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Religious Freedom in English Schools: Neoliberal Legality and the Reconfiguration of Choice

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Abstract: This paper considers how the longstanding liberal principle of freedom of religion in education in England was recontextualised within a marketised system of school choice. First, the potential conflict between the right to freedom of belief and to education is outlined. The notion of neoliberal legalism is explored, first in identifying and defining neoliberalism as a model of regulation by market forces, then in outlining ‘neoliberal legality’, as the manifestation of this approach in law. Next, the paper presents a narrative account of the development in England of the principle of religious freedom in education up to the Education Act 1944. The neoliberal turn is considered, in the 1988 Education Reform Act and subsequent legislation, showing how while the provision remains, religion is effectively one marker of school choice and strategic school selection, rather than purely a fundamental personal freedom. This is discussed in relation to neoliberal recontextualisation of existing law, and the neoliberal governance of religions.

Keywords: England; religions; freedom; schools; law; neoliberal



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1. Introduction

Religious education (in whatever form) has long been caught between two important principles: the right to freedom and belief, and the right to education. These freedoms are found in many jurisdictions, and not least because of the influence of international human rights. The right to freedom of belief is found in Article 18 of the [United Nations \(1948\)](#) Declaration, which states that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change [their] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest [their] religion or belief in teaching, practice, worship and observance.

This sets up the right for individuals, but also establishes collective rights, and it expressly includes “teaching”, though this is undefined. By contrast, Article 26 states that:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory . . .
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

This Article can be seen to intersect on Article 18 in that Section 1 demands compulsory elementary education, which may or may not overlap with the teaching mentioned in Article 18; Section 2 requires a particular aim for moral education which includes attention to different “religious groups”, so implies teaching that recognises these groups and so may have to engage with those groups’ own teachings—whether because they echo each other

or because they are in tension; Section 3 gives parents a choice over their child's education, and will clearly extend to and be motivated by their freedom of belief, impliedly permitting religious involvement in education more generally than simply the internal teachings of a religious group.

These articles did not emerge *de novo* in 1948 but represented the formulation of classic enlightenment principles, such as the values of autonomy, education, and tolerance (Warman 2016), which had been shaped on one hand by political philosophy and national laws and governance, and on the other by philosophy of education and systems of schooling and education. They are the quintessential expression of the underpinnings of the liberal state at the point where belief and education intersect. Religious education, to the extent to which it is a part of education more broadly, will therefore be embedded in and raise questions for the organisation and politics of schooling. In some states, the principles implicit in the articles have led to a doctrine of separation of religious institutions from public schooling, notably in France (e.g., Baubérot 2004). In others, it has been considered compatible with the strong involvement of religious organisations in schooling, such as Greece or Spain, and clearly there are a range of positions betwixt these two, such as a constitutional policy of recognizing particular religions or denominations.

Further, the arrangements in any one state will not be static but shift in relation to wider social and political trends or forces. For example, a social trend might be declining religiosity, or a more diverse religiosity, requiring a fresh look at the kinds of legal options available, and a political force might be radical change in government, such as in post-Soviet-bloc states, when atheist regimes became more agnostically secular, or adopted an established religion. In many countries, education policy has been influenced by neoliberalism, described as “the predisposition of governments to increasingly favor free market solutions over government interventions, and individual efforts over the provision of collective safety nets” (Mundy et al. 2016, p. 6). This predisposition can be found around the world, since “approaches that emerged in Anglo-American states were rapidly picked up in the developing world, and even putatively socialist states such as China and Vietnam talk of ‘market socialism’” (p. 6).

These new policies often have legal and juridical dimensions, which will therefore encounter any longstanding rights-based principles. The aim of this paper is to review critically how religious freedom is shaped by neoliberal changes in education law in England. Methodologically, it adopts a critical legal scholarship approach (e.g., Beaman 2013; Brabazon 2017; Chagnon and Gauthier 2013) to present a narrative account of neoliberal changes in English education law. England is a particularly pertinent focus since, as noted above, neoliberal policies were implemented here relatively early; the other nations in the United Kingdom are not included as they have different trajectories. First, theoretical approaches to neoliberalism and neoliberal legality are discussed. The paper will then consider how these broad liberal principles were initially framed in English law, between the early 1800s and 1944, and then how these provisions were re-interpreted in the light of neoliberal policies from 1988 onwards.

2. Theorising Neoliberal Legalism

The impact of neoliberalism in education is a commonplace within education research (e.g., Ball 1990, 2006; Hill and Kumar 2009; Ball and Junemann 2012; Wright 2012), including research on religious education (Fancourt 2015, 2017, 2021a; Smalley 2019), and on the place of religion in education more widely (e.g., Arthur 2015; Mac an Ghaill and Haywood 2017). This research has tended to overlook the nature of law and judicature, subsuming it into policy (see Fancourt 2021b); other recent work has considered the juridification of education (e.g., Murphy 2022; Rosén et al. 2021), but not neoliberalism. Conversely the field of education has scarcely been considered either by legal scholars of neoliberalism (e.g., Brabazon 2017; Campeau and Levi 2019; Perrone 2016), or those exploring the neoliberal turn in the political economy and governance of religions (e.g., Martikainen and Gauthier 2013; Gauthier and Martikainen 2013).

Neoliberalism is notoriously elusive to define but can be framed from two types of perspective. One is in terms of the particular neoliberal principle under scrutiny, such as marketisation, securitisation, or individualisation (see [Eagleton-Pierce 2016](#)). The other is in terms of the theories of neoliberalism adopted, which are of two approaches: an essentially emic view from proponents of neoliberal principles, such as [Hayek \(1944\)](#) or [Friedman \(\[1962\] 2002\)](#) (even if they did not use the term themselves), and a more etic view from external critics or commentators who seek to identify its features for analysis, such as [Ball \(1990\)](#), [Giroux \(2008\)](#), or [Foucault \(2008\)](#). The two types of perspective are clearly connected in that studies of a particular issue may tend toward one theory rather than another: the analysis of securitisation is more likely to draw on Foucauldian theories of surveillance than of the market. Here, our focus is on school choice and the creation of a market in English schooling after 1988, and so Friedman's work on freedom and choice ([Friedman \[1962\] 2002](#); [Friedman and Friedman 1980](#)) is particularly relevant and arguably 'iconic' ([Johns 2015](#), p. 354), especially since it directly influenced Thatcherism in the 1980s, when these educational changes began ([Kavanagh 1987](#)); it was also influential elsewhere, e.g., Chile ([Madero 2018](#)).

At the heart of Friedman's argument is the view that individual liberty and social progress are best served by a market approach—in 'transactional freedom' ([Friedman \[1962\] 2002](#), p. 2). An economist, he considered that interventionist approaches based on Keynesian economics ([Keynes 1936](#)) were flawed and had proved so in many countries, and that markets would self-regulate efficiently. He further maintained that this market model should be transferred to other aspects of government, including schooling. Indeed, education, or rather 'the role of government in education' is the first topic outside economics and finance that he addresses in 'Capitalism and Freedom' ([Friedman \[1962\] 2002](#), p. 34). The arguments in the educational sphere were not directly about capitalism in terms of restrictions on commercial freedom or union rights, but were directed towards a distrust of centralising educational bureaucracies, echoing [Hayek \(1944\)](#), who was the other key proponent of neoliberalism. Friedman identified and accepted the need for a shared foundational education, a 'general education for citizenship', i.e., 'a minimum degree of literacy and knowledge ... and ... some common set of values' ([Friedman \[1962\] 2002](#), p. 86). Beyond that, parents should have the right to choose their child's education. However, the state has usurped this right:

For schooling, this sickness has taken the form of denying parents control over the kind of schooling their children receive [and] power has instead gravitated to professional educators. ([Friedman and Friedman 1980](#), pp. 151–52)

Furthermore, the quality of teaching was inadequate and, they would have argued, this was as a result of the interference. Instead of an allotted place at a government-run school, what was needed were quasi-independent schools, offering their own curriculum and ethos, and from which parents could then choose through a voucher scheme. Market principles would raise standards because popular schools would be replicated and unpopular schools would close, and 'the development and improvement of all schools would be stimulated' ([Friedman \[1962\] 2002](#), p. 93). It almost goes without saying that the creation of such a laissez-faire, self-regulating system actually requires a considerable legal framework for overall governance.

Some have argued that neoliberal policies interact awkwardly with human rights, whether because the language of rights is ineffective against market forces ([Moyn 2018](#); [O'Connell 2007](#)), or because the invocation of rights implicates actors in the neoliberal order ([Ciupa 2017](#)). At face value, Friedman's argument is reasonably compatible with the Declaration of Human Rights. Article 26 sets out an established right to the basic requirements (Section 1), which include a common set of values (Section 2), and for which parents have a right to choose (Section 3). There is no intrinsic clash here.

The argument did not stop there. Friedman and Friedman also commented on the negative freedom of belief. Children should not be subjected to any form of religious education other than their own:

Public schools teach religion, too—not a formal, theistic religion, but a set of beliefs and values that constitute a religion in all but name. The present arrangements abridge the religious freedom of parents who do not accept the religion taught by public schools yet are forced to pay to have their children indoctrinated with it, and to pay still more to have their children escape indoctrination. (Friedman and Friedman 1980, p. 164)

“Indoctrination” is strong, and the connections between religious and economic perspectives are well recognized from Weber’s ([1905] 1985) identification of the Protestant work ethic to recent work on neoliberalism (Martikainen and Gauthier 2013). In the context of the USA, there was no formal religious education of any kind in schools so the comment is particularly striking and implies that a neoliberal approach to education would safeguard religious freedom in education.

Having considered neoliberalism, we now focus on neoliberal legality, ‘or relations between legal and neoliberal thought and practice’ (Johns 2015, p. 348), in that researchers ‘are exploring what demands neoliberalism might make and how legal norms, institutions and practices might express or call into question neoliberal precepts’ (p. 348). Neoliberalism has long been seen as an economic, political, and governmental project, but it is also legal and juridical: imprinted in and through laws, and advanced (or contested) in the courts. This point is particularly significant given that educational research has overlooked this legal dimension. For example, Bowe et al. (1992) sought to ‘approach legislation as but one aspect of a continual process in which the loci of power are constantly shifting’ (p. 13), so 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). The danger here is in reducing the juridical to the political, especially because soft policy documents are easily written and rewritten whereas the law has more permanence—notably if it embodies some fundamental liberty.

Legal scholars have pointed to two other relevant features of neoliberal legality. The first is its relationship with human rights, and it is often argued that neoliberalism has infringed on human rights, limiting their range and power, notably around industrial or political action (e.g., Giroux 2008), or indeed that the language of rights can implicate people into a neoliberal world order (Ciupa 2017). The second feature is that it rarely marks a complete break with the legal past, but is partially realised by ‘twisting, stretching and creatively interpreting the ordinary legal framework’ (Tzouvala 2017, p. 131). This re-interpretive continuity is inevitable since for any government seeking to implement neoliberal reforms, there are simply too many laws, policies, or practices to change at once to achieve a complete rupture. There is a partial change, but also therefore a new legal landscape within which to reinterpret those older elements that have remained in place.

3. The Legal Origins of Freedom of Belief in Education in England

Freedom of belief in education in England can be clearly traced for the early nineteenth century, and paradoxically perhaps from well before the introduction of compulsory education in 1870 (Fancourt 2021b; Parker 2018). The most explicit early reference is in the Poor Law (Amendment) Act (UK Government 1832), concerning provision for inmates in workhouses, which were parish-run establishments where the most destitute could live, separated by gender—and in return for relentless labour. Workhouses however had to respect inmates’ beliefs, and 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 their children; the workhouse 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). More than that:

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)

Workhouses, as state-authorised establishments, could not impose any form of religious education other than that wished by the parents, and it required them to facilitate these wishes. The principle is important since it protected those at an extreme disadvantage against organisations that might feel it was more appropriate to impose their own views of religion, or that of the establishment, on the destitute—and on their children. Indeed, it thereby placed a burden on workhouse owners to establish the inmates' religious convictions and liaise with local ministers to ensure this provision was met. It was also not unquestioned, and [Mozley \(1838\)](#) counter-argued that only the established church should provide services and education, since "it and it alone has been divinely commissioned with the office of feeding the little ones of Christ's flock" (p. 3).

This emphasis on the right to one's own form of religious education, and the concomitant negative right not to be subject to another, had to be addressed when 'educat[ing] children of differing Christian denominational backgrounds within a single national system of education' ([Parker 2018](#), p. 255), and especially when schooling was made compulsory, in the Elementary Education Act ([UK Government 1870](#)). This Act accepted that the churches provided much of the nation's schooling, and under the 'dual system' their involvement was maintained. There was no formal requirement for religious education (of any type) to be taught, though it was possible. Freedom of religion along the lines of the 1832 Act was incorporated; there were already similar provisions for private schools and secondary "grammar" schools. Significantly, Section 4(2) stated, in what is termed the Cowper-Temple clause after its proposer, that 'No religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school'. This of course did not apply in church schools.¹ Further, however, schools could not make admission dependent on *not* attending religious education elsewhere:

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))

The protection of the right to freedom of religious education was well developed in this Act, to protect parents and children from schools' demands—even if it was potentially addressing various mischiefs, because schools were making unreasonable demands.

This function of legislation to protect individuals continued and was strengthened when religious education was mandated in all schools, in the wartime Education Act ([UK Government 1944](#)), which required schools to provide different forms of religious education, in line with parents' wishes, but drawing on an earlier Education Act ([UK Government 1936](#)), in developing locally responsive syllabi. For example, these Acts mandated that parents who had sent their child to a church school because they were unable to send their child to a state school could choose between the school's denominational religious education, or *any* religious education syllabus supported by the local authority; thus it essentially recognised that parents could not realistically choose a school in line with their beliefs, so the burden was on the school to provide an alternative syllabus, or syllabi if different pupils had different requests. In state schools, pupils could be withdrawn if they could receive the subject elsewhere. This also meant that the subject had to be at the start or the end of the school day, so pupils could leave or join easily. These legal arrangements are not trivial, with implications for staffing, rooming, and resourcing. Realistically, there was little choice of schools, so a complex set of curriculum arrangements had to be developed to ensure that rights were preserved.

4. Marketisation, Religion, and School Choice

The arrangements under the 1944 Act came to an end in the Education Reform Act ([UK Government 1988](#)), which marked the culmination of legislation that erected a neoliberal marketised model of schooling in England and Wales. The broad policy aim had been set out by [Sexton \(1977\)](#) for the Centre for Policy Studies, a Conservative thinktank:

Obviously, we get rid of [previous legislation] . . . We remove all other political constraints and directions which seek to distort the pattern of educational supply and demand. We have to assume that the politicians keep their fingers out of it, apart from laying down the framework within which variety and diversity can abound in accordance with the aspirations and abilities of the children . . . [and based on] absolute freedom of choice of application' . ([Sexton 1977](#), pp. 86–87)

Friedman-esque language is paramount, of 'supply and demand', 'laying down a framework', and 'absolute freedom of choice'. Various Education Acts gave more power to parents to choose schools instead of a place being allocated by the local authority, gave more power to schools to make their own financial or administrative decisions in the place of local authorities, and created new forms of school outside of local authority control. First, the legal mechanisms of parental choice first appeared in the Education Act 1980. Section 6(1) stated that:

Every local education authority shall make arrangements for enabling the parent of a child in the area of the authority to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions and to give reasons for his preference.

There were then stipulations for a duty of compliance and appeals, and Section 17 also provided for assisted places at independent schools (s. 17), further suggesting a market model. For a market to exist, schools had to become more autonomous, and much legislation tackled this; for instance, the Education (No. 2) Act ([UK Government 1986](#)), which gave greater powers to school governors in school management and took it away from local councils.

These statutes paved the way for the 1988 Act, enacted soon after Thatcher's return to power in 1987. It allowed for the creation of new types of autonomous schools, "grant-maintained" schools, (ss. 52–104), and also city colleges (ss. 105–119), both outside the local authority's control, i.e., freed up from the "professional educators". This Act also addressed the nature and place of religious education. This was because, significantly, the Act introduced a national curriculum, but then had to decide how to handle religious education within this, and therefore how to handle the well-established positive and negative freedoms. The subject was not included within the national curriculum, partly since imposing a particular curriculum could fall foul of the many church schools' trusts. The solution for maintaining schools was a reworking of the locally agreed syllabus model from 1944 to include the recognition of world religions, but also prioritising Christianity, and impliedly excluding non-religious positions, since these had been included in several authorities; it was a highly charged debate ([Alves 1991](#); [Robson 1996](#)), not least because several neoliberals were also religious traditionalists and opposed to much pluralistic curriculum and pedagogy (see [Fancourt 2015](#)).

The 1988 Act maintained the long-standing opt-out provisions but modified to match the new situation and new types of school. Thus, in Section 9(1), "It shall not be required, as a condition of any pupil attending any maintained school, that he shall attend or abstain from attending any Sunday school or any place of religious worship". Religious education was still linked to religious attendance, though there was no evidence that state schools had ever made such demands. Further, in Subsection 3,

If the parent of any pupil in attendance at any maintained school requests that he may be wholly or partly excused (a) from attendance at religious worship in the school; (b) from receiving religious education given in the school in accordance with the school's basic curriculum; or (c) both from such attendance and from

receiving such education; the pupil shall be so excused accordingly until the request is withdrawn.

The wording (in Subsection 4) on provision of alternative religious worship or education went so far as to excuse pupils from any lesson to attend it.

This approach was not simply maintained under Blair's New Labour government but extended; neoliberalism was however now allied with progressive elements instead of neoconservative concerns (Kay 2002; Walford 2008), notably in the School Standards and Framework Act (UK Government 1998b), and "meant an endorsement of much of the 1988 Education Reform Act and its successors, in relation both to 'parental choice' and to competition between schools" (Jones 2003, p. 145). The provision for religious education remained the same and was the focus of much policy debate after the terrorist bombings in New York and London, though little changed. The opportunities for "faith" schools expanded, going beyond the provisions for different denominations and the long-standing Jewish schools to pave the way for Muslim or Hindu schools, and well as new forms of inter-denominational collaboration under secondary legislation, such as Anglican/Methodist or Roman Catholic/Church of England (UK Government 2008a, 2008b). However, 1998 did mark the formal incorporation of human rights into English law (UK Government 1998a), though this particular right was well established, as explained above.

Unsurprisingly, this diversification continued apace when the Conservatives returned to power in coalition with the Liberal Democrats, in the Academies Act (UK Government 2010), which enhanced the role of academies and introduced free schools (Wright 2012). These types of school have even greater freedom from local authorities and were not under any statutory obligation to follow either the national curriculum or the local religious education syllabus, though an obligation is currently placed on them for certain subjects, including religious education, under their funding agreement. In a further neoliberal turn, statutory requirements, enforceable by all, become contractual, a matter between the contracting parties—the state and the academy. Thus, an academy's obligation to provide the subject is only contractual, but it is still a human right for parents to choose to opt out of it. In the event, many of these new schools had a religious ethos; in one area of London (Waltham Forest) in 2011, seven of the ten proposals for free schools were Muslim or Christian foundations, the latter organized by small independent churches rather than the more traditional denominations (Mansell 2011), illustrating the increasing diversification of this educational market. Further, a multi-academy trust could run several schools, which may or may not have a constitutional religiosity. For example, the Eynsham Partnership Academy² in Oxfordshire comprises: one secondary academy without any religious constitution; one primary academy without any religious constitution; five Church of England primary academies—one a former voluntary-aided school and four former voluntary-controlled schools; one secondary free school. These various categories have different legal requirements for the religious education on offer and mean that the board of trustees includes church representatives even though the trust is not completely faith-run. The most recent Schools Bill (UK Government 2022)³ seeks to address this problem, incorporating the provisions across an ever-widening set of schools, with explicit arrangements for multi-academy trusts, and other educational providers.

Alongside the proliferation of choice, the right is still a ground for action. It was recently invoked by the Fox case⁴, in which Humanist parents and children challenged a claim by the government that examination criteria for religious *studies* would meet the legislative provisions for religious *education*; they argued that Humanism was not properly accounted for, drawing on human rights law, and the judge agreed. Significant in recognition of non-religions in curriculum design (see Wareham 2022), the case is a reminder of the continuing presence of a human right *qua* right, even though it does little to readdress the wider adjustments to school choice. The parents were not seeking to remove their children from lessons, but rather to quash the statement that the syllabi complied with the law. Within the wider landscape, the case is emblematic of rights being at stake, even though it does not challenge the market model.

5. Discussion: Reconfiguration of Choice

As an expression of neoliberal legality, the 1988 Act had the effect of reframing traditional provisions within the new and changing landscape of parental choice. The 1944 Act, which was based upon earlier legislation, ensured that parents' and pupils' religious freedom was neither impinged upon by the state, nor by the fact that the state could not provide any alternative to faith schooling in a particular locality. Further, under the dual system, parents could apply to a church school if they wished—though places were not secured. By the time of the 1988 Act, parents have the right to express their choice of school, and indeed there are potentially a range of new forms of schooling on offer, but this right is simply one of the ways for parents to make educational choices. There is clear legislative continuity, in [Tzouvala's \(2017\)](#) terms, but the rupture of the surrounding earlier Acts diminishes its role or value.

At the heart of this shift is a reconfiguration of choice. Under the earlier dispensation, freedom of belief in education is a personal liberty, not arising out of schooling alone, but out of the principle of autonomy, especially in religious or spiritual matters. Indeed, this view itself is potentially sacred. Under the new order, choice is a function of the market, as a means of encouraging better performance by schools as they compete for pupils and therefore the attached funding. Parents become customers, the quasi-consumers of educational services, and faith schools become brands (see [Gauthier and Martikainen 2013](#)). Within this market, religiosity is but one marker amongst many, alongside academic performance, quality of the buildings and facilities, or behaviour. [Hemming and Roberts \(2018, p. 502\)](#) show how in some contexts it is seen as part of the imaginary of schooling, as a “vicarious religiosity”, drawing on [Davie \(2007\)](#). Individual autonomy of parents, as quasi-consumers, is matched by schools' autonomy as suppliers of different models of schooling. This diversification in turn is said to lead to innovation and improvement, as more successful models will survive and expand, though whether this success is as a result of or despite these religious values is open for investigation and debate ([Green 2012](#); [Pike 2010](#)).

This situation raises some challenges for freedom of belief in education in England, as what is perhaps surprising is the role of religiosity in this neoliberal model. Religion and religious education might not be the most obvious contributors to a neoliberal education system, which one might expect to be more focused on technical, vocational, and entrepreneurial subjects ([Ball 1990](#)). There are two potential arguments here. First is to argue for a pluralistic and/or values-based approach, in which one rationale is in terms of its contribution to the common values required for society, and thus to some extent a multicultural model framed in more neoliberal terms (e.g., [Modood and Sealy 2021](#)). The second is to argue for religion and belief as key elements in establishing school ethos and individual identity, as a marker of choice. The further difficulty with these two responses is that if one argues for the former, it seems inappropriate to allow any opt-out or alternative. Indeed, this is the position that the European Court of Human Rights hold⁵, in that the right to opt out is not necessary if teaching is impartial and objective. Politically, however, cancelling the opt-out could appear to be the removal of a fundamental freedom, and would be unpopular. A current concern among teachers is that many parents do not understand the aim of pluralistic approaches to the subject, or they simply ‘tend to be . . . anti-Islam’ ([Lundie and O'Siochru 2021, p. 169](#)), with this reason accounting for 67.5% of selective withdrawals (n = 83), rather than because of their own particular convictions. The difficulty with arguing for the latter is that if parents have deliberately chosen a particular school, it seems counter-intuitive to give them the right to extract their child from one of the school's defining elements, or conversely for concerns about the child's rights to be sustainable ([Hemming 2018](#)). Religious identity can lose its traditional features of personal allegiance to a set of truths or a community and become, for parents, a social marker in a wider set of reasons and decisions about potential schools. These parents must balance it amongst the school's location, ethos, size, and results, declaring their allegiance strategically, and this balancing act is itself played out socio-economically, with more advantaged parents

more adept at gaining entry to these often academically successful schools (see [Allen and West 2009, 2011](#); [Andrews and Johnes 2016](#); [Burgess et al. 2014](#); [Butler and Hamnett 2012](#)). A challenge now is in justifying the right, given this current reconfiguration, and indeed many have argued for its abolition in state schools given the subject seeks to be objective and pluralistic ([Lundie and O'Siochru 2021](#); [Parker 2018](#)).

More generally, this reconfiguration of choice also has wider implications for the place of religions within a neoliberal climate. Education becomes one sector where religiosity may be a strategically deployed or selected. The historic involvement of different faith communities, especially churches, in the dual system of provision for all is replaced with, or rather exists alongside, school choice in which religiosity is one part, though as [Patrikios and Curtice \(2014\)](#) suggest, schooling may thereby reinforce “collective – and potentially antagonistic–social identities” (p. 530). As noted, several major architects of the neoliberal educational order were also religiously committed, whether Baroness Cox or Tony Blair, and can be considered within the wider discussion about the complex connections between neoliberalism and religion, intimated in [Friedman and Friedman's \(1980\)](#) work. Moreover, other aspects of freedom of beliefs, such as wearing religious symbols, may be challenged both in and outside schools; thus [Beaman \(2013\)](#) considers how in the Canadian courts the principle of equality in religious freedom is being replaced with a cost-benefit analysis, in a review of cases on driving licence photographs (against Hutterite principles), building construction (creating a Jewish sukkah)—and offensive weapons in school (the Sikh kirpan). Schools are one site of wider socio-political contestation, and wider legal or juridical changes will play out across them, even though these may have idiosyncratic features.

6. Conclusions

This paper has sought to show how the principle of religious freedom in education, originally enshrined both nationally and internationally, has been reconfigured in neoliberal legislation. The theological, epistemic, and existential choice envisioned in its 19th-century formulations and enduring into the 1944 legislation became an educational consumer's choice as the layers of legislation from the 1980s widened opportunities for religious organisations to become involved in education. On the one hand, there is no moment of rupture with prior legislation or principles, but a gradual dissipation of its significance. On the other, educational religious choice of any kind takes on a rights-based flavour, with unexpected claims such as the Fox case being lodged, which makes choice itself in any form seem to be a right, and where parents believe that they can choose to opt out of teaching about any religion if they so wish. There is a puzzle for those—myself included—who value the right, but who are concerned about what it has become as a result of this reconfiguration.

There is clearly more research and scholarship to be undertaken in this intersection of legal and educational research, particularly as specific aspects of neoliberalism are well established in education, and its legal forms can be traced more precisely. Empirical work would be valuable, notably on parents' or teachers' understandings of this recontextualized choice, and specifically on their perceptions of the inter-relationship between school choice and freedom of belief, in both 'faith' and state schools, and indeed on how these play into their sense of religiosity, or their vicarious religiosity, in terms of choosing faith schooling. The issues are also strategically important for those seeking to reform religious education and its place within schools. More broadly, the paper has attempted to show this middle ground, by allowing each discipline to shed light on different processes at work. Here, Friedman's issue of choice and marketisation has been the focus, but clearly other parts of the neoliberal agenda, such as securitisation, or the inter-relationship with private schooling, would also be valuable.

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Notes

- ¹ The precise legal terms for the different types of school vary considerably over the decades. Here, the term ‘state school’ is used for schools without a religious establishment, and ‘church’ or ‘faith school’ for those with one, as in the latter decades other religions established their own schools (Walford 2008).
- ² Home | Eynsham Partnership Academy Trust (epa-mat.org).
- ³ <https://bills.parliament.uk/publications/46433/documents/1770> (accessed on 3 March 2022).
- ⁴ R (Fox and others) v Secretary of State for Education [2015] EWHC 3404 <https://www.judiciary.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf> (accessed on 4 April 2022).
- ⁵ *Yalçın v Turkey*, No. 21163/11, 16 September 2014.

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