

Compulsory School Attendance and the Elementary Education Act of 1870: 150

Years On

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Abstract

On the occasion of its sesquicentenary, which coincides with an extended period of school closures imposed due to the effects of a global virus pandemic, this paper analyses the Elementary Education Act of 1870, and in particular in relation to its implications for compulsory attendance at school. It did not introduce compulsory schooling but helped to shape the ambiguities and uncertainties surrounding school attendance that have persisted into the twenty-first century, such as the case of the *Isle of Wight Council v. Platt* in 2017 and highlighted in the school closures of 2020. The paper discusses the historiography of educational legislation, looks closely at the requirements for school attendance in the 1870 Act and related legislation, and then examines the historical and contemporary repercussions of this ambiguity and ambivalence.

Keywords

1870 Elementary Education Act; legislation; compulsory schooling; historiography; school closures

1. *Introduction:*

In 1970, the centenary of the 1870 Elementary Education Act was celebrated by many as this key legislation appeared to represent the founding of a national education system. At the sesquicentenary of the Act, we must take heed of a radically changed reality. On the one hand, historians of education have turned away from a preoccupation with 'Acts and facts' as their attention has moved from a top-down emphasis on educational reformers and structures towards the social interactions of pupils, teachers and schools. The educational world of the nineteenth century has become increasingly silent and distant as the focus of scholarship has become mainly confined to specialist studies of the twentieth century. On the other, the sesquicentenary of 2020, coinciding with extended school closures imposed due to the effects of a global virus pandemic, punctuates the historical development of modern schooling. This was not indeed a full-stop, but still it raised questions about its most deeply ingrained assumptions and social practices.

The educational legislation of the late nineteenth century, including the Elementary Education Act of 1870, contributed greatly to the schooling of society as a whole. It was educational legislation that underpinned the slow formation of compulsory school attendance, not in any straightforward or linear way, but as itself part of social history. It was experienced and enacted not only in the Houses of Parliament, nor simply by the principal authors of the legislation such as William Forster in 1870, but, just as in our own time, through the bye-laws and in the localities where schools and parents had to interpret them, sometimes challenge them, and often bear their hidden consequences. The richness of the 1870 Act, and its continuing relevance in

the 21st century, can be found at least in part in its legacies for the social history of compulsory attendance at school.

The growth of compulsory schooling around the world, especially over the past two centuries, has underpinned the structure of modern schooling as a social institution. According to the Organisation of Economic Cooperation and Development (OECD) in 1983, compulsory schooling is the core of all modern systems of education; in all countries it constitutes the main body of formal education for virtually all children and the whole of formal education for a large percentage of them. For this reason, the establishment and expansion of compulsory schooling represented a fundamental social transformation of the modern world. And yet, the OECD maintained, nevertheless, that in many OECD countries compulsory schooling had remained largely unexamined, while its goals, processes and practices have tended to be taken as given (OECD 1983).

The current article revisits the 1870 Elementary Education Act, on the occasion of its sesquicentenary, to explore the origins of compulsory attendance at school in Britain (for details of the Act and its passage through Parliament see also e.g. Armytage 1970; and Mitch 2019). As is well known, the 1870 Act did not itself make schooling compulsory. Nevertheless, it was responsible, together with other educational legislation of the late nineteenth century, for establishing the ambiguous character and ambivalent position of compulsory schooling in England and Wales; an ambiguity that has remained unresolved well into the twenty-first century and the school closures of 2020 (see also for general discussions of the history of compulsory schooling, Crook 2005; Woodin et al 2013; McCulloch and Woodin 2019).

The first main section of this article provides a discussion of the historiography of the 1870 Act and educational legislation. In the second section, we look more closely at the requirements for schooling specified in the 1870 Act and related legislation, raising issues around the nature and effects of the educational bye-laws on compulsory school attendance in the years after the 1870 Act. The third section reflects on the historical and contemporary repercussions of the ambiguity of the legal provisions around compulsory schooling.

2. *The 1870 Act and the historiography of educational legislation*

The centenary of the 1870 Act helped to stimulate much historical attention. This included a number of articles in the *British Journal of Educational Studies*, culminating in its centenary special issue of 1970 (*BJES* 1970). The History of Education Society, established in 1967, devoted its second conference to studies in the government and control of education since 1860, with contribution by leading figures of the time, including Stuart Maclure, Norman Morris, Peter Gosden, Leslie Wynne Evans and John Stocks (*History of Education Society* 1970).

The centenary coincided with the culmination in Britain of a period of relative economic growth and social reform, including education. Since the 1950s, investment in educational growth had led to further development at all levels of education. The gradual formation of a national system of education with its foundations traced to the nineteenth century could be widely observed and generally celebrated as a basis for further growth. The substantial reports on different aspects of education that were published in the late 1950s and 1960s – the Crowther report *15 to 18* (Ministry of Education 1959), the Robbins report on higher education (Robbins 1963), the Newsom report *Half our Future* (Ministry of Education 1963),

and the Plowden report on primary education (Department of Education and Science 1967) – could all provide a historical narrative of growth and progress in education.

This story of growth was also reflected in the many historical texts on education that were produced at this time. The years preceding and immediately following the centenary witnessed a range of historical contributions on the 1870 Act in a number of outlets. One such source was a distinguished series of monographs and edited texts relating to the period under the imprimatur of Cambridge University Press. These included John Roach's work on public examinations in the second half of the nineteenth century (Roach 1971), A.S. Bishop on the rise of a central authority in English education (Bishop 1971), David Sylvester on Robert Lowe and education (Sylvester 1974), and edited texts of Mathew Arnold (Smith and Summerfield 1969), Robert Owen (Silver 1969), James Mill (Burston 1973), Thomas Arnold (Bamford 1970), Thomas Huxley (Bibby 1971) and H.E. Armstrong (Brock 1973). Several other extended studies of nineteenth century education that emphasised the emergence of a state system of elementary schools were also published at this time, such as the work of Mary Sturt (1967), John Hurt (1971) and Gillian Sutherland (1971; 1973).

The story of steady growth and consolidation that tended to come across in such works was not a fully agreed consensus even at this time. Indeed, there were well established dissenting views based on rival political perspectives. From the radical left, Brian Simon had championed the argument that 1870 Act was an expression of social class conflict in which a working class struggle for education was being thwarted by middle class interests (Simon 1960; see also e.g. McCulloch 2011, chapter 4). Meanwhile, early indications of a neo-liberal reaction supporting a free market in education were articulated by Edwin West's alternative analysis of the

1870 Act subverting market efficiencies (West 1965). Furthermore, a counter-discourse emerging initially from international sources also helped to undermine the image of liberal progress in education. Intellectually, the powerful critiques of the Brazilian Paulo Freire and the Austrian philosopher Ivan Illich questioned the validity of modern schooling systems founded in the nineteenth century (Freire 1968/1970; Illich 1971). From the United States, student protest over the Vietnam war and popular unrest with schooling demonstrated that a century of schooling had not created social equality or cohesion. This point was also raised with vigour at the same time by American radical revisionist educational historians such as Michael Katz (Katz 1968).

In Britain, educational growth faltered in the early 1970s with the rise of industrial conflict and the onset of deepening economic problems. In these circumstances, education came to be seen in some quarters as the cause of such discontents rather than as a solution to the ills of society, leading to growing political turbulence, and a self-styled 'Great Debate' on education from 1976. Again, these contemporary developments were reflected in changing historical perspectives. A new social history which had emerged in the 1960s with a fresh focus on social class and popular culture began increasingly to influence writings in the history of education. For example, Richard Johnson identified the role of schools in the imposition of 'social control' in the nineteenth century (Johnson 1970), Phillip McCann highlighted the importance of popular education for socialisation in the nineteenth century (McCann 1977), and the Centre for Contemporary Cultural Studies at the University of Birmingham outlined the rise of what was described as 'unpopular education' since the Second World War (CCCS 1981). The dominant refrain of gradual progress that had accompanied the centenary of the 1870 Act was largely dissipated

by the time of the return of the Conservative Party to government, also in 1979, and the decade of educational reforms that followed (see e.g. McCulloch 1994; Beckett 2009 and Sandbrook 2012 for accounts of British society and politics in the 1970s).

The final decades of the twentieth century witnessed a sharp decline in historical interest in nineteenth century education in general, and in the 1870 Act in particular. In part, this was foreshadowed in the professorial inaugural lecture of the educational historian Harold Silver, presented at Chelsea College, London, in 1977. Silver's insightful contribution pointed out that historical attention had been mainly focused on the growth of the role of the State in elementary education, while other aspects of late nineteenth century education had been relatively neglected (Silver 1977/1980). In further work, Silver complained that while more had been researched and written about education in Victorian England than in any other period, with most of it being about popular education, nevertheless, 'we have neglected it' (Silver 1977/1990, p. 194). As he noted, 'The themes that have attracted the most attention in Victorian popular education have been those of policy formation and legislation, commissions and committees, the provision, control and administration of education, and the changing shape of different "levels" of education – elementary and technical, infant and adult, and "types" of education – board and voluntary.' (Silver 1977/1990, p. 194). Silver called instead for more work on areas such as the impact and 'use' of schooling, the relationship between schooling and literacy, the quality of educational experience, the role of the school in social relationships, and educational ideologies (Silver 1977/1990, pp. 199-200; see also Silver 1983).

Silver's strictures were well directed and influential, and signalled the beginnings of new approaches being adopted in research in the history of education. In part, as Gordon and Szreter observed in their historiographical review of the field, this

represented a swing away from a concentration on thinkers and writers about education; on educational legislation, the details of provision and the personalities involved in their promotion; and on educational institutions (Gordon and Szreter 1989, Introduction). Indeed, such work could be dismissed as consisting mainly of 'Acts and facts'. Historical attention moved towards social issues and relationships, supported by the application of novel theories and methodologies (McCulloch 2011). Nineteenth century legislation appeared less interesting by comparison, and relatively little fresh work was published in this area in the early years of the twenty-first century. Between 2010 and 2019, the specialist journal *History of Education* published very few papers on the 1870 Act or more broadly on the nineteenth-century foundations of modern schooling in Britain. In the *British Journal of Educational Studies*, once the unchallenged champion of such studies, there were none at all (for a detailed examination of the development of the topics covered by the BJES and changing approaches taken by the Journal since its foundation in 1952, see McCulloch and Cowan 2018, chapter 5).

There were some exceptions to this general trend. For example, work by Nicola Sheldon and others showed how the position of the school attendance officer, established in the 1870s, was initially one of a policeman until the First World War, by which time it was beginning to become one of a welfare officer, although caring and control could be seen as overlapping practices rather than polar opposites. In part, inducements to parents played a part in this battle including child benefits, travelling expenses, school materials, and medical services. These tended to be placed alongside fines and penalties, which were more feasible as the numbers of recalcitrant families and children reduced in number. Those who failed to fit with this

model came to be categorised as ‘truants’, and later as ‘deprived’ or ‘deviant’, while special forms of provision were developed to meet their needs (Sheldon 2007).

Nevertheless, in general the study of the legislation of the late nineteenth century, and with it on the foundations of modern schooling in Britain, has been in decline. It is also notable that recent international research has recognised a similar trend in other countries (see Westberg et al 2019a; Kvam 2018). Indeed, according to Westberg, Boser and Bruhwiler, introducing an international edited collection on the history of school Acts, ‘Replaced by new research agendas, the history of school acts has almost fallen into oblivion, being perceived as a topic of an outdated historiography’ (Westberg et al 2019b, p. 2).

On the other hand, recent work in the United States has shown the continuing potential of research on the history of educational legislation, especially in applying different theories and methods to understanding its broader social implications. In particular, this American research has explored the contested nature of compulsory attendance laws. In the 1980s, this work was led by David Tyack, in particular his important book, with colleagues, *Law and the Shaping of Public Education, 1785-1954*. They presented a quantitative analysis of public court cases on compulsory education, demonstrating that while in the early period most cases were brought about by authorities building a system and seeking redress from parents, increasingly they have been about litigation from parents and others demanding their rights (Tyack et al 1987).

This research was interested in the social history of law itself and how this related to the development of the public education system - as they put it, ‘investigating how the legal system of public education – state constitutions, statutes, litigation, and

administrative law – have shaped public schooling and how major changes in society and in educational institutions have, in turn, altered the demands placed upon the legal system’ (Tyack and Benavot 1985, p. 340). Seeing the law as responsive to powerful social changes and as an index of power, ‘not as some hermetic domain of judges and lawyers’, they explored the social context that gave rise to educational litigation (Tyack and Benavot 1985, p. 340; see also e.g. Landes and Solmonn 1972).

More recently, new research in the US by authors such as Stephen Provasnik has sought to reconsider the history of compulsory attendance by examining the role that the courts played in transforming compulsory attendance laws into laws about compulsory education that regulate schooling and the curriculum (Provasnik1999; Provasnik 2006). Other research recently produced in the US includes Robert Gross’s 2018 book *Public versus Private: The Early History of School Choice in America*, which investigates the relationship between private schools and public regulation in American history, and analyses the unexpected upturn in private school attendance in the later nineteenth century associated with Catholic immigration, and the effects of this on the public school system (Gross 2018). Paula Abrams’ work has inquired into the background of the case of *Pierce v. Society of Sisters*, in which the Supreme Court found in 1925 against the rights of compulsory legislation to destroy the Catholic schools in the state of Oregon (Abrams 2009). In terms of more recent legislation, Marsha Minow has appraised the longer term legacies of the landmark *Brown* case of the 1950s (Minow 2010). Adam Nelson has led a revisionist debate on the fiftieth anniversary of the Elementary and Secondary Education Act of 1965, linking this key legislation on the one hand to African-American freedom struggles in Mississippi and on the other to the Civil Rights Act of 1964 and the

emergence of Head Start (Nelson 2016). This recent American literature has also begun to take account of the law and higher education. Scott L. Gelber has published a book entitled *Courtrooms and Classrooms*, a legal history of college access from 1860 to 1960, based on around one hundred state and federal appellate cases on college admission, tuition and expulsion, pitting students against institutions (Gelber 2016).

Overall, in Britain, educational legislation in general and the 1870 Act in particular have faded from the historiography, increasingly regarded as too dry and too little related to social and cultural issues in education whereas elsewhere, and notably in the US, they have given rise to a new generation of research rooted in the social dynamics and relationships of such legislation. It remains to investigate in detail how the 1870 Act and other educational legislation of the late nineteenth century formulated school attendance requirements in such a way as to lay the basis for the ambiguity and uncertainties that have surrounded the provision of compulsory education for so long.

3. *Compulsory schooling and the 1870 Elementary Education Act*

The underlying ambiguity of compulsory education, and the disputes to which it gave rise, originated with the educational legislation of the nineteenth century, beginning in England and Wales with the 1870 Act. Even before this, the Newcastle Report on popular education in 1861 had cast doubt on the idea of compulsory education, commenting that compulsion was 'neither attainable nor desirable' (Education Commission 1861, vol 1, Section VI, 2, p. 300), and would be too great a shock to the educational and social system to be contemplated. It contended, indeed, that 'Independence is more important than education; and if the wages of the child's

labour are necessary, either to keep the parents from the poor rates, or to relieve the pressure of severe and bitter poverty, it is far better that it should go to work at the earliest age at which it can bear the physical exertion than that it should remain at school.' (Education Commission 1861, vol 1, Part 1, Section III, II, p. 188).

The 1870 Act itself consisted of a total of 100 clauses, designed as it said 'to provide for public Elementary Education in England and Wales', and not to extend to Scotland or Ireland. (Elementary Education Act (EEA) 1870). Most countries settled on a designated age for starting school at six. In England and Wales, the 1870 Act stipulated full-time education from the age of five, although not for any clear educational reasons. Benjamin Disraeli, the leader of the opposition party in Parliament, the Conservative Party, insisted that 'it was the height of absurdity to require children five years old to go to school' (Szreter 1964, p. 21). Nevertheless, this early starting age remained, and was to mean, by the end of the twentieth century, that most children in England and Wales started school at the age of four to go into reception class at the start of the year in which they became five and in Northern Ireland a year earlier than this (Sharp 2002). Section 7 of the Act provided conditions for religious observance or instruction in religious subjects which were also to have implications lasting into the next century (EEA 1870 Section 7).

The Act was largely devoted to defining local school boards which were to be set up around the country to administer elementary education where there was an established need and where no schools yet existed (EEA 1870, clause 6). There is important work on the school boards, particularly by Jane Martin on the London School Board, who has pointed out its implications for local governance, democratic traditions and gender relations (e.g. Martin 1999). The higher grade schools for

advanced education under the School Boards that developed in the late nineteenth century have also been examined by Mel Vlaeminke (Vlaeminke 2000).

So far as provision for compulsory education was concerned, this was left to Clause 74 of the 1870 Act, its last set of provisions before outlining a range of 'miscellaneous' issues. This declared that every School Board may from time to time, and with the approval of the Education Department, make bye laws for the purposes of 'requiring the parents of children of such age, not less than five years of age nor more than thirteen years, as may be fixed by the byelaws, to cause such children (unless there is some reasonable excuse) to attend school' (EEA 1870, Section 74). The maximum fine for the breach of a bye law would be five shillings. Children between ten and thirteen years of age could be exempted from such byelaws if an inspector certified that the child had reached a standard of education certified in the byelaw. Reasonable excuses would include that the child was under efficient instruction in some other manner; that the child had been prevented from attending school by sickness or any unavoidable cause, or if there was no public elementary school that the school could attend within three miles of their home. The general emphasis was on exemptions and exceptions rather than on enforcement and sanctions.

It is instructive to compare these provisions of the 1870 Act with those of its sister Act in Scotland, the 1872 Education (Scotland) Act. This followed the Argyll Report of 1867, which was the fourth great report of the 1860s alongside Newcastle, Taunton and Clarendon, and the abortive Parochial Schools (Scotland) Bill of 1869 (see esp. Cruickshank 1967 and McDermid 2006 on the Argyll report). These were to lead in Scotland to a system which, if not as classless as its champions proposed, was not as class-based as the one in England and Wales. The 1872 Act, pointedly

aiming to 'amend and extend the provisions of the Law of Scotland on the subject of Education', rather than simply to provide public elementary education, supported advanced education, with School Boards enabled to administer these (ESA 1872, clause 62), unlike the School Boards in England. It was no coincidence that some of the urban School Boards in England that attempted to support the higher grade schools of the 1880s and 1890s often hailed from Scotland – headmasters such as David Forsyth at the Leeds Central Higher Grade School.

The 1872 Act also embodied a stronger notion of compulsory education than in England although again with significant exemptions. It had eighty clauses, with several concerning themselves with the principle of compulsion. Clause 69 placed the onus of ensuring that all children between five and thirteen years of age received elementary education upon the parents. Under clause 70, every school board was expected to appoint an officer to identify and report which parents were failing in this duty, and authorised to summon any such parent to explain themselves. If the School Board failed to receive a satisfactory explanation, it was the duty of the School Board to issue a certificate confirming the transgression and to prosecute them, with a maximum penalty of a fine of up to twenty shillings or up to fourteen days' imprisonment. In this respect, under clause 72, any employers of children would be deemed to be undertaking the duty of a parent, but as it concluded, 'the duty of the parent shall not thereby be discharged or diminished, nor shall the parent be thereby exempted from liability to be proceeded against as aforesaid.' There were still to be exemptions: clause 73 affirmed that a certificate of ability to read and write, and of a knowledge of elementary arithmetic provided by an inspector would exempt the parent and any employer of the child from prosecution or any other proceedings. Nevertheless, this was both a tougher provision, with the scope for

enforcement, and with less room for exemptions, than appeared in the legislation for England and Wales.

Exemptions and exceptions were familiar in the educational legislation of other countries also, although highly varied in their strength and in enforcement. In New Zealand, for example, following the Education Act of 1877, children could be absent from school if they were adequately educated elsewhere, if they lived more than two miles from a school, if there were impassable roads, due to sickness, or if they had already attained an adequate level of education. Attendance remained a major issue in these circumstances, with enforcement continuing to be lax (New Zealand EA 1877).

In the United States, compulsory education laws varied significantly between the northern and southern states. After the early examples of Massachusetts in 1852 and the District of Columbia in 1864, most other states introduced compulsory schooling laws in the 50 years after 1870, for example Michigan in 1871, California and New York in 1874, Ohio in 1877, and Idaho in 1884. Nevertheless, ambiguity of provision and ambivalence in terms of expectations remained significant issues well into the twentieth century. In the southern states, this allowed the passage of segregation laws that excluded former slaves from the benefits of education, although a number of black schools and colleges had been established following the end of the Civil War. Initially, laws only required attendance for a number of weeks in a year. Enforcement would also be loosely connected to and gradually related to a growing increase in the number of school places that were available. In Alabama, the compulsory attendance law introduced in 1915 required attendance for 80 days per year but also allowed for exemptions according to distance, health, level of education, and domestic responsibilities. Enforcement was weak and almost non-

existent among black communities. It was in this context that the landmark Supreme Court case, *Brown v. Board of Education of Topeka* in 1954, rejected the legal legitimacy of school segregation, and gave rise to violent controversy in the coming decades (see e.g. Russo et al 1994).

We can already see at least in general outline the connections between the legislation as enacted and some of their social effects. These become clearer as the legislation in England and Wales became progressively stronger during the 1870s and 1880s, in particular through the Elementary Education Acts of 1876 and 1880 (EEA 1876; EEA 1880) while still allowing exceptions and exemptions. A.J. Mundella, especially in the role of Vice-President of the Council from 1880 to 1885, worked to strengthen the legislation, and steered through the Elementary Education Act of 1880 to promote the use of bye laws to support compulsory education (for details on Mundella and his contribution see also Armytage 1948; Armytage 1951; and Davey 2019).

These wider social relationships can be glimpsed even in the debates of the Houses of Parliament where difficult cases were often discussed. For example in March 1883, the MP for Glasgow, Dr Cameron, asked Mundella

...whether his attention has been called to a case recently before the Guildford County Magistrates, in which a labourer named Bulchin was prosecuted for neglecting to send to school his daughter (described as an exceptionally neat and cleanly girl of six years of age), and in which it appeared that he had sent her, but that she was not allowed to attend because she had a small ornamental flounce or fringe to her frock to which the manager of the school objected; whether the accused was ordered by the Court to either remove the flounce or send his child to another school; and, whether it is true, as stated, that the Education Department had been appealed to, but replied that it had no power to interfere (House of Commons Debates (HOCD) 1883a).

Mundella replied that he had not been aware of this case, but such issues were normally left to local judgement based on the regulations that had been put in place.

At the same time, he advised that it had been a mistake to exclude the child and prosecute the parents in this situation (HOCD 1883a).

Again, later in 1883, another MP brought Mundella's attention to a report in a local newspaper in which the chairman of a bench of magistrates, in some cases against parents for not sending their children to school, had been disparaging about education. Mundella responded that he understood that the chairman in question had described the Education Act as 'the curse of the country', and that his colleague on the bench had agreed with this view (HOCD 1883b).

Further research is needed to examine local differences in the interpretation of legislation around compulsory education and its enforcement in the final decades of the nineteenth century following the 1870 Act, and the effects of local disputes for schools, parents and communities. This might indeed build on the earlier research of David Rubinstein in relation to London during this period. According to Rubinstein, for example, magistrates in London were overburdened with cases against parents raised by the London School Board, to the extent that they spent an average of two or three minutes on each School Board case, and might hear 60 or more cases in a single afternoon (Rubinstein 1969 p. 106).

4. *The ambiguous legacies of nineteenth century educational legislation*

The legislation developed in many countries that school attendance should be compulsory rather than voluntary led to further characteristic features of modern schooling systems around the world. First, it meant that it was not only a right but also a duty for children to go to school. Second, it implied that attendance at school should be free. Third, it had the effect that schools should be expected to provide a duty of care while children were at school, and prepare children for their future

positions as citizens and workers. At the same time, it raised a number of questions that were no less integral for the nature of modern schooling. In the first place, it raised the issue of how long children should attend school, and when they should start and finish. The 'compulsory school age' was to be from five to fifteen years of age (1944 Education Act, paragraph 35). In Britain, for example, under the Education Act of 1944, the 'compulsory school paragraph 35). It would be the duty of the parent of every child of compulsory school age to ensure that they received 'efficient full-time education' appropriate to their age, ability and aptitude, 'either by regular attendance at school or otherwise' (paragraph 36), and this could be enforced through imposition of a fine or eventually imprisonment for up to one month upon recalcitrant parents (paragraph 37). Nonetheless, there were to be a number of exceptions to this rule, such as illness, religious observance, and distance from a suitable school (paragraph 39). At the same time, it stipulated that some aspects of schooling, including a morning assembly, religious instruction, cleanliness of every pupil (paragraph 54) and the provision of meals and milk for all pupils (paragraph 49), would be considered essential for all pupils, while others were merely desirable or optional. The introduction of a national curriculum in many countries, and in the UK under the Education Reform Act of 1988, again suggested that while schooling was compulsory, some parts were more compulsory than others.

Moreover, the rights of parents only went so far. According to the 1944 Act, for example, 'So far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.' (paragraph 76). As generations of parents were to discover, this did not mean a right to choose a particular type of school, or to avoid a particular school, or in other cases to have the

nearest school for their child, or the one that their other children had gone to (see for example Adler et al 1989 on the case of Scotland). The duty of care, observed earlier in the twentieth century with medical inspections and school meals, has in many cases become sporadic (see e.g. Gillard 2003; Vernon 2007, esp. Ch. 6). At the same time, the principle of free education has been stretched to its limit, with parents of children at state schools often being obliged to buy additional provisions. According to a survey of head teachers in 2015, many schools were also obliged to provide additional support for children that had previously been delivered by health and social services, including food, clothes and washing facilities (Weale 2015).

The education reforms of the 1990s, underpinned by the 1988 ERA, tended to provide detail in its legislation and regulations that earlier cycles of reform had not attempted (see McCulloch 1994, pp. 36-40). In this spirit, the Education Act of 1996 again attempted to address the issue of compulsory school attendance. Under section 7, it defined the duty of parents to secure the education of children of compulsory school age. Buried in section 444 (in a total of 580 sections, almost six times the number of either the 1870 or the 1944 Acts), it was noted that 'If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.' (EA 1996, clause 444(1)). This statement was followed by four sub-clauses rehearsing exceptions to this principle.

Nevertheless, it remained ambiguous exactly what was meant by compulsory education or schooling remained ambiguous and contentious. In 2007, for example, new guidelines proposed by the Department for Education and Skills stressed that education is compulsory but schooling is not, pointing out that the responsibility for educating children rests on the parents (BBC 2007). This basic principle has led to continuing disputes as to how to interpret the law. A significant test case arose in

April 2015, when Jon Platt, a father from the Isle of Wight, refused to pay a £120 fine for taking his daughter to Disney World in Florida, causing her to lose seven days of lessons, despite her school refusing permission for her absence. He was one of almost 20,000 parents who faced court action in 2015 for allowing their child to miss school (Pells 2017). Mr Platt was fined £120 for his actions, but appealed to the High Court which ruled in his favour. Despite its painstaking efforts, the 1996 Act had failed to define what it meant by attending school 'regularly', and Mr Platt argued successfully that far from being irregular in her attendance, his daughter had a strong record of attendance of over 90 percent. (Magistrate's Court 2015). The Isle of Wight Council appealed to the Supreme Court against this decision, and in April 2017 the verdict was reversed. In making its ruling, the Supreme Court referred back to previous judgements dating from the legislation of the late nineteenth century. As it pointed out, the 1870 Act had not insisted that attendance be made compulsory everywhere, but that it had introduced the idea of bye-laws both to require school attendance and to allow for reasonable excuses for not attending (Supreme Court 2017, paragraphs 8-9). It refuted the view of the Magistrate's Court that 'regularly' meant 'sufficiently frequently', and also argued that it should not be taken to mean 'at regular intervals' like going to church on Sundays, concluding finally that it meant simply 'in accordance with the rules prescribed by the school' (Supreme Court 2017, paragraph 48). Despite this landmark Supreme Court judgement, in 2017-2018 over a million pupils were taken on family holidays during term time, and 14.9% of pupils in England missed at least half a day of school due to taking family holidays during school time (Turner 2019). Anxious media discussions ensued with parents worried about how to interpret this law, and the personal finance column of the *Financial Times* stepped in to offer advice (*Financial Times* 2019).

There continued to be instances where arguments were made asserting other priorities to be more important than imposing compulsory school attendance. In 2019, for example, it was proposed that children who were not immunised against measles should not be allowed to go to school, suggesting thereby that these were circumstances in which school should not be compulsory (Boseley 2019). Many children have been excluded from school because of poor behaviour, or because they were likely to harm the examination results of their school, again bringing into question the compulsory nature of schooling. Indeed, in 2017-2018 there were 7,905 permanent pupil exclusions in England, with estimates of thousands more being informally excluded either through managed moves to alternative schools or 'off-rolled', often to home education (Weale 2019). There were also warnings in the summer of 2019 that 250 schools planned to end their days at lunchtimes on Friday from the start of the new school year in September in an effort to balance their books. The Labour MP Jess Phillips took her ten year old son Danny through the gates of Downing Street on 5 July to enable him to do his homework on the doorstep of Number 10 (Busby 2019).

Such was the situation when in March 2020 school closures were enforced in response to the threat of the virus pandemic Covid-19. Such closures were not unprecedented, and had been put into effect for example in New Orleans, Louisiana, after Hurricane Katrina in 2005, and in Christchurch, New Zealand, following the earthquake of 2011. Nevertheless, this was a challenge to the established social practices of compulsory school attendance, for example when schooling was confined to the children of 'key workers' whatever might be the views of individual schools as to the interpretation of 'regular school attendance'. Mandatory full time attendance for all was to be reintroduced as from September 2020; according to the

newspaper the *Sunday Mail*, the prime minister, Boris Johnson, affirmed: 'Yes. It's the law.' (*Mail on Sunday* 2020).

5. *Conclusions*

Thus, in order to move towards a social history of compulsory school attendance, we need to shift our gaze towards society itself and how the legislation was received, interpreted and often mediated or contested. It should be possible for us to reconstruct the history of our own educational legislation in this way, reappraising it not as an elevated record of the authors of Education Acts but as part of our broader social, political and legal history. Such work should build on our own social history research where it has already been possible to begin work of this kind, and also engage with international work such as in the United States.

This should take us into the localities, where legislation was often debated and disputed in the courts, and into the lives and everyday experiences of teachers, parents and indeed the pupils, seen as far as possible from their points of view. It should allow us to apply the insights in theory and methodology that have been developed over the past two decades in the history of education to provide fresh insights into the familiar terrain of the 1870 Elementary Education Act. It should reopen our understanding of the shaping of the public education system in the late nineteenth century, and of the origins of schooling in modern Britain, towards a new generation of scholarship interested not so much in 'Acts and facts', but still concerned with the social history of compulsory schooling. As we mark the sesquicentenary of the 1870 Act in a strange and uniquely challenging context, this will be a task for the decades ahead.

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