

## Schools: The Great GATS Buy

### Glenn Rikowski

In F. Scott Fitzgerald's classic American novel, *The Great Gatsby*, the pivotal figure, Jay Gatsby is elusive, hard to pin down. Through Gatsby, Fitzgerald plays off the relation between illusion and reality. Gatsby organises parties and sometimes doesn't turn up for them. He is distanced from his own creations and effects.

The World Trade Organisation's (WTO) General Agreement on Trade in Services (GATS) of 1994 seems to have a similar kind of existence. It appears to be a shadowy force, with massive potential to disrupt, undermine and transfigure public services – yet distanced from their privatisation. The GATS' substantive impact is in some doubt, as many governments – especially here in the UK – seem hell bent on nurturing the business takeover of public services, GATS or no.

A common way to approach the relationship between the GATS and public services is to do an "impact" assessment, as the Association of University Teachers has undertaken for UK higher education, and as some Canadian GATS critics have done for Canadian schools. Whilst having tremendous value, such impact assessments are partially speculative – developing scenarios regarding what might or could happen through the application of GATS imperatives and disciplines. But this is only half the picture, and the relation between GATS and public services ideally needs to be approached on the basis that it is a two-way thing, and that government policies affect differentially the nature of the relation for each service, and for each country. This article explores the relation between schools and the GATS in England today, but first a few words on the GATS.

The GATS seeks to open up 160 services sectors to international capital. Specifically, it aims to create a 'level playing field' thereby avoiding discrimination against foreign corporations entering services markets. The process of trade liberalisation in services (including currently public ones) is *progressive*; it will be deepened and strengthened over time, and Part IV of the GATS Agreement makes this clear. In this scenario, 'public' services will progressively be turned into internationally tradable commodities. UK Government claims that public services are exempt from the GATS have no firm foundation. International trade law lecturer Markus Krajewski has analysed the GATS Agreement in detail. He concluded that the Agreement makes it impossible to tell whether public services are included under GATS. This makes the GATS fiendishly difficult to combat on the basis of what is actually written down in the Agreement. On the one hand, if it was clear that public services were *included* under the GATS then governments, corporations and pro-GATS lobbyists could give no assurances that the 'GATS has nothing to do with privatisation', as they do currently. Their reassurances to concerned organisations and their patronising arguments that anti-GATS folk are merely scare mongering would not be taken seriously, as they sometimes are today. On the other hand, if it were clear that public services were *excluded* from GATS provisions then two things would be obvious. First, anti-GATS activists and trade unions could defend public services from the GATS monster on the basis of international trade law, and corporations attempting to argue that public services were incorporated within the GATS would clearly be on a loser. Anti-GATS forces could confront corporations that attempted to use the GATS to further their interests in public services by using the actual Agreement against them. Secondly, it would be clear that New Labour is really keen on the business takeover of public

services, and is not being forced or cajoled into it by trade rules framed by some distant, business-friendly institution such as the WTO.

Meanwhile, the opacity of the GATS is cunning indeed. It has the potential to intellectually disarm GATS critics. Anti-GATS activists have no firm footing for critiquing the Agreement.

The current round of GATS negotiations at the WTO headquarters in Geneva started up in February 2002; almost directly after the WTO Ministerial Meeting in Seattle late-1999 broke up in disarray following the anti-WTO protests there. An overall deal has to be brokered for December 2004, to come into force in 2005. So for anti-GATS activists, trade unions and defenders of public services there is some urgency.

A good starting point for exploring the relation between schools and the GATS is the GATS Agreement itself, together with the Schedule of Commitments for education in relation to the European Union (EU). The UK's GATS commitments are incorporated within those for the EU, though there are a few national differences (see WTO, 1994). On information gleaned from the EU GATS Infopoint, it appears education has already been lost to the GATS. For primary education, 20 countries committed themselves to GATS disciplines in 1994, and for secondary education 22 countries took the plunge. The EU is GATS-committed for both primary and secondary education.

The GATS incorporates four modes of service supply. Mode 1 is "cross-border" supply, the 'supply of a service from the territory of one Member to a consumer in the territory of another' (EU GATS-Infopoint, p.1). Mode 2 supply is concerned with "consumption abroad", where 'the consumer of the service travels to the service supplier' (*ibid.*). Mode 3, "commercial presence" is 'where the service suppliers establishes in the foreign market as a legal entity in the form of a subsidiary or a branch' (*ibid.*). For all of these modes of supply, the EU's commitments for primary and secondary education are "none" – which is the *opposite* of what it sounds. "None" means that a country is committing itself to ensuring that there are 'no restrictions which are inconsistent with GATS rules covering participation in the market by foreign service suppliers' (EU GATS-Infopoint, p.2). In relation to UK/EU GATS commitments on primary and secondary education, there are two aspects to this. Firstly, for the UK, there are no barriers regarding 'Limitations on Market Access' (though a few EU countries have some limitations on market access incorporated into the EU Schedule for either primary or secondary education). Thus, UK primary and secondary education 'markets' appear to be open to foreign suppliers. WTO members committing themselves to opening up primary and secondary education through GATS (as we have), must show any limitations on access for foreign suppliers – and then these can be challenged through the WTO Disputes Panel. Furthermore, as we have signed up to the GATS regarding primary and secondary education, then those services are also subject to the "Limitations on National Treatment" provision. Under this GATS rule, member states must acknowledge any limitations in the treatment of foreign suppliers that puts them in a less favourable position than their domestic counterparts. For example, Edison Schools (from the States) must be alerted to any differences in the ways they are being treated as compared with UK education services suppliers if they enter the UK schools market. Failure to provide the necessary information might result in the foreign supplier seeking recompense through the GATS. Transparency is the issue here. The UK has no limitations on the National Treatment provision in the EU Schedule either. Finally, only in Mode 4 supply, the "presence of natural persons" from another country does some limitation regarding foreign primary and secondary education suppliers possibly apply. Mode 4 supply is "Unbound" for EU primary and secondary education. "Unbound" means a country is making no commitment either to open up its market or to keep it as open as it was at the time of accession into the WTO. Practically, what this means for

Mode 4 supply is that if Edison Schools wanted to set up operations in the UK, then the company would probably have to use UK employees, as general immigration rules would still apply. It is likely that teachers from the US couldn't be just flown in to work in Edison UK schools regardless. However, the nature of the "unbound" status on Mode 4 supply muddies the picture, with no clear barrier to US teachers being jetted into Edison UK schools established on the basis of the EU GATS Schedule.

From the above account, it might appear that the UK (via the EU) has a pretty much 'open door' policy regarding the foreign supply of primary and secondary education services. It seems that education activists and trade unionists are eight years too late on GATS rules for education services that are technically irreversible. Yet this is a misleading impression, which is exposed as such on deeper examination of the WTO's Schedule of Commitments for education services under GATS (WTO, 1994). Section 5 of the EU's Schedule of Commitments indicates that in relation to education, the GATS refers to "privately funded education services". From this, it might seem that the only education services in relation to schools under threat from the GATS are independent and private schools. Why should we get too agitated if only Eton, Harrow and Roedean and their ilk are under threat from GATS rules? They are clearly in the 'education market', so must take the consequences and face competing foreign providers.

However, once again, the GATS language is cleverly crafted. The Schedule does not pinpoint private education 'institutions', but privately funded education 'services'. It is not the case that a whole education institution has to be a for-profit outfit for the GATS to apply. Any of its constituent services – from frontline ones such as teaching, to cleaning, school meals services and the school library – could fall under the GATS if private capital is involved. Furthermore, private sector operators in school improvement, equal opportunities and recruitment and other schools' services, previously supplied by the local education authority (LEA) also fall under the GATS.

It could be argued this misses the point: are not these services still 'publicly funded' even though education businesses like Nord Anglia and school meals providers like Initial Services are delivering the service? It could be argued they are not basically 'privately funded' education services. A number of points are relevant here.

First, this argument assumes that 'public' money remains 'public' even when transferred to a private sector service deliverer ruled by profit-generation. However, it could be argued that once the contract is signed to deliver frontline teaching, school management or school improvement services the 'public money' undergoes transformation into private capital. This is the magic of money, the illusion on which New Labour and GATS protagonists' arguments rest. At a meeting in a church hall in Newham following the Trade Justice Movement lobby of Parliament earlier this year, Stephen Timms, former Schools Minister (now at the DTI), argued the private sector was being brought in to improve standards, and that this was not privatisation as the pertinent services were still being publicly funded. This argument is naïve at least, and positively misleading.

Secondly, for some New Labour schools policies, private finance forms an element of start-up capital. In the City Academies (or just Academies now, under the Education Act 2002), for specialist schools and for some education action zones, private capital forms part of the start-up fund. The foundational significance of private capital is even clearer in the case of schools built under the Private Finance Initiative (PFI), where money to build the school is raised at commercial rates in the money markets by private companies. In all these cases, it would seem that the

involvement of the private sector *opens up schools to the GATS*. These are private education services that have virused public money.

Thirdly, under the Education Act 2002 school governing bodies can set themselves up as companies. They then have the power to invest in other companies. Furthermore, school companies can merge to form “federations” – chains like McDonalds – to gain economies of scale, thereby increasing profit-making capacity. Schools can enter into deals with private sector outfits. The Act gives the Secretary of State new powers to form companies for involvement in any area of school or LEA life. It provides a de-regulatory framework for the business takeover of schools, and hence also for the virusing of GATS throughout our school system. Of course, New Labour can still argue that all this is ‘publicly funded’, but the previously public finance is transfigured into private capital in the process. Through these mechanisms, schools are exposed to the GATS.

Fourthly, directly after the General Election victory in 2001, Stephen Timms and Sports Minister Richard Caborn promoted a series of ‘partnerships’ between private and state schools. Thirty-four Independent/State School Partnerships were established on 3<sup>rd</sup> July 2001. Dissolution of the barriers and distinction between public finance and private capital muddy the issue of whether schools services are either state financed or ‘privately funded’. The insurgence of private schools into the state sector could well be dragging the GATS in its wake.

Finally, as Belgian teacher and education activist Nico Hirtt (2000, p.14) has indicated, only education systems financed solely by the state and with total exclusion of any commercial operations are excluded from the GATS. This point underscores the previous four: the greater the business involvement in state schools, the more they are opened up to GATS and a future as internationally tradable commodities. On this account, policies and mechanisms that nurture the business takeover of schools can be viewed as the *national faces of the GATS* (for more on this see Rikowski, 2002). These are the national, local and school-level GATS enablers that facilitate the business takeover of schools. In Britain, they include PFI, outsourcing and information and computer technology deals. Ofsted is transfigured into a GATS-facilitator every time it locates a ‘weak’ school ripe for business takeover.

Rather than a Geneva-based GATS monster forcing the UK government to embrace GATS, every time the private sector enters, deepens and expands its involvement in our schools it opens those “educational services” to the GATS. The fight against the business takeover of schools is simultaneously the struggle against GATS and our education services being catapulted into international education markets. New Labour’s education policy is virusing the GATS into our schools and LEAs. One day, a company in Detroit or Vancouver that focuses primarily on the bottom-line could control your local secondary school. Now, that would certainly stretch the notion of a ‘community school’ and the concept of democratic accountability.

## References

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