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Education Bills – 1919 and 1992

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Abstract:

This paper was written in 1991, shortly after the then Minister for Education, Mary O'Rourke, announced that she was “actively considering an Act of the Oireachtas to legislatively enshrine the main principles and objectives of the educational system”. The paper pointed out that the only previous comprehensive legislation drafted for Irish education was the Education (Ireland) Bill of 1919. This bill was denounced by the Catholic hierarchy and was never enacted. The paper speculates on what might be included in the Education Bill that was being considered by Minister O'Rourke for publication in 1992.

Education bills - 1919 and 1992

In a wide-ranging interview with Christina Murphy of the Irish Times on 24th August 1990 the Minister for Education Mary O'Rourke, indicated that she was actively considering "an Act of the Oireachtas to legislatively enshrine the main principles and objectives of the educational system".¹ At that time, she stated that she would issue a White Paper "and use it to launch a major national debate on education". On 30 January 1990, the Minister confirmed her intention to press ahead with the preparation of an Education Act. "I have already announced my intention of issuing a Green Paper on education in Summer 1991 to be followed by a White Paper in early 1992 leading to an Education Act..... The Green Paper will be framed as a strategy paper and will articulate proposals for education at all levels including primary education. It will be comprehensive in its coverage and it will offer all interested parties an opportunity to contribute views which will be taken into account in the formulation of the White Paper. The White Paper will formally set out the Government's policy on primary education, the essentials of which will be enshrined in the Education Act to follow".² More recently, in an interview with John Walshe of the Irish Times on 29/30 March, the Minister indicated that the forthcoming Green Paper originally scheduled for publication before the summer will not now be published until September.³ She has given some indications of the issues which will be raised in the Green Paper, appealed for a full debate on these issues, and has called for "clarity and courage" by all sides in that debate when it gets under way. In the light of the Minister's exhortation, it is timely that this issue of Decision Maker should focus on the issue of an Education Bill.

There has been relatively little legislation underpinning Irish education to date. The National School system which was set up in 1831 was not enshrined in legislation - the basic objectives of the system and its administrative framework were described in a letter sent by the Chief Secretary Lord Stanley to the Duke of Leinster in Oct. 1831. A number of parliamentary measures relating to National Education were passed in the period from 1845 to the 1890s but none of these provided a statutory basis for the National School system which to this day is regarded as having its basis in the Stanley letter. Apart from the Ministers' and Secretaries' Act of 1924, the only legislation passed since 1922 which affects national education is the School Attendance Act of 1926 and subsequent amendments. When the government moved to give financial support to Intermediate Education in 1878, the basis of the new intermediate system (which was essentially an examination-led system) was enshrined in legislation - the Intermediate Education (Ireland) Act, 1878. This Act and its subsequent amendments provide a statutory basis for our secondary education system. However, legislation relating to intermediate / secondary education was and continues to be sensitive to the private and voluntary nature of secondary schools and the powers of the Intermediate Board and its successor the Department of Education were and are quite limited in relation to individual schools. The basis of Technical Education was laid down in the

Agriculture and Technical Instruction Act of 1899 and this Act was subsequently superseded by the Vocational Education Act of 1930. The legislative basis of third-level education is more comprehensive. The setting up of Trinity College, Dublin dates back to legislation in the 16th century; the Irish Universities Act of 1908 and subsequent amendments provide the legislative basis for the National University and its constituent and recognised colleges. Legislation from the end of the 19th century covers aspects of teacher training. More recent legislation during the past twenty five years relates to developments such as the setting up of the Higher Education Authority, the National Council for Educational Awards, Thomond College, the National Institutes of Higher Education in Limerick and Dublin - more recently granted full university status under an Act of the Oireachtas in 1988.

If we are to interpret the Minister's recent statement literally, it would seem that she intends to include all levels of education, including third level, in the proposed new legislation. This will mean that the new Education Act will be an all-embracing measure and as such will be considerably more ambitious than any legislation ever considered or attempted in the history of Irish Education. It will require exceptional finesse and political skill on the part of the Minister to steer such a measure successfully through the houses of the Oireachtas. However, in her dealings with various educational interest groups to date, the Minister has shown an impressive combination of sensitivity and toughness which combined with her political adroitness has overcome some apparently insuperable problems. If Mary O'Rourke remains in office for the duration of the debate leading up to an Education Act, there is good reason to expect that she will bring the measure to a successful conclusion. A Cabinet reshuffle or a premature change of government could well jeopardise the passage of legislation.

The most comprehensive legislative measure attempted in the history of Irish Education was the Education (Ireland) Bill of 1919.⁴ This bill was introduced by the British government with a view to rationalising the administration of national, intermediate (secondary) and technical education in Ireland and bringing it into line with the administrative educational structure in the rest of the United Kingdom. In 1899, a single central Education Department had been set up in England to replace the various Education Boards which had previously been responsible for different aspects of education there. In 1902, Local Education Authorities had been set up in every county and county borough to co-ordinate elementary and secondary education and in 1918, the Fisher Act sought to bring about an increase in educational provision at all levels. It was against this backdrop that the government decided to introduce educational legislation for Ireland. Prior to the drafting of legislation two major committees of inquiry into national and intermediate education had been set up by the government and their reports - the Killanin and the Molony reports - had been published in 1918 and 1919 respectively. The members of these committees included representatives of teachers, management and the Churches in Ireland, and the bill of 1919 was based largely on the recommendations of these two committees. It was not unreasonable for the government

to have assumed that legislation which embodied the proposals of such committees would meet with fairly general support.

The 1919 bill provided for the setting up of a central Dept. of Education which would supersede the existing Boards of National and Intermediate Education, the Technical Instruction Branch of the D.A.T.I and the Teachers' Pension Office in Dublin Castle; the establishment of an Advisory Board; the setting up of local education committees and the imposition of a local rate for education. All of these proposals had been included under various guises in the Killanin and Molony reports. In the light of the current debate on an Education Act, it is of some interest to examine the heads of the 1919 bill with a view to identifying areas which might still be relevant. The bill itself was set out under five broad headings

1. A Dept. of Education for Ireland - its powers, staffing, proceedings etc.
2. Local Administration - Local Education Committees - their powers, financing, provisions etc.
3. Superannuation of Teachers.
4. Finance.
5. General - including public inquiries, Rules of the Dept., Reports of the Dept., etc.

Under the terms of the bill, the powers of the new Department would be quite considerable and relatively untrammelled by Parliament. Those who currently seem to think that an Education Act would curtail the powers of the Department might note that the 1919 bill would have given the Department considerable powers in relation to introducing new rules or amending existing rules. The bill stated that "The Department may make rules for prescribing anything requiring to be prescribed under this Act, and generally for the purpose of carrying this Act into effect". It also stated that "a local education committee shall act in accordance with any regulations and directions that may from time to time be made or given by the Department". The Dept would have power to "cause a public enquiry to be held and to appoint a person or persons to hold the inquiry". It would also have the power to intervene if it felt that a local education committee was failing in its duties. It could make an order "compelling the (Local education) committee to perform their duty" or it could make an order "appointing some person to discharge the duties of the local education committees". Its degree of accountability to Parliament was not very great. It was simply required under the bill "once a year ... to make reports to the Lord Lieutenant as to their proceedings under this Act and all such reports shall be laid before Parliament". As regards finance, the new Department would have a certain degree of autonomy in the disbursement of the Education Fund voted to it by Parliament. It would have power to disburse the education fund voted by Parliament "in accordance with minutes made by the Department after consultation with the Treasury". This appeared to suggest that the Treasury would have less control over educational expenditure than it had previously had.

The proposed powers of the local education committees while relatively wide-ranging, would appear to have been non-threatening to the powers and control of existing Patrons and managers of national schools and the authorities of intermediate schools. The proposed powers of the local education committees included (1) the provision of the local contribution towards building and improving national schools; (2) the provision of school meals; (3) provision for maintaining, repairing, cleansing, heating, furnishing, and equipping national schools; (4) provision of means of conveying a child to and from a national school (5) provision of books and school requisites for national schools in their areas (6) contributing to the cost of a national school site (7) provision and maintenance of residences for national school teachers; (8) enforcing the provisions of the School Attendance Act of 1892. The local education committees would also be responsible for the elementary education and industrial training of 'afflicted' children (i.e. physically and mentally handicapped children); for providing scholarships to enable young persons "who appear specially qualified to benefit" to attend secondary schools or universities; for assisting in establishing evening continuation schools and for the provision of plots of land for horticultural instruction. It is significant to note that the local education committees would have no power over the management of individual schools or over hiring, firing or promotion of teachers.

The bill received its first reading in Westminster on 24 November 1919. It was welcomed by the Irish National Teachers Organisation who recognised that its provisions would bring a much sought for increase in teachers' salaries and an improvement in their working conditions.⁵ The Protestant Churches were also generally in favour of the bill - it was supported by the General Assembly of the Presbyterian Church, the Church of Ireland House of Bishops, the Schoolmasters Association, the Association of Irish Schoolmistresses as well as the Provost of Trinity College and the heads of many Protestant schools.⁶

However, the Standing Committee of the Roman Catholic hierarchy denounced the bill, stating that the bishops believed it was their "imperative duty to condemn in the strongest manner the proposal to set up a Department of Education for Ireland".⁷ As regards setting up local education committees, the bishops warned of "the prospect of very heavy taxation throughout Ireland" and warned the local authorities of "the overwhelming burden of foreign origin which the bill would impose upon them". The General Council of County Councils supported the bishops and within days they issued a statement condemning the bill as "undemocratic and reactionary" which would place Irish education under an "alien triumvirate".⁸ Throughout the early months of 1920 the controversy between Church and State raged. In January the bishops stated: "We are convinced that the enactment of the measure would deprive the bishops and clergy of such control of the schools as is necessary for that religious training of the young which Leo XIII decided to be a chief part in the cure of souls".⁹ The Central Council of the Catholic Clerical School Managers met on 21 January and issued a statement saying: "We offer our firm and united protest against the new Education Bill we consider it necessary at the present juncture to declare as a

fundamental principle that the only satisfactory education system for Catholics is that wherein Catholic children are taught in Catholic schools, by Catholic teachers, under Catholic control".¹⁰

It is significant to note that there was nothing in the bill which would interfere with either the ethos or the management of schools. The government had in fact attempted to forestall allegations of secularism and interference with the teaching of religion in schools by including a clause in the bill which stated that "In the execution of their powers and duties the Department shall ensure that the principles and practice, which at the time of the passing of ~~the~~ this Act govern religious instruction in national schools in receipt of grants from the Commissioners of National Education in Ireland, are adhered to after the passing of this Act in national schools in receipt of grants from the Department." However, neither this clause nor the carefully circumscribed role of the local education committees succeeding in allaying the fears of the Catholic Church authorities. Perhaps they were concerned that democratically elected local education committees, however limited their powers in the short term, might in the longer term seek to expand their brief and that Church control of national schools, which had been built up during the early decades of the national school system, might be gradually undermined.

Many individual bishops condemned the bill in their Lenten pastorals. Cardinal Logue stated "Though we have not yet, thank God, arrived at the stage dreamt of by the extreme Socialists, when the children of the people shall become the mere chattels of the state, the Bill in question seems to tend notably in that direction".¹¹ Dr. Foley, Bishop of Kildare and Leighlin, in a letter read in all the churches in his diocese asked the people to resist "this latest brazen-faced attempt of a hostile government to impose on the mind and soul of an intensely devoted Catholic people the deadly grip of the foreign fetters with which they are gravely threatened; but which, if we be only true to ourselves, and prepared to make the necessary sacrifices, we can, and we shall defeat."¹² In March, Cardinal Logue proclaimed a National Novena to avert "the threatened calamity"; the bishops were instructed to invite the fathers of families "to register their protest against a measure which trenches on their parental rights" and on Passion Sunday 1920 a statement by the Catholic hierarchy condemning the bill was read in all the churches.¹³

The intervention of the Catholic hierarchy was effective. During late spring and early summer of 1920, it became increasingly clear that the government was unlikely to proceed with the bill. The timing of the bill coincided with efforts to introduce a Government of Ireland Bill and in the latter months of 1920, the energies of government were concentrated on finalising this bill. Chief Secretary MacPherson had resigned in early April and he was replaced by Sir Hamar Greenwood. The Education bill was gradually forgotten and it never received a second reading. The controversy surrounding the bill ensured that it would be a long time before a Dublin government would attempt to legislate for Irish education. The

experience of the 1919 bill as well as previous efforts to reform the structure of Irish education in 1902/4 and 1907 would be a salutary reminder to the new Free State government not to interfere with the administrative structure of national or intermediate education.

Since 1922, there have been very few efforts to legislate for Irish education. The 1926 School Attendance Act was carefully drafted to avoid any suspicion of interference by the State with the rights of parents in relation to their children's education. The Constitution of 1937 copperfastened these rights in Article 42 and 44. Efforts in 1942 to introduce a revised and more specific School Attendance Act failed when the Act was referred by the President to the Supreme Court and was rejected as being unconstitutional. The Vocational Education (Act) of 1930 was cleared by the Minister for Education with the Catholic Bishops before it was passed.¹⁴

It is in this context that the current proposals for legislation should be seen. Some of the issues which were contentious in 1919 might no longer be problematic but the question of regionalisation is still a sensitive one. There is little doubt that any effort by the Minister to introduce regionalisation or Local Education Authorities or Committees would be contentious. Efforts in the 1970s and the 1980s to introduce regionalisation did not succeed - both Minister Burke's proposals in 1973 and Minister Hussey's 'Partners in Education' scheme in 1985 evoked much criticism and eventually came to nothing. In 1986 the Catholic Primary Schools Managers' Association made it clear that they would not support regionalisation to-day any more than they did in 1919.¹⁵ More recently, Oliver Ryan, chairman of the CPSMA, speaking at an ESAI Theme conference in January 1991, repeated the CPSMA's lack of support for regional structures which would incorporate primary education. Although the OECD in its forthcoming report on Teacher Education in Ireland is expected to support the notion of regionalisation¹⁶, it is equally clear that the Minister is not enthusiastic about such a proposal. In her response to the OECD examiners in Paris in 1989, it is reported that she rejected the notion of regional structures as put forward by the OECD - she indicated that Ireland is too small for such structures. She repeated this view again recently on the television programme To-Day To-Night on 19th February when she made the point that the total population of Ireland was less than the total population catered for by some of the larger Local Education Authorities in England and that therefore she saw no need for such structures in Ireland.

What then will be the thrust of the bill? It is unlikely to be as specific as the 1988 Education Act in England which was "a massive piece of legislation".¹⁷ With 238 clauses and 13 schedules it took more than 360 hours of parliamentary debate, often contentious, and gave the Secretary of State no fewer than 415 new powers. Concomitantly, it also reduced the powers of the Local Education Authorities. However, certain aspects of the 1988 Act in England may well be mirrored in our forthcoming legislation. The bill is likely to set out a broad underlying philosophy for education in Ireland. In the Minister's own words - "now

is the time to look at issues such as accountability, equity and quality education".¹⁸ The duties, responsibilities and rights of the various partners in education - Minister, Department of Education, parents, teachers and pupils (including children with special needs; mentally and physically handicapped children etc.) are likely to be set out - taking into account the existing reality and the Constitutional position. This may include a delineation of the constitution and role of boards of management at various levels. It is likely that boards will have greater autonomy in relation to financial issues than they have at present. Will there be more parent and teacher representatives and fewer nominees of patrons or trustees on these boards? In specifying the right of parents to choose their child/ren's education, the bill is likely to copperfasten the right of parents to choose denominational education at primary level and consequently, the right of denominational national schools to receive State aid. It is also likely that parallel with this, the bill will state that parents who wish to choose multi-denominational schools for their children should also be entitled to exercise this choice and that such schools should also receive State aid.¹⁹ It will be interesting to note whether the question of ownership of primary school buildings will be adverted to.

In relation to post-primary education, it appears that a number of sensitive and potentially contentious issues will be addressed. The Minister has indicated her intention of opening up the debate on the control of schools - particularly in areas where rationalisation is planned. The thorny question of access to schools and the role of fee-paying schools will be aired.²⁰ How will voluntary schools be defined and more significantly, will they continue to be grant aided at the present level? What mechanism will be proposed to ease the transfer of religious run and controlled secondary schools to community control in the many areas where religious orders have already indicated their intention of withdrawing. The Minister suggests that the time is ripe for discussion on a new type of post-primary school - "a new model which would incorporate the traditions of the existing sectors but which would get people away from the sterile debate of community schools versus community college". While many people would agree that the debate "has got very bogged down",²¹ it is difficult to envisage a new control structure which will overcome suspicions and fears at local level. At an earlier stage in the debate, there were expectations that the role of the Vocational Education Committees might be enhanced to co-ordinate aspects of educational provision at post-primary level. The transport liaison officers under the auspices of the V.E.Cs already co-ordinate school transport for all sectors. Similar services such as the co-ordination of Psychological services, Guidance Counselling services, Adult Education, specialist resources, and moderation of school-based assessment at junior cycle level might also be provided under the auspices of an enhanced (and possibly renamed?) V.E.C. But whether this can happen without significant restructuring of the V.E.Cs is debatable. And would this be any different to setting up local education committees?

The debate on an Education Bill has been initiated by the Minister for Education and fodder for a fuller debate will be provided by the forthcoming Green Paper. The responses of the

different interest groups and of the general public will provide guidelines for the drafting of a White Paper and it is to be hoped that the responses will be publicly available - as was the norm before 1922. The drafting of legislation subsequent to the debate will be sensitive - the lessons of the 1919 bill point to the need for particular care at that juncture. However, that is an issue for the future - the immediate challenge for all those interested and involved in education is to play a full and constructive part in the forthcoming debate.

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