that took place in the 1980s and 1990s. As Ball (2008, p. 101) states: 'education policy is now almost entirely subsumed within an overall strategy of public services reform.'

In the assessment of Wilson & Game et al (1994, p. 23), local authorities in this country, by contrast with many European systems, have always held a more subordinate and dependent position in our constitutional arrangements:

> In a constitutionally subordinate position […] they are literally the creatures, the creation of parliamentary statute. Their boundaries, duties, powers, memberships and modes of operation are laid down by Acts of Parliament .[…] We have a system […] of local government without the wide-ranging competence of many European continental systems.

Despite this age-old subordinate position, in constitutional terms, until the Thatcher reforms, local authorities were seen as an important counter-weight to central government and most constitutional scholars would have claimed that their place and powers were protected by convention. Marquand (2008, p. 300), in noting a gradual erosion of this convention since the Second World War, considered that Thatcher accelerated its demise:

> Legally, the local authorities were the creations of the absolute sovereign Crown-in-Parliament, but custom and practice had given them authority in their own sphere. Since the war, successive governments, with the Atlee and Wilson governments in the van, had pushed back the frontiers of local autonomy. Yet, in a vague and muddled way, the notion that there ought to be a frontier of some sort had survived. One of the central themes of the Thatcher regime was an increasingly formidable assault on that notion.

In exploring the changing relationship between central and local government, Glennerster et al (1991, p. 390) contrasted Thatcher's four radical Acts of reform between 1988 and 1990 (the ERA, The Housing Act, The Local Government Finance Act and The National Health & Community Care Act) to

the earlier social policy legislation generated between 1944 and 1948 to create the welfare state. Here they make a central point about this earlier legislation depending on the local authority system to ensure equal access to public services. This contrasts markedly with ideas about the involvement of markets and choice in the modern day delivery of such services:

> If we look back to that period of post-war legislation we can discern some clear political and philosophical principles. Local Government were to be the agents of social reconstruction led by a central government which set a clear statutory framework and gave local councils the financial incentives to fill out these structures. The recurring theme in the debates and white papers of the day was that of equal access of services […] Access should ideally be the same everywhere regardless of income, religious belief or occupation […] Common rights of citizenship were the distinguishing trade mark of the period, and local authorities were seen as co-partners with central government in achieving them.

Glennerster et al (ibid, p. 413) considered that Thatcher's reforms had 'delivered a deeply unpluralistic outcome' with 'the possibility that this or any future central government being granted enormous residual power to determine the shape of people's lives.' One practical outcome they predicted was the de-skilling and de-motivation of local authority elected members and professional personnel as their roles, responsibilities, powers and resources became curtailed.

A number of factors inspired Thatcher's determination to reduce the power of local government. Bogdanor (2003, pp. 540-541) pinpointed the financial crises in the 1970s as the breakpoint in central-local government relations. Stoker (2004, p. 32) identified as key the fact that the Conservative command of local councils had fallen to five per cent during the 1980s and the party consequently 'had a desire to bring new partnerships into the local government mix.' In terms of local authority finances and spending, Stoker (ibid, p. 21) reckoned that tax levels were at saturation point in the 1970s and that 'the election of a Conservative government in 1979 began a period of considerable struggle over local finance which delivered (eventually) central control over local spending to an overwhelming degree.' In the mid-1980s local government sourced fifty per cent of revenues directly from local income but by 1997 this had gone down to twenty-five per cent (ibid, p. 31).

On its assumption of power in 1997, New Labour largely accepted the Thatcher legacy of a new constitutional status quo comprising an empowered central government and a weakened and more financially dependent local government. In Bogdanor's (2003, pp. 550-551) assessment, New Labour had:

> No desire to return to the model of the self-sufficient authority; rather, it adopted a programme of modernisation which generally accepted and, in certain respects, built on the functional reforms of the Conservatives.[…] By the end of the twentieth century, local

> authorities had effectively *become agencies of central policy.* (italics added)

Many constitutional and political observers (see Hennessy, 2001, Weir et al, 2005) have also tracked the consequent decline in the power of Parliament caused by a strengthening executive, in turn supported by the extended engagement of quangos and private agencies in the administration of the public services.

In looking more closely at the opting out of schools from local authority control, the next section will look at the legislative experience of the ERA and the Academies Act and highlight issues concerning parliamentary practice and its capacity to scrutinise proposals adequately.

Part 2. The ERA and the Academies Act: the legislative experience

In examining Michael Gove's expansion strategy for academies, a number of observers have noted similarities to the legislative activity surrounding the introduction of grant-maintained schools. Janet Daley (*Daily Telegraph,* 7 October 2010) concluded that:

> Mr Gove is also effectively promising the return of the grant maintained schools by announcing that any existing school would be able to become an academy, and thus declare its independence from the local education authority.

Mike Baker (*BBC News* website, 1 July 2010) referred to Michael Gove's academies as a '1980s idea rebranded' and, in differentiating them from the New Labour version of academies, stated:

> […] The Academies Act actually turns back the clock to a reform brought in 22 years ago. For make no mistake, what we are being promised is not an extension of the Labour government's academies, but the recreation of the grant-maintained (GM) schools created by Mrs Thatcher's government in 1988.

The introduction of grant-maintained schools and the opting out of local authority control generated the greatest controversy surrounding the ERA. As Flude & Hammer (1990, p. 58) claimed: 'of all the changes that were signalled, it was the proposal to establish a new category of grant-maintained schools that created the greatest controversy.' Maclure's (1990, p. 57) opinion was that, 'No provision in the Act aroused stronger feelings than those on grant-maintained schools.' Feelings were so strong, that even on the Conservative side, Lord Whitelaw, in a radio interview with Peter Hennessy, indicated that when it came to the relevant clauses of the ERA, the House of Lords would probably reject opting out (Baker, 1993, p. 230). A submission from the Conservative-run council in Barnet suggested that opting out would end with 'a system

loaded against maintained schools in an indefensibly inequitable manner' (Haviland, 1988, p. 105). During the second reading of the Bill in the Commons, Edward Heath grasped the nettle direct, harking back with pride to his 'one nation' forebears:

> I wish to deal with the vital question of opting out, because it destroys the system built up by Disraeli, Balfour and Butler. One of my rt. Hon. Friends on the Benches behind me said in an intervention that opting out represents the choice between freedom and not opting out. That implies that to remain in a local education authority is a form of Tyranny [Hon. Members: 'It is']. Well, there it is, that reveals the real attitude of some of my hon. Friends behind me (Hansard, HOC, Vol 123, No 55, 1 December 1987, p. 790).

When questioned by the Education Select Committee on 28 July 2010 about the link between academies and grant-maintained schools, Michael Gove concurred that some comparison could be made but that the academies were different because they would be run by a far more evolved generation of community-minded school leaders committed to a culture of school improvement and collaboration:

> Indeed. It is absolutely right. There are analogies with the grant-maintained school status and with CTCs. The one big difference is that over the course of the last 15 years, a culture of collaboration has grown up in schools. There were some allegations, which I think were overdone, that grant-maintained school heads, in one or two cases, took the-devil-take-the-hindmost approach - these were sharp-elbowed heads who didn't care about the broader community.
>
> If that were true, I don't think it's true now. A culture has grown up among heads whereby they recognise that […] it is their job not just to generate improvement in their own schools, but to help collaborate with generating improvement in other schools. I have total confidence in the current crop of head teachers that they will want to use these freedoms to work with others.

Michael Gove may be right in suggesting improvements in leadership but such competency and additional powers should not distract from the requirement that headteachers should be answerable at local level to the communities they serve. Rather, any improvements in leadership capacity should be seen as an asset to be placed in the context of a fully accountable school system.

Earlier research on grant-maintained schools and their attitude to other schools in the community suggested that a sense of competitiveness and isolation tended to inhibit rather than encourage collaboration (see Bottery, 1998, pp. 66-91). To further the spirit of collaboration this time, Michael Gove has stipulated that those schools transferring to academy status are to agree 'in principle' to help a local struggling school. Research will need to be undertaken to establish how far and how effectively such responsibilities are acquitted.

In the debates concerning the ERA, there were many complaints concerning the timing of the White Paper consultation period which critics thought limited the opportunity to fully scrutinise the proposed legislation. Members of Parliament complained of the unbecoming haste of the timetable and the departure from normal standards. The announcement of the emergency-style timetable for the Academies Bill aroused some negative reaction from politicians. In a letter to *The Guardian* on 20 July 2010, Lord Tony Greaves, a Liberal Democrat stated that:

> […] The government is ramming the Academies Bill through the Commons at a speed that smashes a huge hole in the customary timetable – and in so doing restricts the ability of MPs to scrutinise it. In its first big test, the Commons has failed to stand up for itself. And it seems as if it is the coalition government, not the Commons, that needs to learn to behave and adhere to legislative norms.

In her regular column for *Guardian Education* on 27 July 2010, Estelle Morris' assessment was that:

> Any new government will want to stamp its mark on events and be seen to be getting on with things, but the boundary between that and arrogance is a fine line, and there is a feeling that the democratic process is being taken for granted.

At the time of the introduction of the Academies Act in 2010, the mood music was one of urgency and momentum although some questioned why it was so critical that 'outstanding' schools needed to change status using parliamentary procedures normally preserved for emergency legislation. There was, in the DfE's admission, no time for a white paper and Michael Gove's reasoning was that the urgency was due to an election promise in the Conservative Manifesto that schools could transfer 'by September'. This raises an interesting constitutional and democratic point concerning how a party manifesto commitment translates to a coalition environment, especially as specific mention of the proposed Academies Bill was oddly absent in the text of the Coalition agreement (Cabinet Office, 2010) though referenced directly in the Queen's Speech. In the Coalition document, the reference to academies came at the end of the schools section, in a single sentence, 'We will ensure that all new Academies follow an inclusive admissions policy.'

At the time of the ERA there was a preceding white paper and 'normal parliamentary procedures' were followed (Simon, 1991, p. 543) but, in the management of the Academies Bill through Parliament in the summer of 2010, the Secretary of State for Education adopted an unconventional approach to the standard practices of constitutional and parliamentary engagement. For instance:

1. Deciding on using the emergency route of passing the scrutiny of legislation to the House of Lords before the House of Commons. Of a total of the fifty-five hours spent in debate, thirty-one of those hours

took place in the House of Lords (Whittam Smith, *Independent*, 30 July 2010).

An article in *The Times Education Supplement* (16 July 2010) stated that, 'according to policy analysts, the speed at which the bill is being pushed through does not meet the criteria set out by the House of Lords constitution committee on fast-track legislation.' In this Committee's report entitled *Fast-track legislation: Constitutional Implications and Safeguards*, the members recommended that the following five constitutional principles 'should underpin the consideration of fast-track legislation': that 'effective parliamentary scrutiny is maintained in all situations'; that the need to maintain 'good law' is upheld; that 'interested bodies and affected organisations are provided with the opportunity to influence the legislative process'; that the legislation is a 'proportionate, justified and appropriate response'; that the need for transparency is maintained (HOL, 7 July 2009, p. 8).

2. Agreeing some amendments suggested by the unelected Lords but stating at the start of the second reading in the House of Commons that the government would not agree to any further amendments suggested by the elected Members. One observer called this 'a case of contempt of Parliament' (Whittam Smith, *Independent*, 30 July 2010).

3. Starting policy implementation in advance of the legislative process by encouraging schools to apply for transfer to academy status before the Bill received Royal Assent. Section 16 of the Academies Act (DfE, 2010a) entitled 'Pre-commencement applications etc' covers this scenario.

4. Indicating in an interview on BBC Radio 4's *Today* programme on 19 July 2010 that there had been plenty of time for consultation before the Academies Bill was published because the discussion concerning academies had really all taken place in the lead up to the 2006 Education and Inspections Act. Commenting that day on the detail of this interview, Mike Baker, in his blog page, indicated that the Secretary of State was disingenuous in saying that the Bill had been preceded by a 'Green Paper' produced 3 years ago in opposition: 'That, Mr Gove must know, is not the same thing as a Green and White Paper in government.'

In my opinion, the above management of the Academies Bill through Parliament suggests that the sponsoring government department held a defensive view of the purpose of debate and a reluctance to provide adequate scope – or indeed the right environment – for proper scrutiny. If the Coalition government is convinced that there is firm evidence to support the idea that

schools will improve if they opt out of local authority control, then it should have the courage of their convictions and allow an adequate standard of debate inside Parliament and the wider community.

The next section will look at how the grant-maintained provisions of the ERA and the Academies Act dealt with the idea of consultation at local level. It will argue that, as with the Parliamentary experience described in this section, the democratic trajectory appears to be going in a negative direction.

Part 3. The ERA and the Academies Act: schools opting out and local democratic consultation

To give Kenneth Baker, Secretary of State for Education and Science, his democratic due (and perhaps his political sense of what was feasible) he provided for consultation and parental balloting procedures in the ERA provisions relating to grant-maintained schools. This was not achieved without difficulty and he noted in his memoirs that: 'Devising a democratic process to allow schools to opt out proved to be a contentious process' (1993, p. 215). Kenneth Baker also recognised that the process of consultation would take some time and his ambitions appeared relatively realistic:

> The ERA went onto the Statute Book in July 1988, and the first schools began the lengthy process that was to lead to their freedom. Within a year I was able to approve and visit the first one, Skegness Grammar School. (ibid, p. 219)

By contrast, Michael Gove confidently 'hopes – and expects – that academies will be the norm among secondary schools by the end of the first term in government' (*Daily Telegraph*, 30 July 2010). Earlier, in a speech in November 2009, he stated:

> We will let any school apply to be an Academy and the most successful schools will be automatically approved to become Academies. At the moment there are more than four hundred secondary schools, which are good or outstanding, which could become academies within weeks of a change of Government.

During and after the passing of the ERA, the balloting arrangements did receive criticism. For instance, it was noted that in some consultations local parents from feeder schools were not eligible to vote and there were issues concerning equal worth of votes between one and two-parent families. Conducting research interviews with education officials, school leaders, parents and other interested parties involved in, or affected by the introduction of grant-maintained schools, Feintuck (1994, p. 68) raised the point – as valid then as it is now – of the crucial requirement in a democratic society that adequate information should be made available to equip parents to cast an informed vote in a ballot:

> An additional aspect of the opt-out process is the degree to which those voting are adequately informed as to the consequences of their

> decision. If the occurrence of meaningful choice is dependent upon the provision of adequate information to allow the person said to be so empowered to be able to exercise informed choice, then evidence from several case studies suggests that parents do not have sufficient information as to enable this precondition of choice to be fulfilled.

Lack of access to appropriate and timely information was an issue that formed the basis of many of the legal arguments in the judicial reviews on academy schools that took place during the New Labour period in government.

Flawed though the consultation and balloting procedures for transfer to grant-maintained status were in 1988, at least they *existed*. The Academies Act contains no such requirement and this marks a substantial decline in democratic decision-making concerning schools.

Why did Michael Gove exclude parental balloting from the Academies Act? The instigator of the ERA and the grant-maintained schools, Lord Baker, is still active in Conservative circles. He views Blair's version of academies as the direct descendents of the City Technology Colleges he introduced in the ERA and has been tasked by the Conservative Party to establish a number of university technical colleges based on the academies model (*Independent*, 5 December 2009). One can make a reasonable assumption that conversations will have taken place on school reform plans, at which Lord Baker's challenging experience with encouraging grant-maintained status would have been an influence on the framing of the Academies Bill – a Bill marked by a muted variant of consultation and a complete absence of parental balloting.

Michael Gove's decision that parental balloting would be dispensed with in the proposed expansion of academy schools was picked up loud and clear by the press. For instance, Janet Daley (*Daily Telegraph,* 23 February 2010*)* confidently stated the underlying political motivation:

> The holding of parental ballots was the greatest roadblock to the development of grant-maintained schools under the last Tory government […] That is why Michael Gove has specifically promised that his new 'independent' schools would be freed from local authority control not by parental ballots but by the judgment of the school governors – and if the local authority had placemen on the governing boards, they would be denied a vote in the decision.

In contrasting the different approaches to consultation between the ERA and the Academies Act on the matter of schools changing their status, Mike Baker (*BBC News Online*, 4 July 2010) identified the obvious omission:

> However, there is one important difference between the old GM schools and today's new academies – the former required majority support in a secret ballot of parents, the latter do not even need a show of hands at a parents' meeting. With GM Mark II, it seems, the parental voice has been forgotten.

In the Academies Bill (DfE, 2010b), the references to consultation were confined to the following two statements (the italics are mine):

- remove the requirement to consult the local authority before opening an academy *(consultation can still take place, but it will not be required by law)*
- require the governing bodies of maintained schools to consult with those persons whom they think appropriate before converting into an academy

In a 'Frequently Asked Questions' section on the DfE website (DfE, 2010c) aimed at headteachers and governors, and in answer to the question: does my school have to hold a consultation with students, parents and the local community/stakeholders, the reply was: 'In converting to an academy, we expect all schools to discuss this intention with students, parents and the local community to ensure they understand the change proposed.' Note here that the answer does not contain the word 'consult', rather the expression 'ensure they understand'. In a DfE (2010d) document dated June and sent to schools already in the application pipeline, the advice on how to consult was as follows:

> Your school can consult in different ways. Some examples are:
>
> - Information on the school's website about the application for Academy status, and a link to the Department's website, together with a contact address for enquiries
> - A letter to all parents explaining the proposals
> - A meeting with parents, or other opportunities to discuss the proposal
> - A newsletter for parents answering questions or concerns, and explaining the latest position on the proposal
> - Ask for views to be sent to the school in writing

The tenor of the DfE suggestions listed above signifies, in my view, a rather dilute interpretation of the concept of consultation and is limited to communication with parents rather than including a wider community. Because of the peculiarities of speed and timing, when policy implementation seemed at times to be in advance of the legislative timetable, the language of the DfE advice is based on the wording in the Bill, not the slightly stronger wording, following amendment, of the final Act.

An examination of the websites of a small sample of ten schools, rated 'outstanding', who are registered on the DfE website and have applied for transfer to academy status, suggests this loose interpretation of the word 'consultation' holds sway. News of the intention to apply for transfer was typically conveyed to parents as a decision made by the headteacher and governing body in response to an invitation from the Secretary of State. The decision was justified, variously or in combination, as being in the best interest of pupils, of financial benefit 'in these uncertain times' or as a recognition and reward for the school's 'outstanding' Ofsted status. In some letters, parents were invited to information meetings, whilst others invited parents to comment in writing on the decision, if they wished.

Typical of the tenor of the phraseology was the following headteacher's letter to parents, dated 26 June 2010: 'The legislation does not require formal consultation but we would invite you to contact us should you wish to do so regarding any aspect of the proposal.' One letter from a headteacher, exceptionally, mentioned that discussions had been held with the pupils explaining the proposed change of status. The tenor here is sharing information and explaining, but there is no sense of discussing pros and cons.

Through an amendment to the Academies Bill, the House of Lords have managed to strengthen the wording concerning consultation but the relevant sentences lie in stark contrast to the ERA where details about arrangements for both parental balloting and the consultation process spanned just over four pages.

On 8 July 2010, in writing to the pipeline schools on the amendments made to the Academies Bill, Lord Hill of Oareford, Parliamentary Under Secretary of State for Schools (and, during part of the 1990s, political secretary to John Major) stated, in referring to the amendment relating to consultation (the italics are mine):

> You will have already carried out or be planning to carry out, extensive consultation as part of the process of becoming an Academy, and should therefore meet the requirements described below. However, *it wasn't originally an explicit condition for schools opting out to convert to academies to consult their communities as part of the conversion process***.** As a result of representations made, during both the Second Reading and Committee of the Bill, for converting schools to be required to consult parents and the local community, I have been persuaded to make this a more explicit requirement of the conversion process *for all future academies***.**

Here Lord Hill is suggesting that the schools in question would have already undertaken 'extensive consultation'. This has a revisionist ring about it and does not quite chime with the wording of the original Bill or the DfE guidelines sent out to interested schools, as discussed earlier in this section. It is interesting that Lord Hill is apparently quite sanguine about acknowledging that the original wording of the Bill did avoid an explicit condition for schools to 'consult their communities as part of the conversion process.' Later in his letter, Lord Hill promised to publish, in due course, new guidelines on consultation good practice on the DfE website. 'Good practice' seems a rather feeble concept compared with advising headteachers and governors of their statutory responsibility to consult.

The final wording concerning consultation in the Academies Act (DfE, 2010a) still appears, in my view, open to interpretation and will be, potentially, difficult to measure and monitor. It compares poorly with the highly detailed pages of legislation in the ERA concerning consultation and parental balloting. In the wording of the final Act there still seems to be a disconnection to Lord Hill's proclaimed standard of 'extensive consultation':

- Before a maintained school in England is converted into an Academy, the school's governing must consult such persons as they think appropriate.
- The consultation must be on the question of whether the school should be converted into an Academy.
- The consultation may take place before or after an Academy order, or on application for an Academy order, has been made in respect of the school.

The third point here seems a frankly ludicrous statement to include in legislation, the idea that a school having gone to all the bother of applying for an academy order would only then start a consultation process. Lord Hill has indicated that all schools will have to satisfy the DfE that consultation has taken place 'with such persons as they think appropriate'. If the volume of schools transferring is high, will the DfE have the capacity to enforce this requirement with appropriate rigour?

Conclusion

In a political scenario where the Coalition government completes a full term in office and is then succeeded by a Conservative government, it is possible that the new 'ballot-free' policy on opting out, when combined with the rather watered down version of parental consultation, will result in a far larger percentage of schools converting to academy status than was the case for the grant-maintained schools. Such a proportion may well exceed the tipping point in terms of the effective and fair management of resources for schools to the benefit of all children. In addition, as such transferring schools become, if they are not already, their own admissions authorities, the capacity of government to ensure fairness in an already compromised admissions environment, will be seriously stretched.

The current Secretary of State for Education has the view that schools that opt out of the remit of the local authorities will instead be run by parents, headteachers and governing bodies supported by a slimmed-down, post-bureaucratic DfE (Gove, 2009). In his opinion, we have reached the age of self-governing schools and empowered parents operating in a dynamic, self-regulating market place but how realistic is this analysis? Reflecting on the earlier experience of grant-maintained schools, Estelle Morris stated (*Guardian Education*, 25 May 2010):

> Previous attempts to further free up schools and really let the market regulate them have never quite worked. Grant-maintained schools set up to be independent eventually came under the auspices of the specially created Funding Agency for Schools, and academies are more closely monitored by the DCSF than any schools could be by its local authority.

The Academies Act 2010 has excluded the option of parental balloting and the legislation in the Academies Act, the DfE's draft funding agreement for the new

academies and the associated advice on its website all indicate a very modest requirement for 'at least one' parent governor. The website advice makes the position clear:

> The existing governing body, foundation or trust will form the academy trust, which will then appoint the governing body. The number and type of governors academies may have is flexible, but must include at least one parent and the principal. Academies are free to choose whether to have for example a local authority governor, staff governor or co-opted governors.

This seems a rather restrictive method for selecting a governing body and a very long way from parental power. Of course, many schools transferring may well take pains to have more than one parent representative on the governing body but the point is that the legislation is mealy-mouthed about encouraging greater parental involvement in the running of schools.

For those schools that decide to keep to just one parent governor, the logic would suggest that this leaves the Secretary of State, the YPLA, school leaders and the remaining sections of the governing body in charge of the new-style academy schools. No matter the good intentions of this (or any future) Secretary of State for Education, no matter the professionalism and leadership expertise of academy heads or the commitment of governors, this is not an adequate recipe to ensure fairness, equity and accountability in a modern democratic state for this most precious of national resource, a resource that continues to be wholly funded by citizens.

The likely expansion of academies following the Academies Act is taking place in a constitutional environment of weakened local government where increasing powers over schools have been placed in the hands of the Secretary of State for Education. Haviland (1988, p. 263), highlighted the dangers by including the views of Sir Peter Newsam in *Take Care, Mr Baker*:

> We appear to be moving closer to direct ministerial control of the education service and of the many institutions within it […] What if one day this country were to find itself with a Secretary of State possessed of a narrow vision of what education in a democracy would aspire to be, coupled with a degree of self-regard and intolerance of the opinions of others that caused him or her to seek to impose that vision on others? Are we, however unintentionally, creating the machinery through which such an imposition should occur? (Extract from a speech delivered to the Association of County Councils at the First Standing Conference on Education in Birmingham on 26 October 1987).

The Academies Bill with its limited and grudging reading of what consultation should entail – both in Parliament and in the wider community – does nothing, in my view, to dampen the fears expressed so pertinently by Sir Peter Newsam in 1987.

In the summer of 2010, the Secretary of State for Education ended his speech during the second reading of the Academies Act in the Commons with the rallying cry that 'we need to do better for our children. The truth is that we cannot afford to wait. We need reform and we need it now.' As a Minister of the Crown and an elected Member of Parliament, Michael Gove has every entitlement to want to improve education for the country's children. Those children, however, also deserve to be brought up in a country where legislative changes concerning schools, and other relevant public services, are produced in a democratic and thoughtful manner. This to be accompanied by a sense of security that resources will be allocated in a fully accountable and transparent way that will not further disadvantage the vulnerable and the unsupported.

References

Baker, K. (1993) *The Turbulent Years: my life in politics*. London: Faber & Faber.

Ball, S. J. (2008) *The Education Debate*. Bristol: Policy Press.

Bogdanor, V. (2003) *The British Constitution in the Twentieth Century*. Oxford: Oxford University Press.

Bottery, M. (1998) *Professionals and Policy: management strategy in a competitive world*. London: Routledge.

Cabinet Office (2010) *The Coalition: our programme for government*. Cabinet office website.

Chitty, C. (2009) *Education Policy in Britain* (2nd Ed). London: Palgrave Macmillan.

DES (1988) *The Education Reform Act*. London: HMSO

DfE (1992) *Choice and Diversity: a new framework for schools*. Cmnd 2021. London: HMSO.

DfE (2010a) *The Academies Act 2010*, OPSI, 27 July 2010

DfE (2010b), Explanation of the Academies Bill. The Department for Education.mht (accessed 27 July 2010).

DfE (2010c) FAQs for headteachers and governors, http://www.education.gov.uk/academies/issues-governors-headteachers#14 (accessed 10 August 2010).

DfE (2010d) Guidance for Schools to become Academies, published in June http://www.education.gov.uk/academies/~/media/Files/lacuna/academies/convertorsguidancedoconsulltationV2.ashx (accessed 10 August 2010).

Feintuck, M. (1994) *Accountability and Choice in Schooling*. Buckingham: Open University Press.

Flude, M. & Hammer, M. (Eds) (1990) *The Education Reform Act: its origins and implications*. London: Falmer Press.

Glennerster, H., Power, A. & Travers, T. (1991) A New Era for Social Policy: a new enlightenment or a new leviathan?, *Journal of Social Policy*, 30(3), 389-414. http://dx.doi.org/10.1017/S0047279400018936

Gove, M. (2009) Speech: 'A comprehensive programme for state education', 6 November.

Haviland, J. (Ed.)(1988) *Take Care Mr Baker: the advice on education reform which the government collected but withheld.* London: Fourth Estate.

Hennessy, P. (2001) *The Prime Minister: the office and its holders since 1945*. London: Penguin Books.

House of Lords Select Committee on the Constitution (2009) *Fast-track Legislation: constitutional implications and safeguards*, 7 July. London: HMSO.

Maclure, S. (1990) *Education Re-Formed: a guide to the Education Reform Act* (2nd edn). London: Hodder & Stoughton.

Marquand, D. (2008) *Britain Since 1918: the strange career of British democracy*. London: Weidenfeld & Nicolson.

Ranson, S. & Tomlinson, J. (Eds)(1986) *The Changing Government of Education.* London: Allen & Unwin.

Seldon, A., with Snowden, P. & Collings, D. (2008) *Blair Unbound.* London: Pocket Books, Simon & Schuster.

Simon, B. (1991) *Education and the Social Order, 1940-1990*. London: Lawrence & Wishart.

Stoker, G. (2004) *Transforming Local Governance: from Thatcher to New Labour.* London: Palgrave Macmillan.

Tomlinson, S. (2001) *Education in a Post-welfare Society.* Buckingham: Open University Press.

Wilson, D. & Game, C., with Leach, S. & Stoker, G. (1994) *Local Government in the United Kingdom.* London: Macmillan.

Weir, S. et al (2005) Democratic Audit: quangos and quangocrats. Paper from the democraticaudit.com website.

ROZ STEVENS is a research student at the University of Hull. She is currently working on a PhD thesis entitled, 'How important are democratic values in the formation of policy regarding the creation and functioning of academy schools', due for completion in the late summer of 2011. *Correspondence*: rosalind.stevens@2008.hull.ac.uk