

The Meaning and Purpose of the Secular Clause in the Education Act 1877

DANIEL HERRING*

Despite prescribing that education would be wholly secular, New Zealand's Education Act 1877 allowed public school buildings to be used outside school hours for purposes not connected with secular education. This was exploited by those seeking to reintroduce religious instruction into New Zealand schools by saying prayers or giving religious instruction to children while the school was officially closed. The secular clause was chosen primarily to prevent sectarian strife, but was also partly the result of strong disagreement between those who supported religious teaching in public schools and those who supported denominational schools. This article examines the Act's legislative history, concluding that its use to reintroduce religious instruction and prayer outside of school hours was — or should have been — foreseen by Parliament at the time of its passing.

I INTRODUCTION

The Education Act 1877 was built upon three principles that continue to underpin New Zealand's public primary education system: education should be free, universal and wholly secular. The first two principles are largely uncontroversial. However, the secular character of public primary education has proven deeply contentious.

Although the Act prescribed that “teaching shall be entirely of a secular character”¹ it contained a curious loophole. Outside school hours, school buildings could be used on conditions prescribed by the school committee for the district.² Those seeking to reintroduce religious education into New Zealand's schools exploited this

* BA/LLB(Hons). The author would like to thank Professor Paul Rishworth of the University of Auckland's Faculty of Law for his support in writing this article.

1 Education Act 1877, s 84(2).

2 Section 84(3).

provision by giving religious instruction or saying prayers while the school was officially closed.

The legality of this system was in doubt until 1962, when Parliament chose to enshrine this method of giving religious instruction into legislation. Teaching during school hours remained secular, but school boards were free to close schools (or parts of schools) and allow voluntary instructors to use school buildings for religious instruction.³ These provisions remain on the statute book today.⁴

This practice has come under attack for breaching, if not in law then in spirit, the principle of wholly secular education first enshrined in the 1877 Act.⁵ This article examines what “secular education” meant in 1877 and the reasons for which it was prescribed. Further, it looks at how this shaped the particular provision in the Act, including the legislative loophole that would reintroduce some religious instruction.

Part II examines early education in New Zealand, focusing on how provincial legislatures and the national Parliament sought to provide education in a manner that did not offend the religious sensibilities of their citizens. Part III examines the debates of 1877 and shows how and why Parliament settled on the final wording of the section. Part IV surveys the outcomes of the secular clause and how we should understand the intent of Parliament in passing the Act. This article also shows how the idea that education could be cleanly split into religious and secular education was challenged by some who saw the religious and the secular as inseparable. It concludes that the members of Parliament should at the very least have been aware that the final wording of the provision would lead to school buildings being used for religious instruction.

II EDUCATION IN EARLY NEW ZEALAND

The Meaning of Secular Education

The word “secular” was used in two main ways in relation to education in the 19th century.⁶ First, it was sometimes used to include non-controversial and non-sectarian religious teaching, alongside

3 Religious Instruction and Observances in Public Schools Act 1962, s 2.

4 Education Act 1964, ss 77–78.

5 See Laura Walters “Bible lessons lead to court” *Sunday Star Times* (online ed, Auckland, 22 February 2015).

6 See Richard Ely “The Background to the ‘Secular Instruction’ Provisions in Australia and New Zealand” (1976) 5(2) ANZHES Journal 33 at 39–40.

subjects such as English, mathematics and geography.⁷ For example, South Australia's 1851 Education Act prescribed that schools would "introduce and maintain good secular instruction, based on the Christian Religion; apart from all theological and controversial differences on discipline and doctrine, and that no denominational catechism be used".⁸

The second meaning excluded all religious content.⁹ In the context of education, this meant that reading, writing and other subjects could be taught independently of, and without reliance upon, religion. Writing in 1870, Auckland headmaster William Taylor understood secular to refer to "matters connected with this world".¹⁰ He explained:¹¹

... secular affairs are affairs of money, business, pleasure, amusements. Secular instruction, then, will consist of the common subjects of daily routine, as grammar, geography, arithmetic, the events of history, &c.

As this article will show, the debates in New Zealand largely assumed the latter meaning of secular and the terms "religious education" and "secular education" were mutually exclusive in many pieces of educational legislation. However, note that even in this context, the terms "secular" and "religious" did not describe opposing worldviews. Rather, they referred to different areas of enquiry: the "secular" being the observable and material world, and the "religious" as the spiritual or unseen world. A system of secular education was not necessarily one that was in opposition to Christianity. It is important therefore to not characterise the continued debates as being about "secular" instruction versus "religious" instruction. There would always be some education that was secular. Instead, the argument centred on the extent of religious instruction that should be given in schools.

The "Religious Problem" in the United Kingdom

New Zealand settlers arriving from the United Kingdom left behind a society where the established churches (Anglican in England and Ireland, Presbyterian in Scotland) had taken primary responsibility for

7 At 40.

8 Education Act 1851 15 Vict 20 (SA), s 2.

9 Ely, above n 6, at 40.

10 William Taylor *The Education of the People. Ten Letters Addressed to His Honour TB Gillies Esq, Superintendent of the Province of Auckland, New Zealand. With Notes and Appendices.* (E Wayte, Auckland, 1870) at 25.

11 At 25.

education.¹² However, education was never provided universally and by the mid-1800s there was a great need for a national system of education, particularly due to changing economic needs in the wake of the industrial revolution.¹³

As the United Kingdom in the 19th century was a pluralistic society, providing education that had some religious content was deeply problematic. Although ideally the state would have financially supported a nationwide system of denominational schools, it could not do so because in many areas this would have been inefficient and impractical.¹⁴ It was thought to be impossible to have religious instruction that was non-sectarian. The remaining solution was to split secular and religious instruction, with religious instruction being given to children of different denominations separately. However, because religion was supposed to “infuse all that was done in the school”, many disagreed with the notion that secular and religious education could be split absolutely.¹⁵

The United Kingdom Parliament responded haphazardly throughout the 19th century. Various government grants to private schools helped spread education and voluntary groups also provided some schooling.¹⁶ But these measures were far from adequate. England and Wales increasingly needed an educated workforce and there was increasing frustration that religious disputes were inhibiting the progress of education for the masses.¹⁷

Finally, in 1870, the United Kingdom Parliament passed an Act that addressed this problem for children between the ages of 5 and 13 in England and Wales.¹⁸ The Elementary Education Act 1870 was less ambitious than New Zealand’s 1877 Act. It did not create a comprehensive, compulsory or free system of education, but “left room for voluntary effort and school fees and private endowments”.¹⁹ It was not secular: unlike New Zealand’s Education Act 1877, the Elementary Education Act supported voluntary schools through grants, although grants would not be given for religious instruction and connection to a religious denomination was not necessary to receive a grant.²⁰ It also allowed for religious teaching in government

12 James Murphy *Church, State and Schools in Britain, 1800–1970* (Routledge & Kegan Paul, London, 1971) at 1–6.

13 At 2–3; and James Murphy *The Education Act 1870: Text and Commentary* (David & Charles, Devon, 1972) at 28.

14 This was said to be the “religious problem” faced by the British state: Murphy, above n 12, at 13–14.

15 Murphy, above n 12, at 14.

16 At 4 and 16.

17 Murphy, above n 13, at 28.

18 Elementary Education Act 1870 (UK) 33 & 34 Vict c 75, s 74(1).

19 HC Barnard *A Short History of English Education: From 1760 to 1944* (University of London Press, London, 1947) at 135.

20 Section 97.

schools, while including a conscience clause for parents who wanted to remove their children from religious instruction.²¹

Education in Colonial New Zealand

New Zealand settlers found themselves in a country with no established church and a plethora of religious denominations.²² Attempts were made to set up religious colonies in certain provinces, notably Canterbury and Otago. However, there was a strong desire, particularly amongst religious minorities, to separate the church and the state and to promote the equal status of all religious groups.²³

In 1847, Governor George Grey passed the first Education Ordinance.²⁴ The Ordinance empowered the Governor of New Zealand to establish new schools and support existing ones using public funds.²⁵ It was initially intended to apply chiefly to Māori children, extending subsequently to European children as well.²⁶

Despite doing little to improve education in the fledgling settlements,²⁷ the Ordinance is significant because it provoked responses about state-supported religious instruction that demonstrate early thinking on education in New Zealand.²⁸ The Ordinance required all publicly-funded schools to give religious education alongside other subjects, although there was a conscience clause allowing parents to withdraw their children from religious classes.²⁹ Further, every aided school had to be placed under the superintendence and management of one of the Anglican Bishop of New Zealand, the Bishop or other head of the Roman Catholic Church, the Superintendent of the Wesleyan Mission, or the head or minister of any other religious body who was involved in the education of youth in New Zealand.³⁰

Migrants to New Zealand frequently arrived with hopes of leaving behind religious strife and of providing a better education for their children.³¹ Many of these people worried that this Ordinance would import the religious tensions of the United Kingdom. There

21 Section 7.

22 John Stenhouse "Religion and Society" in Giselle Byrnes (ed) *The New Oxford History of New Zealand* (Oxford University Press, Melbourne, 2009) 323 at 340.

23 At 340–341.

24 Education Ordinance 1847 11 Vict 10.

25 Clause 1.

26 Despatch from Sir George Grey to Earl Grey regarding "Ordinance for promoting the Education of Youth in the Colony of New Zealand" (9 December 1847) in *Of British Parliamentary Papers: Correspondence and Papers Relating to Native Inhabitants the New Zealand Company and Other Affairs of the Colony 1847–50* (Irish University Press, Ireland, 1969) 48 [Despatch 130].

27 John Mackey *The Making of a State Education System: The Passing of the New Zealand Education Act, 1877* (Geoffrey Chapman, London, 1967) at 42.

28 At 42–43.

29 Clause 3.

30 Clause 4.

31 Mackey, above n 27, at 44.

were two major objections.³² First, there was opposition to the state providing aid to religious schools. Governor Grey thought that supporting churches and religious groups would be faster and more efficient than creating a national system of education.³³ However, those objecting argued that if the state had to support a number of schools in one area — each catering to a different denomination — this would cost appreciably more than supporting one school.³⁴

Secondly, and more significantly, there was disagreement over the inclusion of religious education as a prescribed subject in schools. Compulsory religious education, it was argued, would ignore the reality that there were a multitude of beliefs in New Zealand. Where education was publicly provided and compulsory, it had to “be such as all parents alike may without violence to conscientious scruples be compelled to send their children to partake of”.³⁵ This requirement would preclude religious education because it would violate some parents’ consciences.

Alfred Domett, the Colonial Secretary for New Munster, attacked Governor Grey’s Ordinance on this basis.³⁶ The system was “averse to the freedom of religious opinion and liberty of conscience” for parents who would have to send their children to a school of a different sect.³⁷ According to Domett, national education should be limited to the teaching of precepts that were the sign of true Christianity. Sectarianism was opposed to this true religion. In consequence, if sectarianism could not be avoided, religious education by the state must be abandoned and education should be entirely secular.

Education in the Provinces

In 1852, the British Parliament passed the New Zealand Constitution Act, which created a federal-style system of government for New Zealand.³⁸ The Act created six provinces, each with their own provincial council and superintendent and each with the power to make laws on a wide range of matters, including education. A bicameral General Assembly, with a House of Representatives and a

32 See generally “Journal of Proceedings in the Legislative Council” (5 July 1849) 2(18) *New Zealand Government Gazette (Province of New Munster)* 95 at 97 [Proceedings in the Legislative Council]; “Education: Chapter II” *Wellington Independent* (Wellington, 4 July 1849) at 2–3; and “Education: Chapter III” *Wellington Independent* (Wellington, 7 July 1849) at 2–3.

33 Despatch 130, above n 26.

34 “Education: Chapter III”, above n 32, at 3.

35 Proceedings in the Legislative Council, above n 32, at 98.

36 At 98–101.

37 At 99.

38 New Zealand Constitution Act 1852 (Imp) 15 & 16 Vict c 72, s 71.

Legislative Council, would legislate at a national level.³⁹ The initial six provincial councils were Auckland, New Plymouth, Wellington, Nelson, Canterbury and Otago,⁴⁰ although others were added by 1875.

Education had been poorly provided until 1852. Missionaries from various denominations had helped to set up schools for Māori and churches helped to set up schools in early settlements.⁴¹ But this education was never widespread.⁴² Throughout the provinces, it was widely agreed that education should be universal and compulsory.⁴³ To achieve these ends, provincial councils needed to create appropriate funding and administrative structures.⁴⁴

It was within the context of these structures that the question of how religious education should be included, if at all, arose. All early legislation assumed that secular and religious subjects were separable and distinct. But the question of what should be taught — and Christianity's role in teaching — was dealt with in five general ways.

1 State Funded Religious Schools

The first option was to have government-funded schools of one religious type. In Otago, which was founded as a Scottish Presbyterian settlement, the Provincial Council intended to intertwine religion and education. The preamble of its 1856 Education Ordinance listed the principles behind the legislation: that secular education should be available to “children of all denominations”; that reading of the Bible and instruction in religion were agreeable to the opinions, religious profession and usage of the population; and that state action was required to improve education.⁴⁵ Further, every candidate for the office of schoolmaster had to have a minister attest to his religious and moral character.⁴⁶

This Ordinance was replaced by the 1862 Education Ordinance, which required that the Bible be read daily. Religious instruction would be determined by the District School Committee.⁴⁷ Any religious instruction was not to vary from “Evangelical Protestant Doctrines” and religious instruction had to be at the beginning or the

39 See generally s 53, which states that legislation could not be contrary to English law.

40 Section 2.

41 Allan K Davidson *Christianity in Aotearoa: A History of Church and Society in New Zealand* (3rd ed, New Zealand Education for Ministry Board, Wellington, 2004) at 64–65.

42 At 64–65.

43 Mackey, above n 27, at 89.

44 Mackey, above n 27, at 91.

45 Education Ordinance 1856 (Otago).

46 Clause 18.

47 Education Ordinance 1862 (Otago), cl 37.

end of the day.⁴⁸ This was for practical purposes, so that parents could remove their children if they objected to the religious teaching. As discussed below, this system was strongly opposed by the Catholic population of Otago.

2 Religious Instruction Not of a Controversial Character

Otago was the exception in the type of religious education it prescribed. The second option was to have schools primarily focused on secular education with a part of the day set apart to pray and read scripture in a manner acceptable to all denominations. This was a common compromise between secular and religious education. Such arrangements were accompanied by conscience clauses to allow parents to remove their children from these classes.

In Canterbury, an Education Commission rejected a purely secular form of education in 1863, writing that Christianity pervaded the “laws, literature, and institutions of the civilised world”.⁴⁹ The Commission also rejected denominationalism because it led to sectarianism, which was considered an “evil”.⁵⁰ Rather, the Commission believed that the government should recognise Christianity, not on the points of division “but as a general ruling principle in the life of the State”.⁵¹ In other words, the state should support Christianity but not favour any particular sect. The Commission decided that the common elements of Christianity, namely prayer and knowledge of the Bible, should be taught to all children.⁵²

The Canterbury Provincial Council followed the Commission’s advice. The 1864 Education Ordinance required that one child in each class (or, if none were able to read, their teacher) read the Bible in the first half hour after the opening of the school.⁵³ Only a teacher could give religious or secular instruction not connected with a particular denomination.⁵⁴ A school committee could also set aside a day for a minister to give religious instruction to children in a particular denomination, provided the instruction was requested by their parents.⁵⁵

48 Clause 37.

49 “Report of the Education Commission” (1 December 1863) 10 *Government Gazette of the Province of Canterbury, New Zealand* 197 [Canterbury Education Report] at 241.

50 At 242.

51 At 242.

52 At 243. Note that the Commission also recommended allowing parents to remove their children from the classes if they objected to the religious instruction.

53 Education Ordinance 1864 (Canterbury), s 39.

54 Section 40.

55 Section 42. See also Education Ordinance 1871 (Canterbury), s 72. This was also recommended by the Commission: see Canterbury Education Report, above n 49, at 243.

Other provinces also opted for religious instruction to be as non-denominational as possible. For example, after rejecting a purely secular system, Wellington's Education Amendment Act 1857 allowed the Bible to be taught in schools, providing there was no sectarian or doctrinal instruction.⁵⁶ Nelson also prescribed that religious instruction in its public schools must "be free from all controversial character".⁵⁷

A common feature across most of the provinces with provisions for religious instruction was the presence of conscience clauses.⁵⁸ For example, the Wellington Education Act 1871 stated that:⁵⁹

... religious instruction not of a controversial character may be given at any such school provided it be given at certain fixed times so arranged that any parents objecting thereto may conveniently withdraw their children from the school during such times and provided that notice of the said times be conspicuously posted or painted on the outside of the school.

For practical purposes, the child had to be removed at a time that did not interrupt his or her other learning. Accordingly, the legislation also required that the hours of religious instruction be stated so that a parent could withdraw the child. These two requirements were often bound up in the same clause.

3 Ministers Teaching Religion

The third option was to have only secular teaching, or secular teaching accompanied with simple Bible reading throughout the week, but set aside time to allow ministers to go to the schools and teach children of their own denomination. In Canterbury, for example, these clauses existed alongside the Bible reading and prayer clauses.⁶⁰ Even as these latter clauses were removed in 1873, Canterbury continued to allow ministers of religion to teach children of their own denomination.⁶¹

56 The 1871 Act carried this over: see Education Act 1871 (Wellington), s 46.

57 Education Act 1856 (Nelson), s 15.

58 Compare Canterbury's Education Ordinance 1864, s 41, which stated that no child could be absent from the scripture reading but that he/she could be absent from a course of religious instruction if the school committee was satisfied that the child was receiving adequate instruction elsewhere. This provision was removed from the Education Ordinance 1871 (Canterbury).

59 Section 46. See also Education Act 1856 (Nelson), s 15.

60 Education Ordinance 1864 (Canterbury), cl 42.

61 Education Ordinance 1873 (Canterbury), s 62.

4 Denominational Schools

The fourth option was government-supported denominational schools. The most vocal proponents of denominational schools were Catholic because “uncontroversial” and “non-denominational” Christianity tended to have a Protestant flavour. The overarching complaint was that while Catholics’ taxes contributed to public education, public education was not consistent with Catholic doctrine. The Bishop of Otago, Dr Patrick Moran, expounded the Catholic view of education before a Select Committee in 1871:⁶²

... education is for a man’s entire life here and hereafter, it should therefore be both religious and secular, and as the religious is the more important, and the only one that can establish a real sanction for man’s moral conduct, the secular should necessarily be built up upon the religious and be subordinated to it.

Bishop Moran argued that there were passages in several schoolbooks that were offensive to and biased against Catholics and that the reading of Holy Scriptures was not done in a manner acceptable to Catholic teaching.⁶³ This view was shared in Nelson where Catholics had lodged a petition in 1857 against the 1856 Education Act, complaining that Catholic children had to read the Protestant form of the Bible. Conscientious objection was too difficult and instead Catholic children “chose to conform themselves to the common rules and mode of the schools they attend”.⁶⁴ To the submitters, this system “tend[ed] too much to proselytism”.⁶⁵

The Otago Select Committee concluded that the scheme was not overly oppressive, although it did find that expressions in some schoolbooks were objectionable to Catholics.⁶⁶ It recommended that masters of schools ensured both parents and children knew that attending readings was optional, and that masters avoided books or lessons that contained words offensive to Catholics and other denominations.⁶⁷ It also rejected pleas for support for religious schools as this would have opened the door to a denominational system and reduced the efficiency of the current regime.⁶⁸

62 “Report and Proceedings of the Select Committee on the Petitions of Roman Catholic Inhabitants of the Province” (13 July 1871) in *Votes and Proceedings of the Otago Provincial Council* (session 29, 1871) 79 [“Report on Petitions of Catholic Inhabitants”] at 85.

63 Moran was also concerned that Catholic teachers might not be hired because of their religion. “Report on Petitions of Catholic Inhabitants”, above n 62, at 80.

64 “Memorial of Roman Catholics against the Education Act” (April 14, 1857) in *Votes and Proceedings of the Nelson Provincial Council* (session 4, 1857).

65 At 64

66 “Report on Petitions of Catholic Inhabitants”, above n 62, at 80.

67 At 80.

68 At 81.

The Nelson Provincial Council took the opposite view. Even before the 1857 petition, the Central Board, in their first report on the operation of the education scheme, had noted that several people opposed the Act on conscientious grounds, particularly Roman Catholics.⁶⁹ In order to guarantee protection against the “hardship or oppression” of a majority, the Board recommended that any minority could establish their own school, provided it was open to government inspection and the Central Board was satisfied with the amount of instruction the school provided.⁷⁰ This would “afford a great protection to any minority or denomination considering itself used with injustice”.⁷¹

The Nelson Provincial Council adopted the Central Board’s recommendation. The Education Amendment Act 1858 allowed ratepayers of an educational district to set up a school, subject to certain conditions. These were that: the group had to contribute more than £50 in rates; they had to provide a school room; the school room had to be open to all children between the ages of 5 and 15; any religious instruction had to be imparted at such hours that objecting parents could withdraw their children; and the Central Board had to be satisfied with the level of secular instruction imparted.⁷² The effect of the amendment was to create a partially denominational system, as the Central Board did not provide the land or buildings. Only Catholics took advantage of the clause.⁷³ Nelson’s system was not adopted widely.⁷⁴ However, Nelson’s overall education system was relatively successful. Despite the charges of inefficiency levelled at denominational schooling, by 1864, Nelson had achieved attendance rates of 70 per cent.⁷⁵

Some other provinces experimented with a denominational system. Canterbury’s Education Ordinance of 1857 required schools receiving funds from the Provincial Government be placed under the management of the acting head (within Canterbury) of the Anglican Church, the Wesleyan Church or the Presbyterian Church. The Ordinance also allowed parents to remove their children from religious instruction.⁷⁶ An Education Commission in 1863 found the denominational system undesirable for Canterbury.⁷⁷ One reason was

69 “Report of the Central Board of Education for the half year ending 31 December, 1856” in *Votes and Proceedings of the Nelson Provincial Council* (session 4, 1857) at 3.

70 At 3.

71 At 3.

72 Education Amendment Act 1858 (Nelson), s 8.

73 Mackey, above n 27, at 94.

74 Although other smaller provinces adopted similar legislation. For example, see the Education Ordinance 1859 (Hawke’s Bay), cl 10.

75 Jim McAloon *Nelson: A Regional History* (Cape Catley, Whatamango Bay (Marlborough), 1997) at 59.

76 Education Ordinance 1857 (Canterbury), cl 5.

77 Canterbury Education Report, above n 49, at 239–243.

that where the population was thinly spread, a denominational system could not work efficiently. Additionally, the quality of religious teaching depended in large part on the quality of the school master. Following this Report, Canterbury abandoned the denominational system. The view that the denominational system was inefficient was shared in other provinces.⁷⁸

5 *A Wholly Secular Education*

The final option was a purely secular form of education. Only Auckland and Wellington adopted a secular system, and neither for the entirety of their provincial history.

Wellington's Education Act of 1855 stated that there would be no religious instruction in any school and no ministers of religion would be allowed to teach religion.⁷⁹ This was supported by an Education Commission. The Commission had initially recommended a less extreme approach, where a teacher would use religious books that were supposed to be acceptable to all denominations (including Catholics) and ministers would be allowed to preach one day per week.⁸⁰ However, it also argued that the state should educate its citizens to prevent crime.⁸¹ If this was accepted, then the fact that there was no agreement on a general system of religious instruction "[did] not absolve the State from providing secular [instruction] ... The State [was to provide] schools in which it teaches all that, *as a State*, it [was] bound to teach".⁸² This excluded religious education.⁸³ But Wellington's secular system would not last long. In 1857, Wellington allowed the Bible to be taught in public schools.⁸⁴

Meanwhile, as Wellington retreated from a purely secular form of education, Auckland chose to adopt it. Under the Education Act 1857, some religious instruction was allowed, subject to the amount of secular education satisfying the Board of Education and the right of parents to remove their children from religious instruction.⁸⁵

The Act was repealed and replaced in 1868.⁸⁶ The new legislation stated that "the course of instruction required to be taught in all schools established under the provisions of this Act [was to] be

78 See "Report of the Inspector of Schools" (25 April 1866) Session 14 *Acts and Proceedings of the Provincial Council of Wellington* at 3; and "Report on Petitions of Catholic Inhabitants", above n 62, at 80.

79 Education Act 1855 (Wellington), s 15.

80 Report of the Commission on Education (16 November 1854) Session 2 *Acts and Proceedings of the Provincial Council of Wellington* [Wellington Education Report] at 10.

81 At 8.

82 At 8.

83 For instance, it would not be bound to give aid to denominational schools.

84 Education Amendment Act 1857 (Wellington).

85 Education Act 1857 (Auckland), s 5.

86 Education Act Repeal Act 1868 (Auckland).

purely secular”.⁸⁷ This provision was carried over in the Common Schools Act 1869,⁸⁸ then into the 1872 Act, albeit with slightly different wording.⁸⁹ It stated: “No religious instruction shall be given in any school established under the provisions of this Act at any time within the regular school hours authorised by the Board.”⁹⁰

Finally, while religious instruction was prohibited during school hours in Auckland in the 1870s, the school buildings could be used for religious instruction outside of school hours. The 1872 Education Act stated that the Act did not:⁹¹

... prohibit religious instruction being imparted in any school building established under the provisions of this Act at any time not within the school hours authorised by the Board and to such children as may voluntarily attend such instruction.

This clause demonstrates that although legislators did not want the state to support religious instruction, they did not want to unnecessarily impede it either, and were prepared to accommodate religious classes before or after school hours. Significantly, the clause also foreshadows the similar provision in the 1877 Act that allowed the use of school buildings outside of school hours for religious activities.

The General Assembly and Education

1 The 1871 Education Bill

Despite the efforts of provincial councils, the quality of education throughout New Zealand was poor, particularly in the North Island. Figures presented to the House in 1870 showed that while Otago, Canterbury and Nelson collectively spent £29,369 in the previous year on education, the other provinces spent only £3,436 combined.⁹²

This poverty of education motivated Parliament to act. In 1869, the House of Representatives passed a non-binding motion that it would be desirable to introduce a comprehensive system of education.⁹³ In 1870, Mr James Crowe Richmond MP introduced a motion into the House for the Government to prepare an Education Bill and introduce it in the next session, noting that “[d]emocratic society, all over the world, has recognized the necessity for education,

87 Education Act 1868 (Auckland), s 6.

88 Common Schools Act 1869 (Auckland), s 35.

89 Education Act 1872 (Auckland), s 45.

90 Section 45.

91 Section 45.

92 (17 August 1870) 9 NZPD 46 per James Crowe Richmond.

93 (18 August 1869) 6 NZPD 526.

and acted up to it”.⁹⁴ This motion too was passed,⁹⁵ and led to Premier William Fox introducing a Bill on 29 August 1871 “to make better provision for education in New Zealand”.⁹⁶ The Bill was largely based on the United Kingdom’s Elementary Education Act of 1870.⁹⁷ It provided for the creation of education boards (or retention of existing boards),⁹⁸ state aid to primary schools and schools of higher learning,⁹⁹ and government inspection of schools.¹⁰⁰ Further, it proposed making education compulsory between the ages of 7 and 12.¹⁰¹

The Bill also dealt with religious issues.¹⁰² A student’s admittance would not depend on religious involvement or lack thereof.¹⁰³ Public schools would be required to open with a reading from the Holy Scriptures,¹⁰⁴ but no “religious catechism or formulary, ... distinctive of any particular denomination or sect” would be allowed.¹⁰⁵ If any religious observances were to be given, they had to be either at the beginning or end of any meeting of the school.¹⁰⁶ In addition, a conscience clause allowed parents to remove their children if they objected to the religious teaching.¹⁰⁷

In order to prevent abuse, the school had to be kept open for four hours per day, two in the morning and two in the afternoon, during which education was to be secular. Each two hour block had to be uninterrupted, meaning that religious instruction could only take place before or after one of these two hour blocks.¹⁰⁸ An inspector had no right to enquire into religious instruction.¹⁰⁹

Premier Fox’s Bill was the first time the “two plus two” hours formula appeared in New Zealand.¹¹⁰ The provision was based on schemes of national education in Ireland, where Catholic and Protestant students would share secular education and later have separate religious education.¹¹¹ It was also used in some Australian

94 (17 August 1870) 9 NZPD 47.

95 (17 August 1870) 9 NZPD 58.

96 (29 August 1871) 10 NZPD 151.

97 Mackey, above n 27, at 140.

98 Education Bill 1871, cls 6–20.

99 Clauses 32–35 and 37–41.

100 Clause 57.

101 Clause 59.

102 Clause 55.

103 Clause 55(1).

104 Clause 56(2).

105 Clause 56(2).

106 Clause 55(2).

107 Clause 55(1).

108 Clause 55(3).

109 Clause 55(4).

110 Colin McGeorge “On the Origins of the Nelson System of Religious Instruction” in Bryan Gilling (ed) *Godly Schools? Some Approaches to Christian Education in New Zealand* (The University of Waikato and Colcom Press, Hamilton, 1993) 1 at 11.

111 At 11–12.

legislation and would be included in New Zealand's 1877 Act. The Bill further provided that Board and School Committee could permit buildings to be used:¹¹²

... for religious instruction of children on Sundays and week days outside of the hours set apart for the usual school instruction at such times or alternate times as shall afford to the scholars of different denominations equal opportunities for receiving such instruction

Although Premier Fox had advocated for secular education for Wellington nearly 20 years earlier, he now promoted these religious clauses. He reasoned:¹¹³

We have endeavoured to meet this religious difficulty, not by any process of abstract reasoning, but by a common-sense view of the actual wants of the Colony ... the great bulk of the people interested in the matter are, we think, in favour of religious teaching of a non-sectarian character.

Much of the time debating the Bill was spent on the religious clauses. Those who argued for including religious education stated that morality and culture needed to be part of education and that these were unable to be taught without religion.¹¹⁴ One of the arguments traditionally put forward for education more generally was that it prevented crime and promoted a stable and safe society. In this vein, Mr John Hall MP argued that education:¹¹⁵

... ought not to be a mere stuffing of the brain with secular information ... but it ought to be a cultivation of his heart and feelings, and instilling into him such moral and religious principles as will induce him to make good use of the knowledge with which we are supplying him.

Those who argued against including the Bible reading clause also gave several arguments. First, there was significant disagreement over what constituted religious truth and which parts of the Bible were revealed truth and which were not.¹¹⁶ It would also have been difficult to decide which passages of scripture should be read.

Secondly, members also disagreed over which version of the Bible should be used. Mr Joseph Shephard MP was opposed to the reading of scripture because of the disagreements that would arise

112 Education Bill 1871.

113 (31 August 1871) 10 NZPD 201.

114 (5 September 1871) 10 NZPD 232 per Lachlan McGillivray.

115 (5 September 1871) 10 NZPD 241.

116 (7 September 1871) 10 NZPD 318 per Robert Creighton.

over which version to use, as well as the fear of a “Protestant ascendancy”.¹¹⁷ Presumably, he thought that Roman Catholics would not send children to schools where the Protestant form of the Bible was read. Another member declared that “the use of a particular version of the Bible amounts to denominational teaching”.¹¹⁸

Thirdly, it was also argued that religious teaching was not the duty of the state and that responsibility for religious instruction properly belonged to parents.¹¹⁹ Relieving them of that responsibility would do little to assist religion more generally. Related concerns were that teachers would have to give religious lessons and that this might shut out good teachers through hiring policies.¹²⁰

Further, even if there could be agreement on the version of scripture to be used, mere Bible reading was seen as inadequate. As Mr Edward Stafford MP noted:¹²¹

I do not think you could devise any more ingenious mode of disgusting the young mind with the Bible than by reading it out mechanically to a number of very young children, to whom its contents are about as intelligible as hieroglyphics upon an Egyptian monument

Understanding required explanation. Explanation required a sectarian interpretation, which was exactly what the Bill was trying to avoid.¹²² There was no middle ground: one would have to support either denominational schools or a completely secular system.

The Bill also provided for aided schools. This too was debated and was closely related to the secular issue. Those in support argued that it was fair and necessary to respect diverse religious belief in the community.¹²³ These benefits outweighed the problems with efficiency.

Generally, supporters of the Bible-reading clause opposed denominational schooling.¹²⁴ However, Mr William Gisborne MP saw the inclusion of both as a compromise between secular and religious education.¹²⁵ According to Gisborne, the inclusion of religious

117 (5 September 1871) 10 NZPD 234–235.

118 (7 September 1871) 10 NZPD 326 per William Fitzherbert.

119 (5 September 1871) 10 NZPD 237–238 per John Bryce; and (6 September 1871) 10 NZPD 274 per Donald Reid.

120 (7 September 1871) 10 NZPD 315–316 per Robert Creighton.

121 (6 September 1871) 10 NZPD 278.

122 (6 September 1871) 10 NZPD 275 per Arthur Collins; and (7 September 1871) 10 NZPD 326 per William Fitzherbert.

123 (6 September 1871) 10 NZPD 279 per Edward Stafford.

124 See (5 September 1871) 10 NZPD 232 per Lachlan McGillivray.

125 (5 September 1871) 10 NZPD 247–248.

clauses, both in the form of religious education and aid to other schools, was a compromise that was trying to:¹²⁶

... solve the difficulty of not violating the convictions of religious bodies, and yet at the same time securing the obligation of the State to provide for the education of its subjects.

The majority was opposed to aiding religious schools. The primary reason, as it had always been, was financial: denominational schooling was less efficient and worked poorly in rural areas. National unity was a further reason.¹²⁷ For instance, Mr John Bathgate MP observed that the denominational system in England created disunion by segregating children of differing beliefs. He argued against this:¹²⁸

... let all unite with a view to bringing children together into one common system of secular education, such as should teach them the knowledge of laws of their country and the duty they owed to it.

Before the Bill passed its second reading, Premier Fox addressed a number of issues in his reply. He defended the Bible clause by stating that the Bill gave sufficient protection to liberty of conscience and noted that similar clauses were working in England. He noted the reasons why people opposed the Bible clause.¹²⁹ First, some thought that people would force dogmatic theology on children. Secondly, some argued that the Bible contained errors of translation and things “not reconcilable with reason”.¹³⁰ And thirdly, some thought that the Bible contained passages that should not be read to children. To all three objections the solution was to select the right passage. He also criticised these arguments as self-delusive and hypocritical. Many English boys were exposed at school to “the immoralities of Jupiter and the infidelities of Venus, but little or nothing of the pure law of their Savior”.¹³¹ Given the importance of religion in the colony, he argued that reading of scripture ought to be included in education and would be desired by most parents.¹³²

Premier Fox’s speech was in vain. While the Bill passed its second reading, it was eventually withdrawn. Premier Fox said progress was too slow and blamed some members for slowing the Bill

126 (5 September 1871) 10 NZPD 248.

127 See (7 September 1871) 10 NZPD 317 per Robert Creighton.

128 (31 August 1871) 10 NZPD 207.

129 (7 September 1871) 10 NZPD 442.

130 (7 September 1871) 10 NZPD 443.

131 (7 September 1871) 10 NZPD 443.

132 (7 September 1871) 10 NZPD 443.

down with “fruitless” discussion.¹³³ This was caused in part by members from Otago who wanted to keep their education system intact and feared that any national system would be paid out of the wealth of their province.¹³⁴

During the debates, there was some recognition that the secular–religious divide was not as conceptually tidy as was implied by some members. For example, Mr Edward Stafford MP argued:¹³⁵

... you cannot devise a system of education ... without including in it some theological opinion. In fact, you can scarcely open a book that will not contain passages tending to create a religious bias or to form a religious opinion.

He noted that history in particular will be very difficult to teach without offence. This had been a problematic subject, as many books told a side of history offensive to Catholics. Another member affirmed that a purely secular system could not be adopted if history books included insults to Catholicism.¹³⁶ Mr Walter Johnston MP went one step further, stating it was impossible to create a purely secular system and questioning whether anyone had heard of “secular history”.¹³⁷ These concerns were largely ignored. However, they are an important reminder that there were flaws in the assumptions underlying the debate over the inclusion of religious education, and that these were recognised even at the time.

2 The 1873 Education Bill

In 1873, a further attempt was made to pass an Education Bill.¹³⁸ The 1873 Education Bill was a lesser measure than its 1871 counterpart, as it could be adopted voluntarily by provincial councils.¹³⁹ The Bill was more satisfactory to members from Otago, but widely criticised by others for being permissive and voluntary.¹⁴⁰

Mr Julius Vogel MP, who introduced the Bill, did not think the state had a duty to educate children on religious matters, but thought that parents should be able to opt into religious education. Consequently, the Bill supported some measures for denominational schooling.¹⁴¹

133 (11 October 1871) 11 NZPD 242.

134 See (17 August 1870) 9 NZPD 46–58.

135 (6 September 1871) 10 NZPD 278.

136 (7 September 1871) 10 NZPD 327–328 per Charles O’Neill.

137 (7 September 1871) 10 NZPD 320.

138 For the first reading, see (24 July 1873) 14 NZPD 80.

139 (5 August 1873) 14 NZPD 225.

140 See (8 August 1873) 14 NZPD 340 per Henry Bunny.

141 (5 August 1873) 14 NZPD 226.

The 1873 Bill contained religious provisions similar to the 1871 Bill.¹⁴² Any religious observance was to be practised at either the beginning or end of the school day and a child could be withdrawn if his or her parents objected.¹⁴³ The school would be kept open for four hours: two in the morning and two in the afternoon.¹⁴⁴ Each two hour block was to be uninterrupted and for secular instruction alone.¹⁴⁵

While it passed the lower House, the Bill eventually lapsed when the House of Representatives and the Legislative Council could not agree on its final form.¹⁴⁶ But despite the 1871 and 1873 Bills failing to become law, they were important forerunners to the 1877 Act. Much of the language of the religious clauses was used in the initial Bill presented to the House in 1877 and the debate foreshadowed the difficulties that would exist in passing a national Education Act.

III THE 1877 EDUCATION ACT

The Abolition of the Provinces

In 1875, the General Assembly abolished the provincial councils.¹⁴⁷ The main reason for this was the difficulties that most provinces faced in raising revenue.¹⁴⁸ The Abolition Act came into effect in 1876. The Education Boards Act 1876 allowed education to continue largely unchanged until the following year, when the government would introduce its more comprehensive Education Bill. Religious education was not the primary goal; rather, the religious issues were impediments to the much bigger ambition of providing national secular education. As John Mackey notes, the religious question was one of four major issues to be dealt with, the other three being “balanc[ing] central control with maximum local freedom”, revenue sources and whether the education should be compulsory.¹⁴⁹

142 Education Bill 1873, cl 55.

143 Clause 55(2).

144 Clause 55(3).

145 Clause 55(3).

146 (2 October 1873) Journal of the House of Representatives at xxix, 258–260. The disagreement was over the provision in the Bill for higher forms of education.

147 Abolition of Provinces Act 1875.

148 WP Morrell *The Provincial System in New Zealand: 1852–76* (2nd ed, Whitcombe and Tombs, Christchurch, 1964) at 250–252.

149 Mackey, above n 27, at 178.

The Passing of the Act

1 The Bill Before the House of Representatives

The Bill that would usher in a national system of education was introduced by Mr Charles Bowen, MP for Kaiapoi in Canterbury, on 24 July 1877.¹⁵⁰ He had immigrated to the newly established Canterbury settlement in 1850¹⁵¹ and in the following years took a keen interest in education.

While in his younger years he had supported a denominational education system,¹⁵² its failure in Canterbury caused him to reject it.¹⁵³ For Mr Bowen, the religious problem was secondary to the much larger problem of inadequate education throughout New Zealand.¹⁵⁴ The value of education lay in the fact that knowledge, no matter how little was imparted, was always a good.¹⁵⁵

Ignorance is a power for evil but never for good, and we must fight against it with every available weapon. ... The State cannot impart wisdom ... but it must arm every young citizen with the knowledge that may unlock the sources of higher knowledge.

Mr Bowen's speech introducing the Bill into the House of Representatives summarised its key features.¹⁵⁶ The Bill allowed for the creation of a Ministry of Education that would oversee education boards, which in turn would oversee school committees.¹⁵⁷ The Ministry would exercise control through inspectors and providing funding, but there would still be some local control through boards of education. To finance the schools, the government would pay out £3 10s for every child in "average daily attendance".¹⁵⁸ Additionally, parents of every child would be required to pay 10s to local school committees, which were given discretion to spend these funds.¹⁵⁹

The Bill left the power to compel students to attend school in the hands of these committees.¹⁶⁰ It did not propose to provide state aid for religious schools, which Mr Bowen argued were inefficient

150 (24 July 1877) 24 NZPD 32.

151 Malcolm Anderson "Charles Christopher Bowen and Elementary Education in New Zealand" (MA(Hons) Thesis, University of Canterbury, 1962) at 18–20.

152 At 77 and 81.

153 At 136–137.

154 At 141–143.

155 Charles Bowen "On the Secularisation of Education" *The Lyttelton Times* (Christchurch, 12 June 1872) as cited in Anderson, above n 151, at 263.

156 (24 July 1877) 24 NZPD 32.

157 (24 July 1877) 24 NZPD 32.

158 (24 July 1877) 24 NZPD 33.

159 (24 July 1877) 24 NZPD 33–35.

160 (24 July 1877) 24 NZPD 34.

and squandered government money.¹⁶¹ All instruction was to be secular, because the state should not interfere with the conscience of its citizens. Mr Bowen argued there was no such thing as “some general, nondescript form of religion” and “the only way to be absolutely fair [was] to forbid the teachers to give their pupils any religious instruction whatever”.¹⁶²

There was, however, one exception. It was argued that the state should not “blunt or deaden that intuitive reverence for a higher power”.¹⁶³ Therefore, Mr Bowen included in his Bill a provision for the school to be opened by a scripture reading and the Lord’s Prayer. Ninety-five per cent of parents wanted Bible reading in schools. For those who did not, there was the right to withdraw one’s children from the classes.

The religious sections were found in cl 85 of the Bill.¹⁶⁴

- ...
- (2) The school shall be kept open five days in each week for at least four hours, two of which in the forenoon and two of which in the afternoon shall be consecutive.
 - (3) The school shall be opened every morning with the reading of the Lord’s Prayer and a portion of the Holy Scriptures. With this exception, the teaching shall be entirely of a secular character; and no child shall attend at the reading herein provided for if his or her parents or guardians inform the Committee or the Teachers in writing that they object to such attendance.
 - (4) The school buildings may be used on days and at hours other than those used for secular instruction upon such terms as the Committee may from time to time prescribe, subject to the approval of the Board.

2 *Debate in the House*

Mr Oswald Curtis, MP for Nelson City, immediately proposed two amendments for debate. The first was that the local school committee should have discretion to decide whether the Lord’s Prayer should be recited and whether the Bible should be read.¹⁶⁵ The second was that separate religious schools should receive subsidies from the government, meaning they would also be subject to government inspection. This amendment targeted Catholics who would object to sending their children to a state school.

161 (24 July 1877) 24 NZPD 36

162 (24 July 1877) 24 NZPD 36.

163 (24 July 1877) 24 NZPD 36.

164 Education Bill 1877, as cited in McGeorge, above n 110, at 10.

165 (31 August 1877) 25 NZPD 176.

Very few members were completely satisfied with what Mr Bowen had originally proposed, and opinion was split on both denominational schooling and the inclusion of the reading of the Bible.

Dr James Wallis, MP for Auckland City West, argued the most extensively against secular education. According to Dr Wallis, there were two systems open to the House. One, the common system — which included religion — had been tried “all over the world” and was “liberal and comprehensive”.¹⁶⁶ The other, a secular system, excluded religion and was new and untested.¹⁶⁷ He argued that the first was better because it best cultivated virtue and skills. He also labelled secularists as “an un-ecclesiastical ecclesiastical sect, an unreligious denomination”.¹⁶⁸ While admitting that he shared some of their principles, such as the promotion of reading and writing, he argued that a purely secular approach encouraged atheism by failing to mention God.¹⁶⁹

In contrast, the majority argued against the inclusion of the Lord’s Prayer and Bible reading for a number of reasons. The first reason they gave was that prayer and Bible reading were inconsistent with the secular principle in the Bill. For example, Mr Edward Wakefield MP asked the pertinent question: “How can this be a system of secular education when Protestant schoolmasters and schoolmistresses are to conduct a Protestant service before beginning the proceedings of the school every day?”¹⁷⁰ This could not be anything else other than religious instruction.

Secondly, they argued that prayer and Bible reading were sectarian because they favoured Protestantism. Mr William Gisborne MP reflected the sentiments of many in the House when he said that the reason for supporting secular education was not opposition to religion; rather, it was because the state would “immediately create religious animosity and dissension if it promoted religious education”.¹⁷¹ Another member thought there was a risk that school teachers and principals would be forced to read out scriptures against their will.¹⁷² This would be an unjustified intrusion on their consciences and could even lead to selective hiring. The dissension could undermine national unity. Mr Samuel Shrimski MP, a Jewish

166 (31 August 1877) 25 NZPD 193.

167 (31 August 1877) 25 NZPD 193.

168 (31 August 1877) 25 NZPD 195.

169 (31 August 1877) 25 NZPD 195.

170 (31 August 1877) 25 NZPD 182.

171 (31 August 1877) 25 NZPD 179.

172 (31 August 1877) 25 NZPD 185 per Hugh Lusk.

member, also supported a purely secular system because the current clause was repugnant to Jews just as it was to Catholics.¹⁷³

Thirdly, the majority thought that any instruction would have little positive effect and could even be harmful. In the words of one member: “To call this reading of the Bible and the Lord’s Prayer religious teaching seems to me to be a sham”.¹⁷⁴ Another, Mr Hugh Lusk MP, noted that the beneficial impact of compulsory Bible reading and prayer was small, while the risk for evil was great.¹⁷⁵ Though only the “small edge of the wedge”, it had the potential to lead to religious disharmony and “create a great and deadly breach in your system”.¹⁷⁶ Further, there was a lack of oversight as to how headmasters read out the scriptures.¹⁷⁷ There was, Mr Lusk suggested, a risk that some could have chosen to use compulsory Bible reading as an opportunity to ridicule the Bible.¹⁷⁸

Even Mr Fox, who supported the religious clause, thought little good would come from it.¹⁷⁹ He noted that although the Bible had been excluded from public schools in the United States, he believed the people there were the most religious and moral in the world.¹⁸⁰

Mr Samuel Hodgkinson, MP for Riverton, offered a further point in response to Mr Wallis. Education was “a very comprehensive thing” and the common schools provided for in the Bill did not “profess to educate children completely”.¹⁸¹ Rather, the main part of education would be provided by parents.

The provision of funding for denominational schools was an important related issue. Mr Joseph Tole MP, reflecting the arguments of other members, thought that the only reasonable compromise between a purely secular system of education and one which allowed the teaching of religion was:¹⁸²

... one that would enable people holding certain religious and conscientious views to establish and maintain schools, by the State giving aid and encouragement to the secular teaching alone in those schools.

173 (3 September 1877) 25 NZPD 234.

174 (3 September 1877) 25 NZPD 209 per Arthur Seymour.

175 (31 August 1877) 25 NZPD 185.

176 (31 August 1877) 25 NZPD 185.

177 (31 August 1877) 25 NZPD 185.

178 (31 August 1877) 25 NZPD 185.

179 (3 September 1877) 25 NZPD 233.

180 (3 September 1877) 25 NZPD 233.

181 (31 August 1877) 25 NZPD 203.

182 (3 September 1877) 25 NZPD 218.

He opposed the religious clause for two reasons that we have already seen.¹⁸³ First, the Bible would only be read rather than taught — and this would have little force for good.¹⁸⁴ Secondly, it would inflict an indignity upon the children who would be removed from class while the Bible was being read.¹⁸⁵

However, Mr Tole did note that religious and moral training in the home or at Sunday school would often be insufficient. He thought that the state should provide support for denominational schools. One quarter of children, he said, were in private schools throughout the colony.¹⁸⁶ Their parents, and he was thinking mainly of Catholics, would suffer because they were forced to contribute to the cost of secular education but were unable to benefit from it due to their consciences. They were asking for support because they believed it to be their right, not because it was charity.¹⁸⁷ This point was repeated by Sir George Grey who stated that those parents who objected to the schooling system and provided their own schools faced a double tax on education.¹⁸⁸

Mr Tole also countered the objection that supporting denominational schools would create dissension. He argued that the Bill itself would create conflict, for the “greatest dissension exists among people when these religious conflicts are brought up and maintained by Bills like this, or whenever secular education is pitted against denominational”.¹⁸⁹ Mr Tole’s arguments were supported by other members, who had in mind a system similar to the successful one in Nelson.¹⁹⁰

The main reason against aid for Catholic schools was that it would support denominationalism. Mr Fox said it would introduce “not only the thin end but the thick end of the wedge of denominationalism”.¹⁹¹ Mr Robert Stout MP, a devout secularist, argued that the state was “bound only to look after secular education” and that “it should be confined only to its own sphere”.¹⁹² Mr John Sheehan MP thought a denominational system was inefficient and would not work in sparsely populated areas,¹⁹³ though this was disputed by Mr Tole.¹⁹⁴

183 (3 September 1877) 25 NZPD 219–220.

184 (3 September 1877) 25 NZPD 219.

185 (3 September 1877) 25 NZPD 219–220.

186 (3 September 1877) 25 NZPD 215.

187 (3 September 1877) 25 NZPD 215.

188 (3 September 1877) 25 NZPD 224.

189 (3 September 1877) 25 NZPD 219.

190 See (31 August 1877) 25 NZPD 177 per Oswald Curtis.

191 (3 September 1877) 25 NZPD 234.

192 (3 September 1877) 25 NZPD 227.

193 (3 September 1877) 25 NZPD 227.

194 (3 September 1877) 25 NZPD 227.

In committing the Bill to its second reading, Mr Bowen stated that including the secular clause was a matter of pragmatism.¹⁹⁵

I do not think secularism is a principle to be proud of or to be very anxious about. The principle that we most look to is this: that we must succeed at any cost in providing those elements of education which are absolutely necessary to all children in these days; that we must provide for the children those elements of knowledge which will open to them the door of all wisdom, human and divine, and we must as a State avoid religious teaching if we find we cannot give it fairly for all.

Mr Bowen went on to say that he disagreed with Mr Curtis' amendment for aided schools because it introduced denominationalism, which had already been proven a failure in New Zealand.

It was in Committee that the clause for religious education was removed. First, Mr Reader Wood MP proposed an amendment to the second subsection of cl 85 which added the words: "and that teaching shall be entirely of a secular character".¹⁹⁶ This was passed by 39 votes to 19.¹⁹⁷ Then, Mr Curtis proposed amending the words in the third subsection so that opening the day with prayers and Bible reading were not compulsory.¹⁹⁸ This was defeated by 35 votes to 19 and the remainder of the subsection was then struck out.¹⁹⁹

Mr Curtis' amendment for aided schools was moved the next day. It too was defeated.²⁰⁰ The Bill now contained no provision for either aided schools or religious classes; it was entirely secular.

What was the reason for this result? Richard Davis notes that in large part it was due to two groups cancelling the other out.²⁰¹ He identified three main groups in the House of Representatives: those who wanted absolute secularism in schools; the "pro-Catholic cultural pluralists" who demanded secularity in state institutions and supported denominationalism; and those who insisted on Protestant observances but refused to support denominational schooling.²⁰² These groups were evenly balanced, and so.²⁰³

195 (3 September 1877) 25 NZPD 243–244.

196 (17 September 1877) 25 NZPD 514.

197 (17 September 1877) 25 NZPD 515.

198 (17 September 1877) 25 NZPD 515.

199 (17 September 1877) 25 NZPD 515.

200 (18 September 1877) 25 NZPD 539.

201 Richard P Davis *Irish Issues in New Zealand Politics 1868–1922* (University of Otago Press, Dunedin, 1974) at 79.

202 At 79.

203 At 79.

It [could] be argued that secularists combined with Catholic supporters in making the system entirely secular, while Bible in schools advocates joined secularists in defeating Catholic claims. If the legislators who wanted some official provision for religious education had united they would have been able to outvote the secularists.

The majority wanted some degree of support for religious education, and yet those in the minority, who had argued for a purely secular education system, achieved exactly what they wanted.

After further amendments, the Bill passed the Committee stage and its third reading. It was then sent to the Legislative Council for further consideration.²⁰⁴

3 The Legislative Council

The Legislative Council saw similar arguments to those raised in the House. The lack of provision for prayers drew the ire of some members. It was argued that a purely secular education would lead to social disorder²⁰⁵ and that there should be some recognition of a “Supreme Being”.²⁰⁶ Dr Pollen, in response, echoed Mr Bowen’s earlier statement when explaining the policy behind the final form of the Bill:²⁰⁷

The teaching of the great truths of religion, the great truths of faith and of morals upon which society is founded, must be excluded from the course in our public schools, for the reason that if it were introduced there, the opinions of a very large section of the people upon doctrinal points would be shocked by such a system. I think that is a matter greatly to be regretted. What we have to do, in view of the work that is before us, is to accept facts and deal with them as best we can, hoping that a day will come when dissensions of creed and differences of opinion upon doctrinal points will no longer be permitted to trammel the efforts of the people to educate all children on a broad and national basis.

There was some debate over aided schools.²⁰⁸ An amendment for aided schools was eventually defeated after lengthy debate about whether the Council had authority to insert an amendment relating to an appropriation.²⁰⁹

204 (25 September 1877) 25 NZPD 637–638.

205 (2 October 1877) 26 NZPD 126–129 per Hon Dr Morgan Grace.

206 (2 October 1877) 26 NZPD 134 per Hon James Bonar.

207 (3 October 1877) 26 NZPD 134 per Hon Daniel Pollen.

208 See (2 October 1877) 26 NZPD 124 per Hon Colonel George Whitmore; and (2 October 1877) 26 NZPD 125 per Hon George Buckley.

209 (16 November 1877) 27 NZPD 224, 241–247.

Two significant amendments were sent back to the House of Representatives for consideration.²¹⁰ The first was the reintroduction of the Lord's Prayer to begin each day, along with the appropriate conscience clause. The second amendment stated that school buildings would be made available at times "other than those used for public school purposes"²¹¹ on application by the ministers "for the religious instruction of the children of the respective forms of faith".²¹² This would be for the school committee to control and no child could attend without the written consent of his or her parents or guardians.²¹³

The House of Representatives rejected both amendments. It sent its reasons to the Legislative Council. On the second amendment, it stated that:²¹⁴

... the general policy of the Bill is to leave religious education to the several denominations; and that provisions existed in the Act, without the amended subsection 4, for allowing the use of the school buildings out of school hours for any purposes, including that of religious teaching, which the Committee might approve.

The Legislative Council accepted that its amendments would not be included in the final Act.²¹⁵ With that, the Education Act 1877 was passed. It was entirely secular. Sections 84(2) and (3) now stated that:

- (2) The school shall be kept open five days in each week for at least four hours, two of which in the forenoon and two in the afternoon shall be consecutive, and the teaching shall be entirely of a secular character.
- (3) The school buildings may be used on days and at hours other than those used for public school purposes upon such terms as the Committee may from time to time prescribe.

IV CONTINUED CONTROVERSY

Was the "Nelson System" Intended?

The Act contained a loophole that was quickly exploited. As school buildings were able to be used outside school hours for any purpose,

210 (23 November 1877) 27 NZPD 381–382.

211 (23 November 1877) 27 NZPD 381.

212 (23 November 1877) 27 NZPD 382.

213 (23 November 1877) 27 NZPD 382.

214 (26 November 1877) 27 NZPD 452.

215 (26 November 1877) 27 NZPD 452–453.

this opened the way for religious instruction to be conducted outside of school hours. This became known as the “Nelson system”.

Was this situation intended by Parliament? The amendments made to the section during its passage through the House suggest that the outcome was unintended. The secular clause was simply tacked on to the end of the clause stipulating the times the school was to open. One author described it as “another of Puck’s tricks”²¹⁶ and another agrees that it looks as though permitting the Nelson system was an unintentional consequence.²¹⁷

It is impossible to tell whether the majority of the members were aware of the implications of the Act. However, as noted, when stating its reasons to the Legislative Council for rejecting the proposed amendments, the House said (in a note authored by Charles Bowen, John Sheehan and Donald Reid) that the school could be used for religious purposes outside of school hours. It seems incomprehensible that the authors of this note did not realise that prayers or religious classes could be said immediately before or after the school opened. Further, clauses allowing for religious activities in school buildings outside school hours had been in the failed bills of 1871 and 1873 and in provincial legislation. While the members may not have intended this, it cannot be said that Parliament was unaware of the potential consequences of the decision.

The reason this was approved was most likely pragmatic. This answer was offered after it had passed through both Houses and in order to get the support of the Legislative Council, which would have been reluctant to let this issue prevent the Bill from passing.

Continued Debates over the Clause

The opportunity afforded by the Act to give religious instruction was realised in Canterbury at least as early as 1878,²¹⁸ but the system as adopted there did not spread widely. The current practice became known as the Nelson system after JH McKenzie, a Presbyterian Minister, launched a more successful version in Nelson in 1897.²¹⁹

However, despite this loophole, many remained dissatisfied with the lack of state-sponsored religious education. Between 1877 and 1935, 42 bills, all unsuccessful, were introduced trying to modify

216 AG Butchers *Young New Zealand* (Coulls Somerville Wilkie, Dunedin, 1929) at 301.

217 McGeorge, above n 110, at 13.

218 Colin McGeorge “The Failure of the ‘Nelson System’ of Religious Education in Canterbury 1878–1897” (1974) 9(1) *New Zealand Journal of Educational Studies* 65.

219 Ian Breward *Godless Schools? A Study in Protestant Reactions to the Education Act of 1877* (Presbyterian Bookroom, Christchurch, 1967) at 37.

the secular clause.²²⁰ Eventually, in 1912, a national organisation, the Bible in Schools League, was formed to push for change.²²¹

There was strong opposition to any change to the secular clause. Catholics continued to voice their opposition, as well as arguing the case for aided schools. Other churchmen also supported the secular clause. Minister McKenzie, for example, was convinced that the church must not look to the state to help it fulfil its spiritual duties.²²² He supported the current form of the legislation because he saw the teaching of religion as the role of the church, not school teachers.

The 1914 Education Act carried over the secular clause²²³ and continued to allow school buildings to be used outside school hours for non-public school purposes.²²⁴ It was not until 1962 that Parliament explicitly endorsed the Nelson system following the recommendation from the Commission on Education in New Zealand. By that time, the Nelson system had purportedly grown to cover 80 per cent of schools.²²⁵

The Commission affirmed the secular principle. It was not prepared to say that it was the duty of the state to teach religion in schools and it saw “little prospect of agreement among churches to make a completely non-sectarian approach possible”.²²⁶ There was also little appetite to give teachers the task of religious instruction. Nevertheless, it acknowledged that the Nelson system had some value and was wanted by most parents, so long as instruction was given by volunteers.²²⁷ It therefore recommended that Parliament legally acknowledge the Nelson System.²²⁸

Parliament did so in 1962, but did not forbid teachers to act as voluntary instructors.²²⁹ It was consolidated in 1964 and it has remained the law ever since. The 1964 legislation, after reaffirming that teaching must be secular for four hours per day — two in the afternoon and two in the evening — for five days per week,²³⁰ states that a school:²³¹

220 Davidson, above n 41, at 66.

221 Breward, above n 219, at 55.

222 At 38.

223 Education Act 1914, s 56(4).

224 Education Act 1914, s 49(7).

225 *Report of the Commission on Education in New Zealand* (July 1962) at 680.

226 At 684.

227 At 682.

228 At 692.

229 See Religious Instruction and Observances Act 1962, s 2.

230 Education Act 1964, s 77.

231 Section 78. Note that the 1962 Act contained a slightly different formula: the teaching could not exceed 30 minutes per week. There was no maximum of 20 hours per year.

may be closed at any time or times of the school day for any period or periods exceeding in the aggregate neither 60 minutes in any week nor 20 hours in any school year ... for the purposes of religious instruction given by voluntary instructors approved by the school's board and of religious observances conducted in a manner approved by the school's board or for either of those purposes; and the school buildings may be used for those purposes or for either of them.

V CONCLUSION

Secular education in the 19th century was not opposed to religious instruction. Rather, the term described subjects that concerned the everyday world, such as reading and writing. It was not intended to promote a lack of religious belief or affirm atheism.

In order to counter sectarian strife, religious and secular education were split during the school day. The primary purpose of most of New Zealand's early legislation was to give as many children as possible a secular education. On the whole, religious education was seen as an important but secondary goal. A denominational system, while it would have solved religious difficulties, was largely rejected because it was seen as too costly. The exception was the Nelson Provincial Council, which made a semi-denominational system work effectively.

After rejecting denominationalism, legislators tried to incorporate into schooling religious elements that would not be offensive to the majority of parents. Almost all the legislation on education, and the failed Bills of 1871 and 1873, had conscience clauses that allowed parents to withdraw their children if they objected to religious teaching. In order to make this easier, religious instruction would often take place at either the start or the end of the school day.

While Parliament chose to prescribe wholly secular education, it also chose to retain the clause allowing for use of the school buildings outside school hours. This opened the door for religious instruction. It is unclear whether this outcome was intended, but, as this article has argued, the Members of Parliament should have at least been aware of the possible implications.

A further issue is whether this use of the Act was a breach of the principle of secular education as understood by those in Parliament in 1877. There is seemingly contradictory evidence. On one hand, Parliament rejected religious clauses; and on the other, it allowed a situation that permitted using school classrooms for religious

education. But this evidence can, in theory, be reconciled. By allowing for teaching outside of class hours, the state was no longer involved in the teaching. The state provided a secular education. Religious instruction was left to the church; the state offered no direct funding and there was no compulsion to attend.

If Parliament had actually debated this specific issue, it is moot whether the Act would have remained in its current form. If we adopt the analysis that there were three main groups in the House of Representatives, we can reasonably guess how two of those groups would have voted. Those who supported the wording in the original Bill would likely have been in favour and the “secularists”, who would have seen it as religion trying to sneak back into schools, would have opposed it.

Those who had supported denominational schools would hold the deciding votes, but might have voted either way. The question would have been whether such a clause was likely to cause dissension between denominations. If it were shown that Catholics and religious minorities could have taken advantage of the clause, then they would have probably been in favour of it. Alternatively, it might have been argued that children would be pressured into attending these classes. If it were seen as an attempt to assert Protestant teaching back into schools, then it is unlikely they would have supported it.

The controversy around the current legislation, which allows religious education when the school is closed, has never disappeared. At the time of writing this article, an Auckland man was taking his daughter’s school and the Attorney-General to court after his daughter was placed in Bible classes without his permission.²³² The Secular Education Network (SEN) sought to join the case and expand the case’s scope to cover the role of religious education in schools.²³³ The SEN maintains that it is not opposed to education about religion, but is opposed to religious instruction.

Even the modern controversies skirt around the issue of whether the secular–religious distinction remains a valid way to inform our views of education. Unlike in 1877, today’s curriculum teaches values alongside literacy and numeracy. As Mackey notes:²³⁴

232 Walters, above n 5.

233 *McClintock v Attorney-General* [2016] NZHC 592; and see also David White “Small win in long running battle to overhaul religious education in schools” (6 April 2016) Stuff <www.stuff.co.nz>. Peters J subsequently struck out Mr McClintock’s case for his failure to comply with timetable directions at trial. It has since been reinstated by the Court of Appeal in *McClintock v Attorney-General* [2016] NZCA 274, but stayed until Mr McClintock (1) discontinues his claim against the Red Beach Board of Trustees, (2) files an amended statement of claim against the Attorney-General complying with the High Court Rules and (3) pays any outstanding costs orders. The Supreme Court dismissed Mr McClintock’s application for leave to appeal against conditions (2) and (3): *McClintock v Attorney-General* [2016] NZSC 132.

234 Mackey, above n 27, at 278.

The legislators of 1877 could not see that the nineteenth century elementary school, dedicated to lower middle-class usefulness, was to develop into the twentieth century child-centred school, dedicated to full personality growth. The concept of personality development was to reintroduce to the schools the fundamental questions concerning the nature of man and his destiny which the nineteenth legislators had thought to exclude by the adoption of the secular clause.

The meaning of “secular” in the context of education has expanded. It now includes values that are independent of religion, but which seek to answer similar questions. For the members of Parliament in 1877, the finding that the public school curriculum now concerns character formation would be alarming, in the same way that Catholics found Protestant doctrines in public schools distressing. The members did not intend secular education to include education in values. The entire reason that the 1877 Parliament excluded religion was the impossibility of agreement on what should be taught. But by teaching about values, schools did ultimately answer many of the same questions as religion did about life and morality.

The secular–religious divide is not as helpful as it used to be, because what is now included in the secular was once only in the domain of the religious. Given the diversity of New Zealand and the fact that values are now wrapped up in education, we must consider whether we can find values that are common to everyone and, if not, whose values we will teach.