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The meaning of religious education in English legislation from 1800 to 2020

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ABSTRACT

The importance of key legislation in framing religious education in England is widely assumed, and indeed some argue that these Acts – of 1870, 1944 and 1988 – demarcate pedagogical phases, or paradigms. Policy and historical analyses have revealed the political and social disputes around legislation, but often conflate legislation with other policy. This paper reassesses the statutory meanings of ‘religious education’ through a textual analysis of legislation from 1800 onwards, exploring: the positive entitlement to religious education; the negative freedom not to be subjected to other forms of religious education; curriculum specifications. Sixty-five Acts were reviewed. Presented chronologically, the analysis shows that: the term has a long and varied development that predates compulsory education; several neglected Acts have been pivotal in shaping the subject – notably in 1841, 1869 and 1936; religious education is continuously a marker of religious autonomy for individuals and increasingly for schools, and its curricular use stems from this; the newest related terms are for inspection purposes. The implications are discussed for accounts of the subject, curriculum development and further research, both in England and more widely.

KEYWORDS

Religious education; law; policy

Introduction

Accounts of religious education in England frequently open with descriptions of key legislation (UK Government 1870a, 1944, 1988),¹ thereby inferring that the subject cannot be understood without this long legal background (e.g. Cox 1983; Copley 2008; Barnes 2014; Lundie 2017). These statutes are said to underpin the subject’s scope and nature, including curriculum and pedagogy. This makes religious education unique in the curriculum, as most other teachers are unconcerned with such curricular legalities; it also means that the term has different meanings and uses – legal, theological and pedagogical- which are not easy to disentangle (Freathy 2008). England is not alone in this. Quite apart from the rest of the United Kingdom, this legal issue applies to religious education in other countries, and indeed it is also entangled in supra-national human rights; religious education is frequently a legal issue around the world, and consideration of the English case may exemplify wider patterns.

Recent calls for reform in English religious education often address these legislative demands. Various reports have lamented what are considered longstanding legal restrictions (Clarke and Woodhead 2018; Commission on Religious Education 2018; Long, Loft, and Daneshi 2019), such as the opt-out clause, arrangements for locally determined syllabuses, or the dual system of schooling –

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and offered suggestions how these might be amended or replaced to create a different model of both the subject and of the curriculum decision-making process. Clarke and Woodhead (2018) suggested new requirements, and the RE Commission (2018) put forward some legal 'Recommendations'. Indeed, Chater (2018) offers specific wording, including: procedural requirements in terms of which schools, which pupils, over which years in school; curriculum demands about religions and non-religions and the wider ethos of lessons; curricular assumptions that must be met. However, these different demands raise questions about the implications of being in statutory form, quite apart from whether these proposals are sensible or feasible in curricular or pedagogical terms. Some requirements might be better suited to becoming law than others; it has been long argued that the law should establish processes rather than set out precise requirements (Harte 1991).

This article seeks to clarify this legislative dimension, critiquing neither previous and existing laws, nor putative proposals. However, to interpret these accounts and arguments, it is vital to consider how the term 'religious education' is used in law.

The treatment of legislation in educational research and scholarship

There is surprisingly little *specific* attention to legislation in educational research in the United Kingdom, although – or perhaps because – it is routinely included within policy analysis and historical research. By contrast, internationally, there is considerable legal research within educational research. This is arguably strongest in the United States, where litigation around schooling is common (e.g. Heise 2004; Superfine 2013). Policy analysis in the United Kingdom has focused on how policies are created, drafted, and especially enacted in schools, and legislation is subsumed within a collection of policy texts. For instance, Ball's (1990, 2017; Bowe, Ball & Gold 1992) influential model of three contexts of policy – influence, production and practice – explores the flow of policy but downplays the importance of legislation *per se*. Bowe, Ball, and Gold (1992) wanted 'to approach legislation as but one aspect of a continual process in which the loci of power are constantly shifting' (p. 13), and thus argued that 'in effect the [1988 Act] is being constantly rewritten as different kinds of "official" texts and utterances are produced by key actors or agencies of government' (p. 12). Placing law within policy processes is valuable, but risks overlooking its uniquely legal dimension. Under the constitutional principle of the separation of the powers, legislation must be robust enough to be interpreted effectively by the judiciary, whereas softer policy documents are simply the product of the executive – even if the increasing use of secondary legislation, notably statutory instruments, has arguably blurred this principle. While other policy documents can filter or distort meaning, they can only do so against the legislative text, which remains in force until its repeal.

Aside from sporadic academic commentary on particular statutes (e.g. Yeaxlee 1944; Stopes-Roe 1976; Cox and Cairns 1989; Hull 1989a, 1989b; Harte 1991; Loudon 2004), educational policy research on religious education in the UK has also overlooked the specifically legalistic aspects of the law, as legislation is subsumed within wider policy. Fancourt (2015), Matamba (2015) and Smalley (2020) all adopt Ball's approach to policy implementation. Other commentators have deployed different methodological or theoretical lenses; Kay's (2002) study of prime ministers' attitudes, or Alves' (1991) Bates' (1996) and Robson's (1996) analyses of the 1988 Acts illuminate political or theological turns around legislation. Nevertheless, Barnes' claim that there 'is no need to settle the matter of the proper interpretation of the religious clauses of the 1944 Act' (Barnes 2014, 57), seems incautious, especially as the Acts of 1870, 1944 and 1988 are treated as the triumvirate of religious education policy in England – whether for praise or critique. The 1870 Act is prioritised as the 'first' Education Act (Priestley 2006); Barnes (2014) considered that it was 'inclusive and anti-discriminatory' (p. 55), whereas Gearon (2013) argued that it 'masked a problem of pedagogical foundations to which it had been subject throughout its history' (p. 109). Bell (1985) considered that the 1944 Education Act was intended to 'inspire Christian belief and adherence to the Christian Church' (p. 178), Priestley (2006) that it engendered consensus Christianity, and Lawton (2018) that 'local authority schools were all

required to *teach* Christianity, but shorn of any of its denominational specificities, and no one was required to *learn* it' (p. 23, original emphases). Grimmitt (2000) complained that 'Following [the 1988 Act], RE . . . has increasing become the victim of ideological agendas . . .' (p. 7; see also Parsons 1994), and Hull (1989b) objected to its 'religionism', but Harte (1991) thought it innovative in establishing a mechanism for producing the model syllabus. These Acts continue to be commented on long after repeal, but this commentary is not necessarily accurate if it blurs law with other policy, or with its effects. Further, legal scholarship has tended to focus on the legal features (e.g., Sandberg 2011), and engaged little with educational research.

Historians of education have often focused on legislation, particularly in wider social or political debates; thus, McCullough and Arthur (2020) argue for exploring the 'relationship between education reform legislation and the changing society' (p. 520). Historians of religious education have also often explored legislation, and the role of individuals or organisations in shaping it (Copley 2008; Jackson 2014; Parker, Allen and Freathy 2020; Doney 2021). However, whilst policy sociology or historiographical approaches are valuable, they may dissolve specifically textual features of law into a plethora of other forms of documentation and voices – political, executive, administrative, curricular or theological. For example, Doney (2021, 10) in his Foucaultian analysis, sets about 'contextualizing' the subject, moving from agreed syllabus legislation to school types, to the home nations' constitutional arrangements, to a history of curriculum and pedagogy, returning briefly to the law before an analysis of indoctrination, ideology and instrumentalization: the challenge here is in setting some limits to contextualisation (Fancourt 2017; Skeie 2013). These approaches risk inferring extraneous meanings into the legislation, and closer attention to the text would shed light on the potential discrepancies between legislation on religious education and subsequent interpretations of it in educational research.

A methodology for interpreting educational legislation

This paper addresses this question of interpretation by considering the term 'religious education' in English legislation since 1800. It draws on legal interpretation, applied to a corpus of relevant statutes. Statutory interpretation is fundamental to law (Cross, Bell, and Engle 1995; Bailey et al. 2017), and some basic principles are outlined (e.g. Wilson et al. 2020). Clearly, some Acts set out rules of general interpretation (e.g. UK Government 1978, 2018). Beyond that, a unified approach to the following principles is generally applied (Cross, Bell, and Engle 1995). First is the literal rule, i.e. as Lord Diplock stated, 'the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was and to give effect to it'.² As its starkest, this means that only a statute's actual words should be used to ascertain Parliament's intention, and judges should neither look to policy documents nor Hansard (the official record of Parliamentary discussions). If the literal meaning is absurd or inconsistent, then judges have, under the 'golden rule', been long entitled to adjudge Parliament's intentions, inferred from the Act's preamble, surrounding text or headings, and – since 1993 – Hansard.³ Third is the 'mischievous rule' in that any interpretation should suppress an underlying wrong and provide a remedy: legislation is often intended to be corrective. There are also more detailed rules, e.g. 'noscitur a sociis' (an ambiguous word is interpreted from those around it), or 'expressio unius est exclusio alterius' (the mention of one item is the exclusion of another).

The relevant statutes were identified through various legal databases: Education in England, legislation.gov.uk, LexisNexis, Westlaw. The initial range was wide, as Education in England (2020) identified 262 important statutes since 1721. Primary legislation only from 1800 onwards was reviewed to ensure two long centuries of coverage. Case law and supranational human rights conventions were excluded. As a result, sixty-five Acts were scrutinised (Appendix A). The searches included 'religious education' and cognate terms: catechesis, denomination/s formulary/ies, religious instruction, religious knowledge, secular instruction, teaching on religious subjects. The term 'spiritual' was excluded. Some secondary legislation, legislation specifically relating to Ireland (pre-

independence), and Northern Ireland, Scotland or Wales (including post-devolution legislation), and legislation on higher education were sometimes identified for comparison but not treated systematically, as were a few earlier Acts. Initially, this analysis was intended to include teachers' religiosity and freedom of belief, but the employment law dimensions created further complexity. The findings are simply presented chronologically. It should be acknowledged that the general aims and purposes of legislation over this long double century will vary (see Harte 1991) and this approach will not capture this nuance, for which more contextual approaches remain valuable.

Religious education becomes an entitlement

In the early 19th century, two basic legal principles developed out of increasing concerns for children's welfare, rather than directly within schooling. The first was an entitlement for children and young people to have religious education, with the related parental right to bring children up in accordance with their own religious beliefs. Second was the concomitant negative principle not to be subjected to religious education other than one's own.

The early development of an entitlement to religious instruction concerned working children. In the previous century, the Chimney Sweepers Act (UK Government 1788, see also UK Government 1834a) provided that the Chimney Sweeper 'will *require* the said Apprentice to attend the Publick Worship of God on the Sabbath Day, and *permit and allow* him to receive the Benefit of any other religious Instruction' (emphasis added). However, by the Factories Act (UK Government 1802), children's employers were required to ensure:

That every apprentice ... for the space of one hour at least every Sunday, be instructed and examined in the principles of the Christian religion, by some proper person to be provided and paid by the master or mistress of such apprentice ...

Explicitly Christian, this obligation was linked to full church membership, with confirmation mandatory between fourteen and eighteen years old (s. 8). This acknowledged parents' beliefs as significant even if there was no formal right to choose. Moreover, it recognised denominational differences between the two established churches, with a parallel provision for Scotland in the Act.

The next development can be found in the Poor Law (Amendment) Act (UK Government 1834b) which regulated parish workhouses, establishing positive and negative freedoms for inmates. A workhouse could not 'oblige any Inmate ... to attend any Religious Service which may be celebrated in a Mode contrary to the Religious Principles of such Inmate' (s. 19), and this negative freedom was extended to the religious education of the inmates' children, so the owners could not:

... authorize the Education of any Child in such Workhouse in any Religious Creed other than that professed by the Parents ... and to which such Parents ... shall object (s.19)

Moreover, the positive entitlement to religious education for children was established:

Provided also, that it ... be lawful for any licensed Minister of the Religious Persuasion of any Inmate ... to visit such Workhouse for the Purpose of affording Religious Assistance to such Inmate, *and also for the Purpose of instructing his Child or Children in the Principles of their Religion.* (s. 19, emphasis added)

These provisions both prevent a state-authorised establishment – the workhouse – from imposing any form of religious education other than the parents' wishes *and* require them to facilitate parental wishes. Clearly, no provision on content was made: ministers were considered to be competent. Some considered this development too permissive – people who had become poor should not be entrusted with their children's salvation (Moseley 1838; Moore 2008). However, this arrangement later became the model for children in reformatories and industrial schools⁴ (UK Government 1857, 1866a, 1866b), and for special needs provision into the 20th Century.

Incorporating religious education into schooling

These principles were consolidated into emerging legislation on schooling, requiring a new feature – the separation of religious education from the rest of the curriculum. The School Sites Act (UK Government 1841, see also, 1851) allowed for schools to be established ‘for the purposes of the education of such poor persons in religious and useful knowledge’ (s. 5), though in 1852 legislation distinguished between religious and *educational* in respect of training (UK Government 1852). In 1866, an Act for reformatories and industrial schools distinguished between secular and religious instruction. These Acts were at pains to differentiate religious education from the rest of the curriculum, which has since remained a feature of legislation.

Three Acts, in 1868, 1869 and 1870 consolidated the place of religious education in schooling, across independent, grammar and all elementary schools. The issue of withdrawal first appeared in 1868, in The Public Schools Act (UK Government 1868), which allowed the governing bodies of nine major independent schools to consider their provision,

... for the Education of Boys whose Parents or Guardians wish to withdraw them from the Religious Instruction given in the School (s. 12(9))

These schools could make whatever regulations they wished, and so Parliament recognised the issue without imposing a solution. Then, more prescriptively, the Endowed Schools Act (UK Government 1869) – covering 784 Grammar schools across England and Wales – entitled parents or guardians to:

Claim ... the exemption of [a] scholar from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject (s.15)

This negative right is specifically for both worship and instruction, echoing the 1834 Act. The 1869 Act also addressed two mischiefs that could arise for exempted pupils. First:

a scholar shall not by reason of any exemption from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, be deprived of any advantage or emolument in such endowed school.

There could be no indirect penalty for opting out, such as loss of a scholarship or funding. The second was when teachers simply addressed this material elsewhere in the school day:

If any teacher, in the course of other lessons ... teaches systematically and persistently any particular religious doctrine from the teaching of which any exemption has been claimed ... the governing body shall ... make all proper provisions for remedying the matter. (s. 15)

Though it only applied to systematic *and* persistent teaching, this clause recognised that the content of lessons, across the timetable, had to be regulated to avoid impinging on the parents’ and pupils’ negative freedom; a Latin teacher could not start discussing soteriology with an exempted pupil in the class.

Next, the 1870 Act essentially adapted the 1869 provisions for elementary schooling. Nowhere is religious education made compulsory (contra Lundie 2017) – unlike the Factories Acts of 1802 and 1866. Nothing is *required*, only that parents’ and pupils’ negative freedom should not be jeopardised. Religious education is permitted but not compulsory; however:

It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday school, or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs. (Section 7(1))

This echoed previous legislation, simply adding provision for flexibility for religious observance. This wording also allowed for the significant Jewish population (Black 2014) to be accommodated – the Jewish United Synagogues Act (UK Government 1870b) was passed the same year, legally establishing Jewish religious institutions (see Barnes 2014). Next, subsection (7(2)) dealt with the practical issue of timetabling, by requiring that worship and religious education be either at the start or the

end of the day, so that opting-out was straightforward, and with inspection, in that inspectors should not 'inquire into any instruction in religious subjects given at such school, or to examine any scholar therein in religious knowledge or in any religious subject or book' (s. 7(3)), foreshadowing its place within inspection frameworks.

The Act's final negative freedom is the much-fêted Cowper-Temple clause, on curriculum: 'No religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school' (s. 4(2)). The Cowper-Temple clause is arguably unnecessary if exemption rights are given, but it may simply address the mischief in s. 15, Endowed Schools Act more neatly. Essentially, the 1870 Act's importance is less in creating new legal principles around religious education, and more in extending existing ones into compulsory schooling.

Embedding religious education beyond elementary schooling

In the next phase the consolidation and expansion of schooling, e.g. beyond elementary schools or for the emergent special needs provision, meant that these key elements of freedom and curriculum were constantly addressed. They were transferred in 1902 to the new Local Education Authorities ('LEAs') (UK Government 1902a) and extended to the emerging further and higher education sector in 1889 and 1921 (UK Government 1899, 1921), and continuation schools (UK Government 1918).

A further development was to introduce the religious/secular distinction into English mainstream schooling, in the 1902 Act, as LEAs would 'have the control of all secular instruction (s. 3)'. As noted, the distinction was not new, presaged in the religious/useful distinction of 1841, it had appeared the 1866 Factory Schools Act, and in 1872 in the Education (Scotland) Act (UK Government 1872), which provided for compulsory education north of the border. It was also being deployed across the British Empire (Goldburg 2012).

However, religious education was increasingly caught between the new educational provisions and the older social welfare provision (Ward 2021). The parental right to determine children's religious education was re-emphasised during this period. For instance, the Custody of Children Act (UK Government 1891), provided that even if a parent were deemed unfit to care for their child, the Court could still require that the child be provided with the parent's choice of religious education: religious freedom trumped parental neglect. However, this was – and remains as the Act is still in force – subject to the child's freedom of religion:

Nothing in this Act contained shall interfere with [the Court's power] to consult the wishes of the child in considering what order ought to be made, or diminish the right which any child now possess to the exercise of its own free choice. (section 4).

Under the 1893 Act, provision for 'blind and deaf' children could be provided for either under the 1870 Act, or under the earlier provisions in the 1866 Acts, so two legal regimes were in operation depending on the nature of the provision, and this twin system was extended to 'defective and epileptic' children in 1899 (UK Government 1899). Where children were in institutional settings (for whatever reason), the term retained its association with clergy or ministers, or with a religious alignment between institution and child (see also UK Government 1902b). Thus, in Mental Deficiency Act (UK Government 1913) the institution should identify the child's 'religious persuasion' allow the appropriate minister to visit 'for the purpose of instructing him in the principles of his religion' (s. 17), not compel them to receive other forms of religious instruction, and allow a relative to apply to the court for them to be moved to an institution of a more suitable religious persuasion.

Religious freedom and agreed syllabuses

The next phase was marked by greater control of the syllabus, notably through legal recognition of locally agreed syllabuses, in the Education Act 1936 (UK Government 1936). The two histories of post-war religious education policy (Copley 2008; Doney 2021) focus on 1940 onwards and omit its

contribution to religious education. It set out opt-out provisions for any type of school but recognised the local syllabus as a potential choice for parents. Thus, in 'provided' (i.e. state-funded church) schools, if parents:

- (a) desire them to receive religious instruction in accordance with a syllabus in use in schools provided by the authority; and
- (b) cannot with reasonable convenience cause them to attend a school provided by a local education authority;

such instruction shall be given in the school (s.12).

Furthermore, in 'maintained' schools (i.e. *all* state-funded schools), a pupil could be withdrawn from religious education, 'if [satisfactory] arrangements have been made for him to attend religious observance or instruction elsewhere' (s.13). The Act is potentially confusing because it uses the term 'religious instruction' in the heading, but refers to both 'instruction' and 'observance' in the text, but otherwise these provisions created a framework for a highly individualised freedom of religious education. Church schools might have to provide two or more syllabuses, and pupils might leave any school for religious education elsewhere. The potential for a patchwork of individualised religious education was created.

The 1944 Act is often heralded as a 'landmark' for religious education (Copley 2008, 15), however it is better characterised as consolidating the provisions of the 1936 Act. As Hull (1989a, 60) had argued, the 1944 Act 'merely ratified and clarified'. On the issue of the positive and negative freedoms, it transposes the complex arrangements for the option clause for different types of religious education from that provided by the school to the new different types of school: county, and the three types of voluntary schools: controlled, aided, and special agreement. Institutional religiosity was balanced against parental freedom of religion, maintaining a potential patchwork across England – and hardly 'consensus Christianity' (contra Bell 1985; see Priestley 2006).

On curriculum, it provided more definitional clarity, since if religious education were compulsory, it required clear delineation. The Act adopted the old distinction (in the 1902 Act) between secular and religious (see ss 15, 23) to clarify different elements, and notably whose responsibility they were. There is no evidence of the secular 'infusing' religious education (contra Gearon 2013), and the broad distinction was already a century old. One valuable definitional nuance was to use religious education as an overarching term to include 'religious instruction', i.e. the subject, together with 'religious worship', i.e. school assemblies, which could then be treated differently. However, since this was only contained in headings, it was not a formal distinction.

For religious *instruction*, the Act made mandatory the emerging practice of adopting a locally agreed syllabus, already recognised in the 1936 Act, and subject to the Cowper-Temple requirement that it 'shall not include any catechism or formulary which is distinctive of any particular religious denomination' (s.26). The procedural mechanism for achieving this was in the arrangements for the 'agreed syllabus conference' (Schedule 5). This consisted in four committees, representing: local denominations (except the Church of England), which were determined by the Local Education Authority ('LEA'); the Church of England; teachers' associations; LEA representatives. There is balance here of religious, educational and political representation; there is no requirement for the latter committees to have any religious affiliation. There are no other curriculum requirements, and it 'does not contain any word more definite than "religious"' (Institute of Christian Education 1954, 22), following Acts since 1832. Christianity is unspecified, although clearly earlier Acts in the 19th Century had done so. Further, local authorities could approve more than one syllabus, for particular schools or indeed types of pupils.

The 1944 Act therefore does not mark a vastly new period, phase or paradigm in the legal form of religious education. It drew extensively on the Acts of 1870, 1902 and 1936, and only went beyond them in explicitly making the subject compulsory – arguably simply addressing the mischief of its absence. It clarified definitional terms, and mandated a mechanism for drafting syllabuses, based in

existing practice. Fundamentally, it preserved the potential for a patchwork of provision, noted above – not least because schools within one LEA could choose different agreed syllabuses; indeed, within one school, different syllabuses could be in operation for different pupils – or pupils could be leaving school for religious education elsewhere. Having an Agreed Syllabus meant that the LEA and local schools could be confident that many parents would not opt out, but did not guarantee it; the Institute of Christian Education (1954) identified withdrawal by parents who were: agnostic, Christadelphians, Christian Scientists, Church of England, Jehovah's Witnesses, Jews, Plymouth Brethren, Roman Catholics, Seventh Day Adventists, and in voluntary schools, various Nonconformists. There was no clear *statutory* consensus (contra Priestly 2006).

The 1944 Act remained in place without significant developments until 1988, though in 1969–1970 the initial stages of legislative reform were initiated (Freathy and Parker 2015), as at the time 'there was general agreement ... that present arrangements for the statutory syllabus have outlived their usefulness' (p, 22). There were still separate provisions for approved schools until 1960s, but otherwise, the term only occurred in relation to church school trusts, in the Education Act 1973 and the Reverter of Sites Act (UK Government 1973, 1987). The term 'religious instruction' occurred in the Child Care Act 1980 (UK Government 1980), to refer to provision in care homes, i.e. the long-standing presumption that religious education was wider than schooling, and could occur in other institutional settings (see UK Government 1913). The absence of development is significant because religious education changed considerably while the Act was in force (Copley 2008), notably the inclusion of world religions and humanism in 1970s, further suggesting that there are not discrete legal/pedagogical periods or phases. Indeed, even in the 1980s, Earl (1984) could still suggest that the 1944 Act was workable despite these changes.

Christianity, denominational education and inspection

The 1988 Act is significant across schooling for various innovative reasons, notably the National Curriculum, assessment, and new types of schools. The wording on religious education is complex, reiterating existing provisions, reintroducing obsolete elements, and introducing innovations. In its fundamental framing of the subject across all types of school it drew on the 1936 and 1944 Acts, incorporating the complex opt-out provision, including extending the right to be absent from other subjects for religious education elsewhere (section 9), and extending provisions to the new types of school. The major legacy was the continuance of the agreed syllabus committee structure, despite there now being a national curriculum for all subjects. This further calls into question both Gearon's (2013) claim that religious education was being subsumed into secular education, since religious education was manifestly treated differently, and Harte's (1991) claim that the Act represented a new approach in legislation by establishing a decision-making framework, because it merely reiterated the 1936/1944 model.

The 1988 Act was however novel in other ways, largely linked to greater diversity of religions in the country. First, it modified the arrangements for the agreed syllabus conference, so that the first group consisted in '*Christian and other religious denominations*' (s.11(4), author's emphasis, showing additional wording). Other religions had arguably never been excluded but given that the term 'denominations' was possibly more restrictively interpreted as only applying to churches, it was soon amended in 1993 (UK Government 1993) by adding '... and other religions and denominations of such religions' (Sch. 19, para 27. emphasis added).

Second, there was novelty in curriculum stipulations. The Cowper-Temple formula was slightly modified, in that it added that 'this provision is not to be taken as prohibiting provision in such a syllabus for *the study of* such catechisms or formularies' (s.9, emphasis added). The latter clause thereby sought to clarify a pedagogical point in separating 'by means of' from 'the study of'. The

major novelty was the explicit mandate that an agreed syllabus:

shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain (s.8(3)).

Strikingly, the word 'Christian' is reintroduced – unseen for over a century – and while the requirement to include other religions is well documented (Hull 1989; Bates 1996), the wording also impliedly prohibits the inclusion of non-religions. The 1944 Act had no such limits, but here the *expressio unius* rule, might impliedly exclude non-religious worldviews – which been included in some agreed syllabuses since 1970s (see Stopes-Roe 1976).

These two strands – maintaining existing rights and addressing religious diversity – were also entangled in the provisions on collective worship. On one hand, this was maintained in schools, but it now had to be wholly or mainly of a broadly Christian character' (s.7(1)), so Christianity is also explicitly named here. On the other hand, the negative freedom was not just available for individual parents, schools could also apply to SACRE for a general dispensation to ignore this stipulation. Further, this Act abandoned the linguistic distinction between 'secular' and 'religious' education (see Gearon 2013), because the national curriculum now dealt with the former. It also abandoned the neat 1944 distinction between religious education as the umbrella term, subdivided into religious instruction, and collective worship as its two components. In 1988, the term 'religious instruction' was replaced with 'religious education', but the latter term now had two senses, for curriculum alone, and as the umbrella term for curriculum *and* collective worship together; this nuance is often missed, for instance Freathy (2008) claimed that the term only applied to the curriculum subject and was no longer an umbrella term. This double role could be misread as implying that collective worship fell within the curricular element: thus Loudon (2004, 276) erroneously considered that 'there is a clear strand of expectation that schools should promote religious education, including worship'; even Harte (1989, 39) considered it 'regrettable' that the term 'religious studies' was not applied to the curriculum element. In this respect, it reverted to the 1936 Act's unclarity between instruction and observance.

In legislation since 1988, 'religious education' as a placeholder of school type has increased because of a proliferation of new types of school, e.g. Grant Maintained Schools in 1993 (UK Government 1993), or The School Standards and Framework Act (UK Government 1998). The latter provided for various schools with a religious character, for example Jewish⁵ Muslim⁶ and Hindu⁷ schools, alongside Christian denominational – and inter-denominational schools, such as Anglican-Methodist⁸ or Roman Catholic/Church of England.⁹ The next, paradoxical, development was the Academies Act (UK Government 2010). Academies were to be treated as independent schools, so there was no statutory provision for religious education; the requirement is either through the trust deed, for schools of a religious character, or contractual, within the funding agreement, which currently reapply the standard post-1988 provisions.

The proliferation of school types led to different inspection frameworks. Soon after 1988, the Education (Schools) Act (UK Government 1992), on the inspection of schools, coined the new term 'denominational education' to indicate a type of school that was not required to follow an agreed syllabus, and would thereby be subject to a faith-based inspection service. Moreover, this term applied to both religions as well as denominations – thereby echoing the semantic confusion in the 1988 Act's wording on ASC membership, which had required correcting in the 1993 Act, but has not been corrected here. Thus 'denominational education' denotes an inspection regime, and neither parents nor pupils' rights, nor any specific description of curriculum or syllabus, except negatively. Indeed, this association with inspection continues; explicit provision for religious education in the Coronavirus Act 2020 only relates to inspection, though collective worship is directly addressed (s. 5, amending Education Act 2005).

Discussion

From this analysis, three points emerge. First, the phrase ‘religious education’ in legislation is consistently a marker of religious autonomy for individuals and schools, and this precedes its use to identify a curriculum subject. Indeed, the phrase is best thought of as a bundle of educational rights attached to freedom of belief around which curricular and pedagogical decisions must be made, rather than as a curriculum subject around which legal obligations are placed. This difference separates educational and legal perspectives, the former thinking pedagogically and the latter in terms of personal freedoms. The emergence of legislation on provision of religious education in school lies in the early 19th century when state-authorised institutions were expected to provide religious education but not to interfere with the freedom of belief the children of those in their care. Drafted when the state did not provide education, there is no curriculum requirement. With the arrival of compulsory schooling, it became the marker of different types of schools, with different inspection arrangements, and this inflexion continues, particularly recently, with an expansion of types of school. Indications as to curriculum are initially stated negatively, in the Endowed Schools Act 1969, and in the Cowper-Temple clause in 1870, and the first explicit requirements only emerge in 1988. However, the legal and educational senses have different starting points, and different modalities.

Second, several Acts are arguably as important as the triumvirate (contra Lundie 2017; Barnes 2014; Gearon 2013), including some from before the conventional start in 1870, disrupting common accounts of its development. Religious education is arguably shaped as much by the Poor Law (Amendment) Act 1836, the Endowed Schools Act 1869, the Education Act 1901, the Education Act 1936, and the School Standards and Framework Act 1998. Provision for children in institutions is also different. Thus the legislative history of religious education is progressive development rather than major shifts in direction. Different Acts may develop a different strand – the positive and negative freedoms, the curriculum, children in care – or may reiterate wording for one aspect, develop others, or may indeed revive older terms. Periodisation can be valuable heuristically, but it is a mistake to rely too heavily on individual Acts for delineation of separate pedagogical periods or phases.

Finally, however given that many accounts of the subject are over-reliant on the triumvirate of Acts, and it worth considering why this has occurred. One explanation might be that the narrative has a persuasive force, particularly to distinguish different types of religious education in schools, where the Acts apparently offer clean breaks in curriculum models. Another is that these Acts are significant for education generally and have therefore been assumed to be as important for religious education. In a general reappraisal of these three Acts, it is wise to include religious education, but overhasty to limit one’s understanding of religious education to these statutes. Indeed, the interplay between general educational legislation and more specific legislation for religious education needs a more nuanced reading.

Conclusion

This broad sweep across a wide range of legislation covering two long centuries has provided a novel account of legal terminology and challenged conventional interpretations of legislation. For further research, it would be valuable to consider these forgotten Acts in more contextual detail, or to unravel their specific legacy in the courts, in legal, policy and educational debates. The issue of teachers’ rights would also bear scrutiny, and the provision for juvenile offenders, special needs pupils, and looked after children. In terms of curriculum and policy reform that may require statutory amendment, proponents of change should be more aware of the words’ weight and significance, in recognising just what is at stake in proposing change, and indeed thus to avoid talking at cross-purposes on these fundamental legal rights, but which require curricular solutions. Further, as noted

in the introduction, the curricular uniqueness of religious education is itself not unique, and its meaning and shifts within other states' legal frameworks would also bear valuable analysis, to situate it better within a wider comparative understanding of legislation and its effects on classrooms.

Notes

1. Hereafter 'the 1870 Act', 'the 1944 Act' and 'the 1988 Act'. APA referencing will be used for the first reference to any Act; thereafter, standard legal referencing will be used. Appendix 1 lists all the statutes reviewed.
2. *Duport Steels Ltd v Sirs* [1980] 1 WLR 142, 157
3. *Pepper v Hart* [1993] AC 593. *Jackson v Attorney General* [2006] 1 AC 262
4. Reformatories were for child criminals, whereas industrial schools were for homeless or vagrant children.
5. The Yesodey Hatorah School (Designation as having a Religious Character) Order 2005
6. The Tauheedul Islam Girls High School (Designation as having a Religious Character) Order 2006
7. The Krishna-Avanti Primary School (Designation as having a Religious Character) Order 2008
8. The Trinity Anglican-Methodist Primary School (Designation as having a Religious Character) Order 2008
9. The Christ College, Cheltenham (Designation as having a Religious Character) Order 2006

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