



# Compulsory school attendance as a child welfare initiative: the socio-political function of education legislation with respect to vulnerable children in Norway, 1814–1900

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## ABSTRACT

The history of Scandinavian social welfare services is a well-established field of research. Numerous studies have examined the principles and consequences of poor laws and criminal legislation with respect to various social groups, the emergence of child-rescue institutions and their activities. The socio-political function of education legislation has, however, received little investigative attention. This article discusses the relationship between child welfare, the parental prerogative and compulsory school attendance with regard to vulnerable children in Norway 1814–1900. Questions concerning the parental prerogative and child welfare arose within the school sector from the debate concerning compulsory school attendance specifically for neglected, poor and abnormal children. The issue prompted arguments for family intervention and the forceful relocation of children to new families/institutions that could cater better for their education. At the same time, the authorities sought to protect the parental prerogative. This article argues that compulsory school attendance represents a link between the fields of socio-politics and the history of education, which in turn raises fundamental questions about the family as society's primary institution for the provision of children's education.

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## Introduction

The history of public-sector child welfare services in Scandinavia is closely associated with the social democratic welfare model that emerged after the Second World War. Social welfare services were developed based on values such as solidarity, justice and egalitarianism, and child welfare officers, social workers and social educators were trained and put to work.<sup>1</sup> Historians traditionally recognise the Norwegian Act regarding the Welfare of Neglected Children of 6 June 1896 as the very first piece of child welfare legislation, not only in Scandinavia, but internationally.<sup>2</sup> ‘The Act was regarded as something of a world

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<sup>1</sup>Gerd Hagen, *Barnevernets historie. Om makt og avmakt i det 20 århundret* (Oslo: Akribes, 2001).

<sup>2</sup>Tove Stang Dahl, *Barnevern og samfunnsvern. Om stat, vitenskap and profesjoner under barnevernets oppkomst i Norge* (Oslo: Pax, 1992), 87.

sensation from Norway', writes education historian Harald Thuen in *History of Education*.<sup>3</sup> This legislation made the welfare and education of vulnerable children and young people a government responsibility in Norway, rather than a mere philanthropic concern as was the case elsewhere in Europe.

In England, the Reformatory School Act of 1854 and the Industrial Schools Act of 1857 introduced various institutional initiatives in an effort to safeguard the welfare of juvenile offenders (1854) and vagrant, poor and neglected children (1857). These institutions were subject to public supervision to some extent, in the form of government approval arrangements, but the legislation stopped short of introducing a truly publicly run child welfare system. Not until the early twentieth century did child welfare become a government responsibility in England, as was also the case in France and Germany.<sup>4</sup> In a Nordic context, Sweden passed the Act relating to morally neglected and wicked children in 1902, and three years later the Danish Act regarding the treatment of criminal and neglected children and young people was introduced.

Child welfare historian Gerd Hagen points out that child welfare issues may be discussed solely on the basis of child welfare legislation, or they may be considered in a wider perspective that takes account of societal initiatives within a number of sectors with responsibility for children's development, such as the health, education and culture sectors.<sup>5</sup> This article adopts the wider perspective on child welfare when examining issues relating to compulsory school attendance as a child welfare initiative for the vulnerable children and young people of Norway. In doing so, the article seeks to elucidate the relationship between government power and the parental prerogative<sup>6</sup> in the time leading up to the passing of the world's first Child Welfare Act in 1896, and its coming into force in the year 1900.<sup>7</sup>

Knut Tveit, who for decades was Norway's leading scholar in this field of research, categorically establishes in his large three-volume work on publicly run schools 1739–1830 that 'school attendance has never been compulsory in our country', whether in the eighteenth and nineteenth centuries or in modern times. Based on the fundamental view that the parental prerogative imposes the main responsibility for children's education – the educational primacy – on their parents, and that it is the job of publicly run schools to assist them in this task, Tveit holds that Norway only introduced *compulsory education* rather than compulsory school attendance.<sup>8</sup> Tveit's stance is reasonable if we consider only able-bodied children of the general public, and if

<sup>3</sup>Harald Thuen, 'Education or Punishment? Reformatory Schools in Norway 1840–1950', *History of Education* no. 1 (1991): 49–60.

<sup>4</sup>Gillian Carol Gear, *Industrial Schools in England, 1857–1933* (London: University of London, 1999); Julius Carlebach, *Caring for Children in Trouble* (London: Routledge & Kegan Paul, 1970). For the early history of child welfare in Britain, with emphasis on institutions set up as philanthropic initiatives, see Malcolm McKinnon Dick, *English Conservatives and Schools for the Poor c. 1780–1833: A Study of the Sunday School, School of Industry and the Philanthropic Society's School for Vagrant and Criminal Children* (Leicester: University of Leicester, 1979); Joanna Innes, 'The "Mixed Economy of Welfare" in Early Modern England: Assessments of the Options from Hale to Malthus (c. 1683–1803)', in *Charity, Self-interest and Welfare in the English Past*, ed. M. J. Daunton (London: UCL Press, 1996), 139–80.

<sup>5</sup>Hagen, *Barnevernets historie*.

<sup>6</sup>The 'parental prerogative' refers to the educational primacy of parents, and in this context also to their right to have their children educated by providers other than the publicly run schools.

<sup>7</sup>Jens Schaan Theiste, *Lov om behandling av forsømte barn av 6. juni 1896 med senere tilleggslover* (4.utg.) (Oslo: J. M. Stenersen, 1935).

<sup>8</sup>Knut Tveit, *Allmugeskolen på austlandsbygdene 1730–1830. I.3. Skolens utvikling* (Oslo: University of Oslo, 1989), 161.

we consider only the period post-1814. Even if terminology like ‘compulsory school attendance’, and ‘children of compulsory school age’ was used in nineteenth-century education legislation,<sup>9</sup> parents were nevertheless entitled to meet this obligation by providing the education themselves, either through home schooling or by paying for the services of a teacher.<sup>10</sup>

However, my study of education legislation suggests to me that compulsory school attendance becomes a more complex issue once we focus on nineteenth-century children and young people with special needs – the ‘neglected’ and ‘poor’, the ‘deaf and dumb’, the ‘blind’ and the ‘feeble-minded’ – who in late nineteenth-century Europe were referred to as ‘abnormal’ children.<sup>11</sup> In this article I will argue that special restrictions were imposed on the parental prerogative through the education legislation; that this legislation was used as an early socio-political tool; and that compulsory school attendance in Norway after 1814 was intended as a safeguard to protect the welfare of children. By shedding light on these assumptions, my ambition is to establish new insights relating to compulsory school attendance as a link between social welfare and education policies before the introduction of the Child Welfare Act of 1896.

Earlier research has examined the main features of Norway’s early socio-political history. Large parts of the twentieth century have been covered by existing reference books,<sup>12</sup> and published works have focused on critical discussions regarding the motives and interests that lay behind the early social welfare of the nineteenth century.<sup>13</sup> These discussions raise questions about which people and which social groups were considered worthy and unworthy in different periods of receiving assistance, from society. Educational historians have also researched vulnerable children’s need for society’s protection and the opportunities these children had for involvement. Particular attention has been given to educational activities at the child-rescue institutions that emerged in Europe from approximately 1830.<sup>14</sup> The history of Norwegian social welfare services on the other hand, and the history of special education pedagogy,<sup>15</sup> have been written with only summary references to education law and the issue of compulsory school attendance as a social welfare initiative. In so far as these issues have been explored at all, the concepts used are consistently vague. Questions concerning *compulsory school attendance* are never considered in association with questions concerning *compulsory education*. Because no distinction is made between the two concepts, the parental prerogative is never discussed as an issue.

This article is based on empirical analyses of preparatory legislative works of an academic and political nature, from the period up to and including the passing of the Education Acts

<sup>9</sup>*Lov om Almue-Skolevæsenet paa Landet* (Christiania, Chr. Grøndahl, 1827), § (paragraph) 15, 17; *Lov om Almueskolevæsenet paa Landet* (Christiania: Chr. Grøndahl, 1860), § 49, 51, 54, 56; *Lov om Folkeskolen i Kjøbstæderne* (Kristiania: B.E. Mallings-Boghandels Forlag, 1889), Chapter 2.

<sup>10</sup>*Lov om Almue-Skolevæsenet paa Landet* (1827), § 16; *Lov om Almueskolevæsenet paa Landet* (1860), § 50; *Lov om Folkeskolen i Kjøbstæderne* (1889), Chapter 7.

<sup>11</sup>Store norske leksikon, ‘Abnorm’, University of Bergen, <https://snl.no/abnorm> (accessed March 6, 2018).

<sup>12</sup>Hagen, *Barnevernets historie*.

<sup>13</sup>Anne-Lise Seip, *Sosialhjelpstaten blir til. Norsk sosialpolitikk 1740–1920* (Oslo: Gyldendal, 1994); Dahl, *Barnevern og samfunnsvern*.

<sup>14</sup>Harald Thuen, *I foreldrenes sted. Barneredningens oppdragelsesdiskurs 1820–1900. Eksempelet Toftes Gave* (Oslo: Pax, 2002); Harald Thuen, *Om barnet. Oppdragelse, opplæring og omsorg gjennom historien* (Oslo: Abstrakt, 2008). See also Edvard Befring, *Frå tukt- og barnehus til skoleheimsinstitusjonen* (Oslo: Universitetet i Oslo, 1963).

<sup>15</sup>For major works on special education research, see Astrid Askildt, *Opplæring av funksjonshemma i eit historisk perspektiv* (Oslo: Universitetet i Oslo, 2004); Berit H. Johnsen, *Et historisk perspektiv på idéene om en skole for alle* (Oslo: Unipib, 2000). See also Eva Simonsen and Berit H. Johnsen, eds., *Utenfor regelen. Spesialpedagogikk i historisk perspektiv* (Bergen: Unipub, 2007); Eva Simonsen, *Vitenskap og profesjonskamp. Opplæring av døve og åndssvake i Norge 1881–1963* (Oslo: Unipub, 2007).

of 1816, 1827, 1848, 1860 and 1889. Primary sources relating to education policy are seen in connection with poor laws, criminal legislation and the Penal Code, and are further linked to the findings of earlier research. Debate arose concerning the treatment of children who were 'neglected', 'poor', 'blind', 'deaf and dumb' or 'feeble-minded' partly because the law, and the social debate in general, referred to children and young people who dropped out of school and society as a single group, and partly because the child welfare measures enshrined in the education legislation were directed towards these groups. The history of Europe's social, criminal and education policies in the nineteenth century is characterised by ever-changing diagnoses and concepts. Words such as 'idiot' and 'cripple', 'corrupted', 'doomed', 'feeble-minded', 'deaf and dumb' and 'lame' are all lacking in precision. Were they used today, they would be considered offensive and stigmatising.<sup>16</sup> As a researcher I will retain the terminology of the times in this educational history study.

By way of an introduction, general principles will be clarified relating to the relationship between compulsory school attendance, compulsory education and the parental prerogative in the nineteenth century. From this follows a discussion of the relevant principles at work in cases that involved children considered to be neglected by their parents and in cases that involved children who were burdened with particularly significant moral challenges. I will then examine the relationship between poverty as a social challenge and compulsory school attendance for vulnerable children in general, before finally going on to discuss the relationship between compulsory school attendance, the parental prerogative and social welfare services aimed at children labelled as blind, deaf and dumb, or feeble-minded. On the basis of the overall presentation I draw conclusions about the socio-political function of education law in the nineteenth century.

### Principles relating to compulsory school attendance, compulsory education and the parental prerogative

Following the dissolution of Denmark-Norway under the Peace Treaty of Kiel of 14 January 1814, it did not take long before Norway's educational legislation was in the process of being formulated. The Norwegian Constitution of 17 May 1814 established that Norway was to be a free, independent and indivisible realm. The Union with Sweden that came into force a few months later was no obstacle to Norwegian independence. A separate Norwegian national assembly, government and civil service were soon up and running. After the dissolution of the Union in 1814 the Norwegian elite were faced with a number of hitherto unfamiliar tasks, with Norway moving from absolute monarchy to a fledgling constitutional democracy, from one union to another, and all at the same time.<sup>17</sup> Providing elementary education for the general public was also an unfamiliar task for Norwegians. The puritan legislation of the eighteenth century had been a matter for the absolute monarch, Christian VI (1699–1746) in Copenhagen and his personal advisers and counsels.<sup>18</sup> Admittedly, the ordinance for the

<sup>16</sup>Concepts such as 'neglected', 'corrupted' and 'doomed' children are key to this article, reflecting the Norwegian terminology of the nineteenth century: 'forsømt', 'fordærvede' and 'fortabte'.

<sup>17</sup>Regarding 1814 and the emergence of a new political culture, see Ruth Hemstad and Bjørn Arne Steine, eds., *Overgangstid. Forargelse og forsoning høsten 1814* (Oslo: Dreyer, 2016).

<sup>18</sup>*Forordning, om Skolerne paa Landet i Norge og hvad Klokkerne og Skoleholderne derfor maa nyde* (Friderichsberg: Hans Kongel. Majestæts og Universitets Bogtrykkerie, 1739). A publicly run elementary school for the common classes was not introduced on the basis of the 1739 legislation, but on the basis of *Placat Og nærmere Anordning Angaaende Skolerne paa Landet i Norge* (Copenhagen: Hans Kongel. Majestæts og Universitets Bogtrykkerie, 1741).

rural schools of Norway and the pertinent remuneration of sextons and schoolmasters of 1739 was partly based on information obtained from bishops about the state of education in Norway, but the first national Public Education Act was introduced on 1 July 1816.<sup>19</sup>

Earlier historical research maintains that the first piece of legislation to secure elementary education for Norway's urban population was not passed until 1848, and that the Act of 1816 was merely an interim law.<sup>20</sup> However, the law of 1816 was made applicable in urban as well as rural areas. This legislation did not regulate the parental prerogative. Nor did it provide arrangements for compulsory school attendance or compulsory education, or opportunities for home schooling of the vulnerable children of the general public. There were only three sections to the law, and they covered only the essentials required to secure the regulation of a nationwide school system in Norway.<sup>21</sup> Nevertheless, after 1814, government officials clearly held the view that parents carried the main responsibility for the education of their own children. A publicly run school for common people, and issues concerning the relationship between the educational responsibilities of society and parents were raised in all sessions of the Norwegian legislative assembly, the Storting, until the Peasantry Education Act of 1827 was passed. This legislation enshrined the parental prerogative in law, in the sense that parents were given a general and genuine statutory right to provide home schooling instead of sending their children to the publicly run 'common school': 'Any parent or guardian who prefers to have children in their care educated at home, whether by teaching them personally or by providing the services of a teacher, may be exempted from sending them to school.'<sup>22</sup>

The education of the general public was still intended to be society's responsibility, as was the case in Denmark. In the eighteenth century, Denmark-Norway had long considered the provision of elementary school education to be a socially beneficial project that combined religious education with skills training.<sup>23</sup> Extending the network of publicly run schools remained a major education policy project after 1814. This focused on providing education for common people in permanent schools.<sup>24</sup> It was an express objective, especially from the mid-nineteenth century, to provide elementary education for the children of all echelons of society in permanent schools. Attendance at publicly run common schools was generally growing in the nineteenth century. Private schools for common people were on the decline throughout the century.<sup>25</sup>

Yet at the same time, education was not exclusively a matter for society. Compared with Denmark, Norway's education legislation after 1827 put greater emphasis on the educational primacy and responsibility of parents. The Norwegian provision for *compulsory education* rather than *compulsory school attendance* was founded on the parental prerogative. This was carried forward as the nineteenth century progressed and was enshrined in law through section 15 of the Public Education Act for Market Towns of 1848 for urban areas, and

<sup>19</sup>Peter Vogt, *Love, Anordninger, Kundgjørelser, aabne Breve, Resolutioner m.m. Iste Bind*, indeholder Aarene 1814, 1815 og 1816 (Christiania: Grøndahl, 1817), 483–4.

<sup>20</sup>Johnsen, *Et historisk perspektiv*, footnote 21; Tone Skinningsrud and Randi Skjelmo, 'Fra enevelde til konstitusjonell stat. Arbeidet for en norsk skolelovgivning 1814 til 1827', *Uddannelseshistorie* (2014): 32.

<sup>21</sup>Vogt, *Love, Anordninger, Kundgjørelser*, 483–4.

<sup>22</sup>*Lov om Almue-Skolevæsenet paa Landet* (1827), § 16.

<sup>23</sup>Ida Bull, 'Industriousness and Development of the School-system in the Eighteenth Century: The Experience of Norwegian Cities', *History of Education* 40, no. 4 (2011): 425–46.

<sup>24</sup>See the Norwegian legal provisions for the setting up of non-ambulatory schools in *Lov om Almue-Skolevæsenet paa Landet* (1827), § 3–4; *Lov om Almueskolevæsenet paa Landet* (1860), § 3.

<sup>25</sup>Harald Thuen and Knut Tveit, 'Privatskolane – vere eller ikkje vere? Fire hundre år i motgang og medgang', *Tidsskrift for samfunnsforskning* no. 4 (2013): 493–508.

through section 50 of the Peasantry Education Act of 1860<sup>26</sup> for rural areas. This liberal education project peaked with the passing of the Folk School Act of 1889 under the Liberal Party (Venstre) government and Prime Minister Johan Sverdrup. This provided a system of parental control, which in principle enabled parents to choose the education they preferred for their children, provided the standards set by the publicly run elementary schools were achieved. The reforms were based on liberal values associated with the freedom of the individual, the parental prerogative issue and the protection of the individual against government intervention.

While the parental prerogative held a strong position in Norway from 1814 to 1900, the underlying reasons were changing over the course of the period. The first discussions on the principles relating to the parental prerogative arose from the preparatory legislative work that followed the dissolution of the Union in 1814. The social elite wanted to raise awareness among parents of their *duty* to ensure that all children were in receipt of edification and religious education. The arguments in support of this parental duty were in part founded on the view that the natural order of the parent/child relationship dictated that parents held the main educational responsibility. However, the arguments were also founded on the view that the government's main responsibility was to provide higher education for the upper classes, not the common people, nor the most vulnerable children. In the wake of 1814, the arguments for parents to hold the main responsibility for the edification and education of their own children were thus not made on democratic grounds; they were made to support the social rigidity of a stratified, hierarchical society. Not until the introduction of the Liberal reforms towards the end of the nineteenth century was the argument for a parental prerogative put forward on democratic grounds, with the emergence of a school under parental control being associated with the development of people power, democracy and the dismantling of a rigid social class system based on rank and position.<sup>27</sup>

In respect of the parental prerogative, there were interesting differences between the education policies of Sweden, Norway and Denmark from the early 1800s onwards. The inspiration from Sweden was evident among the Norwegian social elite. In the early 1800s Sweden already had a long-standing tradition for parental control over children's upbringing and education. The conservative opposition against making the edification and education of common people a matter for society held a stronger position in Sweden than in Norway, and was stronger in Norway than in Denmark. One way of identifying the different countries' views on whether children's education should be the primary concern of parents or society is to look to their policies on the introduction of non-ambulatory schools in the mid-nineteenth century, as dedicated school buildings would shift the responsibility for children away from the home and into public control. Compared with Sweden, Norwegian politicians wanted a more forceful policy while Denmark went even further than Norway in emphasising society's responsibility for children. Danish non-ambulatory school policies were therefore highly assertive.<sup>28</sup>

<sup>26</sup>The supplementary laws of 22 March 1869, 12 June 1869, 31 May 1873 and 19 June 1878 did not amend the provisions that regulated the parental prerogative and allowed for home schooling as an alternative to the publicly run 'common school'.

<sup>27</sup>Vegard Kvam and Asbjørn Tveiten, 'At Børnelerdommen maa være di alle huse'. Om skoleplikt og foreldrerett i allmueskolens religionsopplæring', *Historisk tidsskrift* 96, no. 2 (2017): 124–51.

<sup>28</sup>See Jan Froestad, *Faglige diskurser, intersektorielle premisstrømmer og variasjoner i offentlig politikk. Døveundervisning og handikappomsorg i Skandinavia på 1800-tallet* (Doctoral degree, Universitetet i Bergen, 1995).



In the course of the 150-year history of Norway's common school, 1739–1889, ordinary people thus acquired ever-increasing rights and greater influence over their own children's education. While the reasoning behind the parental prerogative varied over time, and while other Nordic countries went further than Norway in promoting parental control of education in the early 1800s, it remains a fact that from 1827 and until the end of the century there was growing respect in society for the idea that parents should have an opportunity to choose home schooling for their children as an alternative to the publicly run common schools. This was based on the educational primacy accorded to parents. However, the principles of the parental prerogative, the opportunities presented by home schooling and the distribution of educational power between the individual and society were not unqualified. We will now look at the education legislation in a socio-political light, focusing on cases of what government authorities felt were varying degrees of parental neglect of children. The legislation distinguished between neglected children, whose neglect could be of various degrees of seriousness, and corrupted or doomed children, which were expressions used to refer to children with particular moral challenges as a consequence of neglect.

### Compulsory school attendance as a welfare initiative for neglected children

The Norwegian Peasantry Education Act of 1827 declared that if parents were found to 'neglect their children', these children would be summarily referred to the common school. This meant compulsory school attendance: in these instances the law introduced an exception in that home schooling based on the parental prerogative was unacceptable as a way of fulfilling the otherwise applicable compulsory education provision.<sup>29</sup> Although not expressly stated in law, government authorities clearly saw elementary education as a right bestowed on *children*. If parents failed to fulfil this requirement, it was society's responsibility to intervene to protect and support the child. It was the Church, as represented by the parish minister, who was granted authority to assess the parents' degree of neglect, and if necessary, take appropriate action.<sup>30</sup>

This socio-political approach and the statutory opportunity to impose compulsory school attendance was carried forward and strengthened as the nineteenth century progressed. Following a lengthy preparatory process for the Public Education Act for Market Towns (1848), during which the parental prerogative was discussed and considered against the children's need for elementary education in instances of parental neglect,<sup>31</sup> 1848 saw the adoption of a new section to the law, which imposed further restrictions on the parental prerogative. If parents were found to be 'so indifferent, disorderly or wretched that their children are neglected and corrupted in their care', children could be removed from their parents and placed with new families, who were expected to provide more 'conscientiously' for their education 'by keeping them in school'.<sup>32</sup>

Unlike the provisions of the Education Act of 1827, this amendment ensured that inspections and assessments were made the responsibility of the School Board, a democratic body

<sup>29</sup>Lov om Almue-Skolevæsenet paa Landet (1827), §16.

<sup>30</sup>Ibid.

<sup>31</sup>Johannes Helgheim, *Allmugeskolen i byane* (Oslo: Universitetsforlaget, 1981), Chapter 4.

<sup>32</sup>Lov om Almueskolevæsenet i Kjøpstæderne (1848), § 15–16.

constituted by representatives of the local community, rather than representatives of the Church. The School Board was charged with conducting an independent assessment of whether children were neglected, and if so, to what degree. They would then have to decide whether to restrict the parental prerogative by imposing compulsory school attendance. The School Board was only authorised to propose the placing of neglected children with a different family considered by them to be more conscientious in its approach to providing for the children's education and schooling. The actual relocation of the children, as a socio-political initiative, had to be enforced by another democratic body from within the local community: the Poor-Law Commission.<sup>33</sup> The arrangement that children could be removed from their homes for reasons of inadequate education was carried forward by the Peasantry Education Act of 1860, and was expanded to cover not only biological parents, but also 'others with children in their care'.<sup>34</sup> Society's enforcement power over groups considered to be weak was gradually strengthened in that the scope for intervening with the guardians' educational primacy was widened.

Mid-nineteenth century legislation brought two further socio-political changes that impacted on the parental prerogative and the issue of compulsory school attendance. First, it was considered a duty to society to be on guard against not only parents who neglected their children, but also parents who corrupted their children by failing to provide sufficient schooling and a minimum of care. The spotlight was directed at the moral qualities of parents and their children. Second, responsibility for assessing the children's domestic circumstances was moved away from church officials and passed over to local democratic bodies. In practice, this meant a move away from assessment by an official who was more or less unknown to the people involved, to assessment by an official who would consider the children's home and schooling in partnership with representatives of the local community. The intention was for the assessment to be made by people within the local community, who were duly considered to be culturally closer to the parents. For better or worse, this meant that the standards of the local community were brought to bear. At the same time, there was clearly an in-built safeguard in that the School Board and the Poor-Law Commission both had to intervene to enable the removal of a child, which ultimately meant a loss of the parental prerogative.

While the government sought to introduce compulsory school attendance for neglected children, the authorities gradually realised that not all children could be moved with ease to new families or be educated at the common school. Due to their life situation, some children and young people were, in the eyes of the authorities, already 'morally corrupted' and 'doomed'.<sup>35</sup> In order to understand what socio-political measures were available for these children, and how these measures may be interpreted in terms of education policy, we need to examine the criminal legislation, the Penal Code and the poor laws dating from the mid-eighteenth century onwards.

<sup>33</sup>Ibid., Chapter 3. See also Trond Bjerkås, 'Grunnloven og lokaloffentligheten. En undersøkelse av Grunnlovens betydning for fattig- og skolekomisjonene, ca 1790–1830', in *Riket og regionene. Grunnlovens regionale forutsetninger og konsekvenser*, eds. I. Bull and J. Maliks (Trondheim: Akademika, 2014).

<sup>34</sup>Lov om Almueskolevæsenet paa Landet (1860), § 50–1.

<sup>35</sup>Descriptions extracted from Lov angaaende Fattigvæsenet i Kjøbstæderne av 20. September 1845 (§ 49), in Julius August S. Schmidt, *Love, Anordninger, Traktater m.m. for Kongeriket Norge. Andet Bind. 1832–1848* (Christiania: Chr. Tønsberg, 1850), 790–803.



## Social welfare and elementary education for corrupted and doomed children

Workhouses were introduced in Norway by an ordinance passed in Copenhagen on 2 December 1741.<sup>36</sup> Around 20 years later, particularly after a amendment of 24 November 1764 concerning the ‘schooling and edification of children in market towns and rural areas,’ it became policy to send young people to the workhouse, even for minor misdemeanours like failing to attend school (see Figure 1). The amendment dictated that if young people failed to attend school, irrespective of whether this was the children’s fault or that of others, ‘such obstinate Children and Servants should be sent to the workhouse’.<sup>37</sup> As from 1789 the workhouses were also made into correctional facilities for people convicted of theft.<sup>38</sup> These people were sentenced to ‘disciplinary punishment so as to change their lives’ and ‘were forced to correct their ways through discipline’, to quote Thuen.<sup>39</sup> Children and young people could thus end up in institutions side-by-side with adult criminals.

The introduction of workhouses in Norway and Denmark finds its parallel in the large-scale expansion of correctional facilities elsewhere in Europe in the eighteenth century. In France these institutions were referred to as hospices, in England they were workhouses or correctional facilities; in Germany the workhouses were referred to as *Zuchthausen*, which echoes the Norwegian term for them: *tukthus*. Michel Foucault describes the roll-out of institutions of confinement in these countries as an internment programme on a grand scale, primarily motivated by a desire to protect society against those who were considered to be immoral, insane, poor, neglected or criminal. Among the internees were also people with various disabilities. In some of the French hospices as many as two-thirds of the inmates were children.<sup>40</sup> When the union with Denmark was dissolved in 1814, there was, however, no publicly run social welfare system in Norway that might provide an alternative to the workhouse. The age of criminal responsibility was 10 years. In principle, later Penal Codes also gave provisions for the punishment of children as young as 10, but the Penal Code of 1842 introduced special provisions that limited the criminal liability of children under the age of 15, as inspired by the German Penal Code in Hannauer of 1840.<sup>41</sup> Around the same time, schooling for the corrupted and doomed children was regulated by dedicated socio-political legislation.

The Poor Law of 20 September 1845 can also be seen in a European context.<sup>42</sup> Slowly but surely various pauper regulations introduced in the eighteenth century paved the way for the understanding that even the most wretched children were worthy of receiving assistance from society to ensure their schooling, and that it was time to find an alternative to placing

<sup>36</sup>Anordning om Tugthusets Indrettelse i Christiania og de Fattiges Forflegning i Agershuus Stift’ av 2. December 1741, in Peter Hersleb Smith, *Kongelige Forordninger samt andre trykte Anordninger m.m.* (Christiania: Det Wulfsbergske Bogtrykkerie, 1823), 520–46.

<sup>37</sup>See Laurids Fogtman, *Kongelige Rescripter, Resolutioner og Collegialbreve for Danmark og Norge udtogsvis udgivne i chronologisk Orden 1660–1813. V. Deel 2. Bind* (Copenhagen: Gyldendal, 1806–1825), 615–16.

<sup>38</sup>Seip, *Sosialhjelpstaten blir til*, 42.

<sup>39</sup>Thuen, *Om barnet*, 34.

<sup>40</sup>Michel Foucault, *Folie et Déraison. Histoire de la folie à l’âge classique* (Paris: Union Générale d’Éditions, 1961).

<sup>41</sup>See Peder Kerschow, *Lov angaaende forbrydelser af 20. August 1842 saadan som den efter senere forandringer er lydende med henvisning til og uddrag af love, skrivelser, forarbejder og retspraksis m.m.* (Kristiania, Jacob Dybwads forlag, 1896).

<sup>42</sup>See Lov angaaende Fattigvæsenet i Kjøbstæderne’ av 20. September 1845 (§ 49), in Schmidt, 1850, 790–803. This law was later replaced by *Lov om Fattigvæsenet i Kjøbstæderne* (1863) and *Lov om fattigvæsenet* (1900). The provision that the poor-law authorities were licensed to take care of neglected children outside their homes was carried forward from law to law.



**Figure 1.** Christiania Workhouse (Tugthus), unknown photographer 1911. Source: Directorate for Cultural Heritage: [https://lokalhistoriewiki.no/wiki/Fil:Kristiania,\\_Oslo\\_-\\_Riksantikvaren-T001\\_04\\_0175.jpg](https://lokalhistoriewiki.no/wiki/Fil:Kristiania,_Oslo_-_Riksantikvaren-T001_04_0175.jpg).

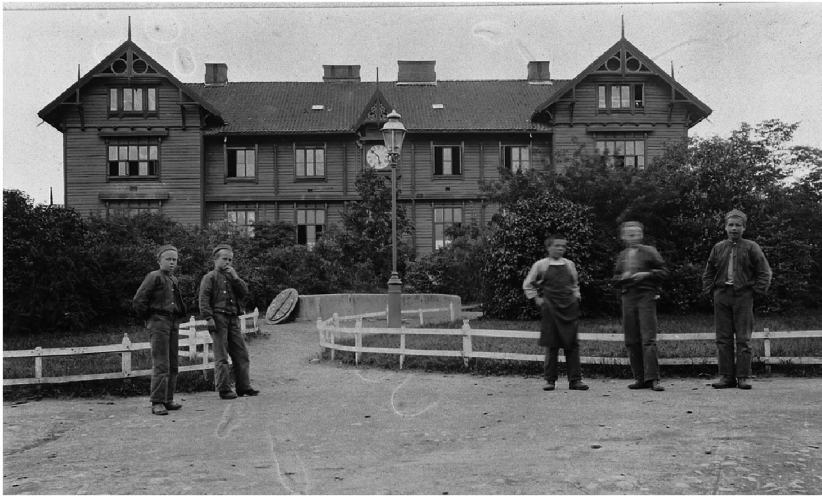
children and young people in workhouses.<sup>43</sup> In the mid-nineteenth century the causes of criminality were frequently discussed in Europe. Whilst criminologists in Italy and France pointed to determinist, congenital and hereditary models of explanation, Germany and the Scandinavian countries put forward social factors.<sup>44</sup> The idea that criminality might be rooted in social causes, later known as the sociological school of criminology, opened up a new line of thinking about educational social welfare measures. Based on the Poor Laws, and anchored in the Penal Code of 1842, an initiative was taken to abolish the workhouses to make way for asylums and various forms of municipal rescue institutions that would provide schooling for particularly vulnerable children and young people.<sup>45</sup> At the same time, towns and municipalities saw the introduction of formal arrangements for inspectors with a special remit to ensure that neglected, doomed and morally corrupted children were ‘kept in school’, and that they had their needs for ‘care and education’ fulfilled.<sup>46</sup> The first child asylum in Norway was established in Trondheim in 1834, after which a number of asylums emerged in Drammen in the course of the period 1839–1841. In 1841, Bergen saw the establishment of similar institutions. The same year one of the most famous child-rescue institutions was

<sup>43</sup>Norway’s first poor laws were introduced in Akershus Diocese in 1741 and formed the basis for publicly provided poor relief in the nineteenth century. New regulations followed in 1755 (Bergen), 1786 (Christiansand) and 1790 (Trondheim). These regulations provided relief for the poor and homeless until 1845 which saw the enactment of both *Lov ang. Fattigvæseneti Kjøbstæderne* and *Lov ang. Fattigvæsenet paa Landet*.

<sup>44</sup>Henry John Mæland, ‘Fra kriminalloven til straffeloven’, *Tidsskrift for strafferett* no. 4 (2002): 327f.

<sup>45</sup>*Lov angaaende Fattigvæsenet i Kjøbstæderne* of 20 September 1845 (§ 49), in Schmidt 1850, 790–803. Regarding the setting up of workhouses, see ‘Anordning om Tugthusets Indrettelse i Christiania og de Fattiges Forflegning i Aggershuus Stift’ of 2 December 1741, in Smith, 1823, 520–46.

<sup>46</sup>See ‘*Lov ang. Fattigvæsenet i Kjøbstæderne*’ and ‘*Lov ang. Fattigvæsenet paa Landet*’, in Chr. Bull, *Love Anordninger, Kundgjørelser, aabne Breve, Resolutioner m.m.* (Christiania: Gyldendal, 1845), 457–85.



**Figure 2.** Main building at Toftes Gave. Foto: Albert Steen, 3. juli 1903. Source: <http://digitaltmuseum.no/011012890580>.

set up at Grønland in Kristiania, later known as Toftes Gave (see Figure 2).<sup>47</sup> The asylums and institutions had a clearly stated objective: ‘To rescue poor, abandoned children, save souls, and cheat the gallows and the workhouse of as many candidates as possible’.<sup>48</sup>

The institutions were founded on philanthropic engagement. The philanthropists were members of society’s upper classes, but the philanthropy expressed in Europe and Norway in the nineteenth century was based on benevolence, compassion and a desire to improve the relationship between rich and poor. Earlier research has demonstrated that the philanthropic idea was educational in essence. The rescue institutions were not only intended to protect children and young people who found themselves in a difficult situation in life, but also involved compulsory school attendance for the inmates based on the idea that children in even the most desperate situations should have an opportunity to improve themselves. Britain was a pioneering country in respect of philanthropic initiatives with vulnerable children and young people receiving shelter as well as edification and education. In Norway it was not until the mid-1830s that philanthropic engagement gained momentum. Britain also played a pioneering role in the introduction of infant asylums, with the first such institution opening in 1816, established by Robert Owen in New Lanark.<sup>49</sup> From Britain the idea of infant asylums spread to Europe in the period 1825–1830. In the United States, the picture was much the same.<sup>50</sup>

The rescue institutions were founded on the Enlightenment idea that education and human development were two sides of the same coin. Norwegian legislation of the 1840s

<sup>47</sup> Andr. Bechholm, *Kristiania folkeskoler før 1860. Den halv-offentlige skole for fattige borgerbarn i 16 og 1700 årene og de eldste opforstringshus* (Kristiania: Olaf Norli, 1920), 104–5.

<sup>48</sup> *Asyl- og Skole-Tidende* (Første del) (Christiania: Det norske Asylselskab, 1841), 71ff.

<sup>49</sup> Robert Owen, *Robert Owen at New Lanark: Two Booklets and One Pamphlet, 1824–1838* (New York: Arno Press, 1972); Robert Owen, *An Address delivered to the inhabitants of New Lanark, on the first of January, 1816, at the opening of the institution established for the formation of character* (London: printed for Longman, Hurst, Rees, Orme, and Brown, 1816).

<sup>50</sup> John G. Richardson, ‘Common, Delinquent, and Special: On the Formalization of Common Schooling in the American States,’ *American Educational Research Journal* 31, no. 4 (1994): 695–723; David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971), 207.

reflects not only society's awareness of the need to protect vulnerable children and young people along more humanist lines than before, but also a belief in the opportunities offered by welfare initiatives and compulsory school attendance to make a positive difference for children and young people who were considered to be in need of society's protection. In this way compulsory school attendance represents a link between the fields of socio-politics and the history of education.

In terms of the history of ideas, we can also draw a line back to European Renaissance humanism of the 1400s, when faith in the individual's inherent dignity – knowledge and reason – was strengthened during the transition from the Middle Ages to the modern era.<sup>51</sup> An early advocate of the humanist idea that the state should take on more responsibility for the neglected and the poor in society is Juan Luis Vives (1493–1540). Vives presented a new vision for dealing with poverty when he emphasised the need to transform the paupers into citizens by providing them with education. He held the opinion that the state should provide financial support as well as educational assistance for people in need, which would ensure that the provision of social aid would allow the poor and vulnerable to no longer pose a danger to the internal order of a state, no longer spread diseases whilst begging by the church door, etc. Vives' proposals influenced social relief legislation enacted in England and the German Empire during the 1530s.<sup>52</sup> The nineteenth-century European issue of compulsory school attendance is thus not only a child of the Enlightenment or a mere continuation of the philanthropists' acts of benevolence. It was also rooted in a deep-seated humanist tradition that goes back centuries.

It is not entirely obvious whether the combined social policies directed at the so-called neglected, corrupted and doomed children in Norway were motivated by concerns for the welfare of children or society. Evidence suggests a dual objective. There were clearly societal dimensions both to safeguarding the welfare of children who were neglected and to preventing criminality by providing education for particularly vulnerable children. Besides, child-rescue institutions would be able to give the children's parents an opportunity to find paid employment without the children being neglected,<sup>53</sup> and behind the desire to put the parents to work we find objectives for the prevention of poverty in society.

### Compulsory school attendance as a poverty-prevention measure

Europe's industrialisation and urbanisation also brought increasing awareness of the challenges represented by street children. Begging and vagrancy were banned in a number of countries towards the end of the eighteenth century, also motivated by a desire to implement an active industrialisation policy. As society transitioned to a more capitalist system, the poor laws were seen as political tools to secure societal development. By putting idle people to work, the authorities were able to provide cheap labour while ensuring that the poor were engaging with the economic system.<sup>54</sup> In the mid-nineteenth century it was estimated

<sup>51</sup>Froestad, *Faglige diskurser*, 65, 79.

<sup>52</sup>Juan Luis Vives, *De Subventionem Pauperum Sive de Humanis Necessitatibus* (Leiden: Boston Brill, 1529/2002).

<sup>53</sup>Mari Janne Sahl, 'Her har vi bygget Smaabørn et Hjem. Barneasylvesenets fremvekst og etableringen av Ladegaardens børneasyl', *Årbok for norsk utdanningshistorie* (2005): 75–8.

<sup>54</sup>See Anthony Brundage, *The English Poor Law 1700–1930* (Basingstoke: Palgrave Macmillan, 2002); Christopher Hill, *Reformation to Industrial Revolution: A Social and Economic History of Britain, 1530–1780* (Harmondsworth: Penguin Books, 1986/1969). Olwen Hufton, *The Poor in Eighteenth Century France* (London: Oxford at Clarendon Press, 1974).

that around 30,000 poor children were living on the streets of London.<sup>55</sup> In New York the situation was just as serious.<sup>56</sup>

We know from earlier research that the national rate of poverty continued to rise from approximately 1800 onwards. In 1801 the percentage of the population registered in the poor relief system was 2.3; by 1846 this percentage had increased to 3.5. In particular, the influx of people from the countryside to the cities led to a disconcerting concentration of poor people in urban areas, which increased the cost of poor relief and was considered a burden on the urban bourgeoisie.<sup>57</sup> In the following, we will examine the relationship between poverty-prevention measures and compulsory school attendance issues for vulnerable children.

From the mid-nineteenth century it was generally held by people in authority in Norway that education of the general public could work as preventive poor relief.<sup>58</sup> In a European context these were not new ideas. One of the reasons why Owen set up the first infant asylum in Britain in 1816 was his recognition that schooling was an essential social tool if the aim was to rid society of poverty in the long term. In Owen's view, poor relief through financial support was not enough in the face of an emerging capitalist society. Only popular education, edification and training would give people the ability and willingness to take responsibility for their own lives, get into work and contribute to society.<sup>59</sup> In Norway the relationship between education and the prevention of poverty was discussed in particular depth by the Commission on Public Poor-relief in Rural Areas, established in 1853. The Commission submitted its recommendation to the government after three years of work.

The Commission pointed to the common school as an important tool for the long-term relief of poverty among common people. Poor-relief had for too long been a matter of providing material and financial support to whoever needed it. The Commission held the view that 'care purely for a person's material well-being ... can thus never permanently lift the curse of poverty from anyone'. This is because material assistance alone does not solve the longer term challenges of poverty in society. The common school could be given a socio-political function in this respect. When discussing issues such as 'the extent to which society's institutions for the prevention of poverty require further improvement', the Commission gave the opinion that poverty 'most often' was 'a consequence of wickedness, ignorance and brutality'. Consequently, 'the prevention of poverty' could not be achieved unless society took on the job of providing corrective schooling of vulnerable children.<sup>60</sup>

At the time when the Commission submitted its recommendations to the government in 1856, it was not considered self-evident that poverty was caused by immorality and other personal vices. From the late eighteenth century onwards, increasing numbers of people began to voice the opinion that people could end up in poverty through no fault

<sup>55</sup>Hugh Cunningham, *The Children of the Poor: Representations of Childhood since the Seventeenth Century* (Oxford: Basil Blackwell, 1991), 106.

<sup>56</sup>Joseph M. Hawes, *Children in Urban Society: Juvenile Delinquency in Nineteenth-century America* (New York: Oxford University Press, 1971).

<sup>57</sup>Tore Pryser, *Norsk historie 1800–1970. Frå standssamfunn til klassesamfunn* (Oslo: Samlaget, 1999), 75ff.

<sup>58</sup>Dahl, *Barnevern og samfunnsvern*, 118.

<sup>59</sup>Owen, *An Address delivered to the inhabitants of New Lanark*.

<sup>60</sup>*Betænkning og Indstilling fra den ved Kongelig Resolution af 5te August 1853 nedsatte Commission angaaende det offentlige Fattigvæsen paa Landet* (Christiania: Mallings Bogtrykkeri, 1856), 72f.



of their own, for instance due to lack of employment opportunities. Sometime after the Commission had completed its work, Eilert Sundt demonstrated in his large-scale study of the poor that poverty could be caused by ‘multifaceted’ reasons, some of which could be of a practical and financial nature rather than merely moral, and in Sundt’s considered opinion these were ‘Facts, as evidenced by my Dissertation.’<sup>61</sup> Nevertheless, the Commission clearly expressed a view that people’s immorality and personal vices were ‘most often’ the causes of their poverty. This stance was probably associated with the Commission’s educational objective: to introduce compulsory school attendance, in its literal sense, for the children of paupers, even if this inevitably involved imposing restrictions on the parental prerogative, which was at odds with the otherwise current and less stringent principle of compulsory education.<sup>62</sup>

In the spirit of the Commission, the Education Act of 1860 further reinforced society’s responsibility for children who were considered to be neglected, or even corrupted. If a neglected child had reached his or her 14th year and was found to be so wanting in knowledge that ordinary common school lessons were no longer considered worthwhile, then the School Board was obliged to ensure that the young person received alternative education. Such initiatives did not depend on the parents’ willingness. If the young person had reached his or her 16th year without having submitted to the School Board requirement of pursuing school work, the Board was authorised by law to implement ‘any such forceful means’ as the local authorities might approve, ‘yet never incarceration of the child in any form of correctional facility’.<sup>63</sup> The workhouses had been abolished, but society still had faith in the forceful implementation of compulsory school attendance as a socio-political measure. The goal of reducing poverty in society through education sanctified the means and trumped the parental prerogative.

Based on the idea that compulsory school attendance would be a poverty-prevention measure and a child-welfare initiative, we understand why it was imperative for the government to ensure that poverty never formed an obstacle for these children to attend school. The financial responsibility for children was in principle borne by their parents, but the Education Act of 1827 made it a matter for the minister to assess whether the parents were in a sufficiently sound financial position to provide what was required in terms of food, clothes, books and educational material. If the parents were found to be wanting in this respect, it was up to the School Board to provide the funds.<sup>64</sup> Pursuant to the Public Education Act for Market Towns of 1848 such costs could be covered by the Poor Law authorities,<sup>65</sup> as dictated also by the Peasantry Education Act of 1860.<sup>66</sup> If, however, the School Board had intervened due to the parents’ neglect rather than their poverty, the Poor Law authorities were entitled under the law to demand that costs be covered by the parents, or by others who bore parental responsibility in their stead.<sup>67</sup>

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<sup>61</sup>Eilert Sundt, *Om fattigforholdene i Christiania* (Christiania: J.Chr. Gundersens Bogtrykkeri, 1870), 139.

<sup>62</sup>See note 60 above: 72f.

<sup>63</sup>*Lov om Almueskole-væsenet paa Landet* (1860), § 51.

<sup>64</sup>*Lov om Almue-Skolevæsenet paa Landet* (1827), § 17.

<sup>65</sup>*Lov om Almueskolevæsenet i Kjøbstæderne* (1848), § 17. The Poor Law authorities were the municipal boards in charge of managing the municipal poorhouses in accordance with the poor laws for market towns of 1845, see *Lov ang. Fattigvæsenet i Kjøbstæderne* (1845) and *Lov ang. Fattigvæsenet paa Landet* (1845).

<sup>66</sup>*Lov om Almueskole-væsenet paa Landet* (1860), § 51.

<sup>67</sup>*Ibid.*



## From education legislation to a law regarding neglected children

The early nineteenth-century idea of compulsory school attendance as a child-welfare and poverty-prevention measure augurs the introduction of organised child welfare services in Norway by the Act regarding the Welfare of Neglected Children of 6 June 1896.<sup>68</sup> This law was a supplement to a *Citizen's Penal Code* that was also being prepared, and which was passed in 1902.<sup>69</sup> The Child Welfare Act was thus part of new penal reform, but as discussed, the development of social welfare services in the 1800s focused more on pedagogy than on criminal law. This has clearly been overlooked by earlier social welfare research.

The penal policy reform movement of the late 1800s was concerned that education should replace the corrective penalties directed at minors in earlier times. In a civilised society it was no longer acceptable that increasing numbers of children and young people were imprisoned as a consequence of poverty, neglect and juvenile crime. Because these ideas had gained acceptance in society some time before the Child Welfare Act was introduced, the penal policy reform movement merely supported the current view that even criminals were entitled to society's protection and deserved an opportunity for personal development. The results would be unpleasant if society on the one hand neglected to afford vulnerable children and young people an opportunity for edification and education, while on the other sought to punish the same children for immorality and crime. Community leaders voiced the opinion that if this vicious circle were to be broken, it was time to strengthen the preventive effects of education.<sup>70</sup>

The Child Welfare Act of 1896 was intended to prevent children from becoming homeless paupers and beggars, and to bring about a reduction in crime. They wished to eradicate poverty by intervening 'energetically and systematically ... to protect the children against corruption, the misery of which is often caused by their parents' wretchedness rather than through any fault of their own'. The long arm of the law would therefore have to reach everyone who more or less certainly would 'become a burden to society in the form of work-shy layabouts, criminals and convicts', to quote the Director of Public Prosecutions, Dr Bernhard Getz (1850–1901), who was a key contributor to the preparatory work for the Bill (see Figure 3).<sup>71</sup> There was great faith in the potential for elementary education to turn lives around, or, to quote the draft bill that preceded the Child Welfare Act: 'Man is what education makes him.'<sup>72</sup>

Against this background it was considered legitimate to deprive ill-suited parents of their right to raise their own children, which in turn raises fundamental questions about the family as society's primary institution for the provision of children's education. According to the new law of 1896, children whose welfare society had assumed responsibility for could be placed in boarding schools, orphanages or reformatory schools.<sup>73</sup> However, the legal criteria for family intervention and bypassing the parents' educational primacy were

<sup>68</sup>Theiste, *Lov om behandling av forsømte barn*.

<sup>69</sup>J. Parmann, *Almindelig borgerlig Straffelov af 22de mai 1902 og Lov om den almindelige borgerlige straffelovs ikrafttræden* (Kristiania: Det norske aktieforslag, 1902).

<sup>70</sup>Bernhard Getz, *Udkast til Lov om sædelig forkomme og vanvyrkede Børns Behandling med Motiver* (Kristiania: Det Steenske Bogtrykkeri, 1892), 1.

<sup>71</sup>Stortingsforhandlinger, 1893, Ot. Prp. no. 33. Om Udfærdigelse av en Lov om Behandling av forsømte Børn, Bilag 'Motiver', 2. See also Stortingsforhandlinger 1896, Ot. Prp. No. 6, kriminalistforeningens møte okt. 1892.

<sup>72</sup>Stortingsforhandlinger, 1893, Ot. Prp. No. 33. Om Udfærdigelse av en Lov om Behandling av forsømte Børn, 51.

<sup>73</sup>Theiste, *Lov om behandling av forsømte barn*.



**Figure 3.** Director of Public Prosecutions, Dr. Bernhard Getz (1850–1901). Foto: L. Szacinski, 1896. Source: [https://digitaltmuseum.no/011014859045/bernhard-getz?search\\_context=1&count=11&query=Bernhard+getz&pos=6](https://digitaltmuseum.no/011014859045/bernhard-getz?search_context=1&count=11&query=Bernhard+getz&pos=6).

vague. In particular, the criteria lacked clarity with respect to the standards expected of care and education institutions run by public authorities. The pivotal criterion for family intervention was an overall assessment of the parents' 'vices'. Logically, it therefore follows that similar cases could be given different treatment, and that the quality of the social welfare provision was largely dependent on who represented the social welfare authorities at the time. The Child Welfare Act's discretionary criteria for family intervention were based on the education legislation passed earlier in the century. The concept of 'wicked' parents first appears in the Public Education Act for Market Towns of 1848,<sup>74</sup> and was later carried forward into the Peasantry Education Act of 1860.<sup>75</sup>

Getz himself repeatedly referred to 'detrimental parents' in his preparatory work for the Child Welfare Act. He made it clear that nothing 'perverts corrective work with children quite like the influence of detrimental parents'.<sup>76</sup> At the same time, Getz was concerned that a successful application of the Child Welfare Act was reliant on appropriate standards of care and education being provided by the institutions/alternative homes to which children might be removed. Getz put it like this when the Bill was proposed to the Storting:

<sup>74</sup>*Lov om Almueskolevæsenet i Kjøpstæderne* (1848), § 16. The concept was not used in Norway's earlier Education Acts of 1816 and 1827.

<sup>75</sup>*Lov om Almueskole-væsenet paa Landet* (1860), § 51.

<sup>76</sup>Stortingsforhandling 1893, Oth.Prp. No. 33, Appendix 'Motiver', 29.

we must never forget that the homes from which we contemplate removing the children, however pitiful and poor and miserable they may be, will never be capable of inflicting the harm that may be inflicted by inferior child care institutions.<sup>77</sup>

In other words, when parents failed, the welfare of children was considered to be a responsibility that befell society, but it was equally important to ensure that the quality of society's child protection was up to the required educational standard.

### Compulsory school attendance specifically for abnormal children?

Children who were blind, deaf and dumb, or feeble minded – all of whom from c.1870 were referred to as abnormal – constituted the last group of children for whom society considered introducing compulsory school attendance. These children were not necessarily covered by society's social welfare initiatives, but from the issue of compulsory school attendance for abnormal children followed also discussions about the socio-political function of compulsory school attendance. Before compulsory school attendance for these children could be made social policy, the possibilities currently available to society for giving them an alternative education had to be debated. There were no special schools for the blind, the deaf and dumb and the feeble minded in Denmark-Norway before the dissolution of the Union, or in the immediate aftermath of 1814.

The 1739 ordinance proclaimed that the common school should provide 'for all and sundry', irrespective of their capacity to learn.<sup>78</sup> The teacher instructions that accompanied the ordinance asked schoolmasters to 'differentiate between the children's receptiveness, which allowed one person to take longer to learn what another person would grasp more readily'.<sup>79</sup> According to Tveit, it is reasonable to assume that attempts were made in the eighteenth century to integrate 'slow and disabled students' into the common school, in line with the ordinance.<sup>80</sup> Other historians hold that few sources can establish the educational situation of children with special needs in the 1700s.<sup>81</sup> Yet others doubt that the expression 'all and sundry' as used in the ordinance of 1739 was chosen with particular care by the legislators. Children with special needs were simply not considered to have a place among the common school students, and they soon ended up as social welfare cases.<sup>82</sup>

If we wish to clarify this issue further, we shall probably need to look to local history sources. As in many other areas there was most probably great variation among local authorities and schools. While attempts were made to integrate some children into the common schools, as demonstrated by Tveit in his studies from village schools in Eastern Norway, other children were kept at home without receiving any education, while others ended up in the poorhouse. Nationally, Norway's first special needs school was *Throndhjems Døvstummeinstitut*, a school for the deaf and dumb established by royal decree on 1 November 1824. The institute, which was a philanthropic initiative and founded by Andreas

<sup>77</sup>Stortingsforhandlinger 1896, Tidende, O, 49.

<sup>78</sup>Forordning, om Skolerne paa Landet i Norge og hvad Klokkerne og Skoleholderne derfor maa nyde (1739), Introduction and 7.

<sup>79</sup>Ibid., 21.

<sup>80</sup>Tveit, *Allmugeskolen på austlandsbygdene*, 670.

<sup>81</sup>Berit H. Johnsen, 'Idéhistorisk perspektiv på spesialpedagogikk i skolen for alle', *Årbok for norsk utdanningshistorie* (1999–2000): 110.

<sup>82</sup>Berit H. Johnsen, 'Erik Pontoppidan og spesialpedagogiske problemstillinger i grunnskolens startfase', in *Utenfor regelen. Spesialpedagogikk i historisk perspektiv*, eds. E. Simonsen and B. H. Johnsen (Oslo: Unipub, 2007), 53.

Christian Møller, came into operation in the spring of 1825. Around 1850, several special schools for the deaf and dumb were established in Christiania, Kristiansand and Bergen.<sup>83</sup> The first special school for the blind in Norway was established in 1861, while the last group to get a dedicated school was the 'mentally abnormal children' whose first institute was established in 1874.<sup>84</sup> Special needs schools run by public authorities were not introduced until the Act regarding the Education of Abnormal Children was passed by the Storting on 8 June 1881.<sup>85</sup>

In a European context, Norway was late in establishing special schools. Historical research tells us that deaf and dumb children were taught by private tutors as early as in the 1550s and then increasingly through the seventeenth and eighteenth centuries, in Spain, Italy, Germany and England.<sup>86</sup> In Paris the Jacobean priest Charles Michel de l'Épée (1712–1789) set up a school for the deaf as early as 1760. In Scandinavia, Denmark established special schools for the deaf in 1787 under the leadership of Georg Wilhelm Pflingsten (1746–1827), and in 1807 The Royal Institute for the Deaf and Dumb was set up in Copenhagen. Sweden made the education of the deaf a government responsibility in 1809.<sup>87</sup>

The fact that in the Nordic countries as well as on the Continent it was the deaf and dumb children who were the first to benefit from special schools was due to the idea that it was these children who had the greatest potential for development, compared with the blind and the feeble-minded.<sup>88</sup> Admittedly, thanks to the idea that language and reason are two sides of the same coin, many among the social elite held the view until far into the eighteenth century that the deaf and dumb were not very receptive to education or the development of inter-personal qualities. The shift in perceptions with regard to the educational potential of the deaf came with the recognition that being mute was a consequence of being deaf, rather than a separate type of human 'defect'. The deaf could therefore in principle enjoy good educational potential, if only the education was adapted to their needs. The blind were considered to represent more of a challenge, and these children were to a greater extent considered to be incapable of benefiting from education and to lack the ability to look after themselves.<sup>89</sup> But even these perceptions were changing at the turn of the century. The first European school for the blind was set up in Paris in 1784 by Valentin Haüy (1745–1822). Two years later he published a book about relief lettering, raised Latin letters that his pupils could read by touching them with their fingertips. Gradually Haüy's work was to gain impact on the education of the blind in a number of other places in Europe and in the United States, where novel approaches to educating the blind were being tried.<sup>90</sup> In Norway however, the first special school for the blind was not set up until 1861.

<sup>83</sup> Helgheim, *Allmugeskolen i byane*, 124–5; Johnsen, *Et historisk perspektiv*, 306–7.

<sup>84</sup> Asbjørn Birkemo, 'Opplæring av utviklingshemmede i statlig regi', *Årbok for norsk utdanningshistorie* (2001): 50.

<sup>85</sup> Lov om Almueskolevæsenet paa Landet af 16 Mai 1860 med senere Tillægslove (herunder Lov om abnorme Børns Undervisning), *Departementsskrivelser m.m.* (Kristiania: Bjørnstad, 1883), 36–9.

<sup>86</sup> Regi Th. Enerstvedt, *Legacy of the Past: Those Who are Gone but Have Not Left. Some Aspects in the History Oof Blind Education, Deaf Education, Deaf-Blind Education with Emphasis on the Time before 1900* (Dronninglund: Nord-Press, 1996); Phillip L. Safford and Elizabeth J. Safford, *A History of Childhood and Disability* (New York: Teachers College Press, 1996).

<sup>87</sup> Johnsen, *Et historisk perspektiv*, 304–5; Astrid Askildt and Berit H. Johnsen, 'Spesialpedagogiske røtter og fagets utvikling i Norge', in *Spesialpedagogikk*, eds. E. Befring and R. Tangen (Oslo: Cappelen Damm, 2008), 76.

<sup>88</sup> Froestad, *Faglige diskurser*, 83.

<sup>89</sup> Kjell-Åke Johansson, *Om blindeundervisningen i Sverige från 1890: Förändringar i de pedagogiske perspektiven inom den tidliga specialundervisningen* (Stockholm: IMFO-gruppen, 1974), 46.

<sup>90</sup> Alexander Meshcheryakov, *Awakening to Life: Forming Behavior and the Mind in Deaf-blind Children* (Moscow: Progress Publishers, 1979).

Special schools for feeble-minded children were not introduced in Norway until 1874, and then clearly motivated by the educational optimism that spread throughout Europe from the early 1800s onwards.<sup>91</sup> Internationally, there was a widely held belief that edification and education could have a healing effect on their afflictions and would contribute to making them better equipped to look after themselves. It is an illustrative point in this respect that special-needs education in German-speaking countries since the mid-nineteenth century has been referred to as '*heilpädagogik*' in specialist literature,<sup>92</sup> with particular reference to the work carried out by Édouard Séguin, in the latter half of the 1830s. In France, this formed the basis for implementing a systematic and determined initiative to give the feeble-minded edification, education and care.<sup>93</sup> With great optimism Séguin believed in the possibility of healing 'idiocy' through education. To Séguin, education was an important right enjoyed by all society's children and young people, thus enabling even the most disadvantaged to experience equality and freedom.<sup>94</sup> This educational optimism on behalf of the feeble-minded was also held in the United States around 1850. Even if the so-called 'idiots' could not be healed, they could at least be better equipped to learn and to live better lives.<sup>95</sup>

Across national borders the view was thus widely held that the edification and education provided by schooling could have a healing effect on the afflictions of particularly vulnerable children and improve their potential for looking after themselves, for their own sake and for the sake of society.<sup>96</sup> The learning that was needed for Christian confirmation was a particular challenge for the special schools. Ever since the first confirmation ordinance of 1736,<sup>97</sup> which introduced obligatory confirmation in Denmark-Norway, it had been a matter of concern that learning disabilities caused young people to leave school.<sup>98</sup> In practice, the special schools thus provided protection for both the child and society, as being Confirmed was required to gain access to Holy Communion, and receiving Holy Communion was required to gain access to the basic rights of citizenship.

Consequently, with educational optimism as the most important premise, Confirmation preparations as the primary object and purpose of education, and with dedicated institutions for special needs education, compulsory school attendance for abnormal children became a highly relevant political issue in Norway when the social elite in the lead-up to the 1880s were to consider the drafting of a special education law for abnormal children, which would make schooling for people with special needs a public responsibility. The Norwegian Act regarding the Education of Abnormal Children of 8 June 1881 regulated

<sup>91</sup> Johnsen, 'Idéhistorisk perspektiv på spesialpedagogikk', 114.

<sup>92</sup> See Theodor Heller, *Grundriss der Heilpädagogik* (Leipzig: Verlag von Wilhelm Engelmann, 1904).

<sup>93</sup> Edvard Befring, 'From Normalization to Enrichment: A Retrospective Analysis of the Transformation of Special Education Principles', in *Restructuring for Caring and Effective Education: Piecing the Puzzle Together*, eds. Richard A. Villa and Jacqueline S. Thousand (Baltimore, MD: Paul H. Brookes Publishing, 1999), 558–75.

<sup>94</sup> Édouard Séguin, *Die Idiotie und ihre Behandlung nach der physiologischer Methode* (Vienna: Karl Graeser, 1912/1866). See also Ivor Kraft, 'Edouard Seguin and Nineteenth Century Moral Treatment of Idiots', *Bulletin of the History of Medicine* 35 (1961): 394–418.

<sup>95</sup> James W. Trent, *Inventing the Feeble Mind: A History of Mental Retardation in the United States* (Berkeley: University of California Press, 1994), 17.

<sup>96</sup> See Johnsen, 'Idéhistorisk perspektiv på spesialpedagogikk', 114–15. Later in the century, there were also more pessimistic world-views in Europe that dealt with degeneration and tried to counter these tendencies by eugenic thinking and measures. Not all the feeble-minded children would be able to benefit from schooling, and some had an inheritance that was directly threatening to civilisation and should be sterilised. In Norway, a more pessimistic view was first introduced in a new Education Act for Abnormal Children of 1915, and the Sterilization Act that was first enacted in 1934.

<sup>97</sup> Kong Christian den Siettes II. *Forordning, Angaaende den tilvoxende Ungdoms Confirmation og Bekræftelse udi deres Daabes Naade* (Friderichsberg, 1736).

<sup>98</sup> Askildt and Johnsen, 'Spesialpedagogiske røtter', 76.

society's responsibility for children who were deaf and dumb, feeble-minded or blind.<sup>99</sup> In the opinion of the commission that drafted the legislation, earlier private initiatives to set up special schools had been too randomly organised and were never good enough, although they failed to present their grounds for saying so.<sup>100</sup> With the new law, the government wished to take responsibility for ensuring that abnormal children and young people would receive 'citizenship instruction' and religious education in preparation for their confirmation in dedicated 'Edification and Education Institutions'.<sup>101</sup> Some years after the education act for abnormal children had been passed, the folk school legislation of 1889 followed suit by stipulating that children and young people with various types of incapacities and learning disabilities were to receive education outside the standard folk school.<sup>102</sup>

In his article concerning the emergence of differentiated care provisions for the mentally ill in Norway, Professor of Sociology Johans Tveit Sandvin argues that the Education Act for Abnormal Children of 1881 introduced 'formal compulsory school attendance' for children with special needs.<sup>103</sup> His conclusion concerning the formal side to the issue of compulsory school attendance is debatable. Unlike other European countries, where issues regarding abnormal children were generally a matter for the medical profession, these issues in Norway were largely associated with edification, education and pedagogy.<sup>104</sup> The question of compulsory school attendance for these children was thus a topical matter for discussion in Norwegian politics. It is nevertheless inaccurate to conclude that the Act of 1881 introduced 'formal compulsory school attendance' for abnormal children. It may be argued that this meant compulsory school attendance for most children in practice, but that is a different matter.

Documents from the Bill's preparatory stage raise the question of compulsory school attendance in connection with the education of abnormal children. A royal resolution of 16 June 1877 set up a commission that was asked to debate the possibility of introducing statutory provisions for the introduction of 'Educational Institutions for all abnormal children' at common school level. The Commission was also tasked with examining the possibility of introducing 'compulsory school attendance for abnormal children'.<sup>105</sup> The Commission considered that it was society's responsibility to introduce statutory provisions for educational arrangements for abnormal children, and felt that this was a favourable time to do so, because there was great interest in the matter among the general public.<sup>106</sup> The members of the Commission were 'decidedly of the opinion, that abnormal children should have special educational institutions', but they also held that the educational objective, as far as possible, should not be at odds with that which applied for the common schools.<sup>107</sup> According to the

<sup>99</sup>Lov om Almueskolevæsenet paa Landet af 16 Mai 1860 med senere Tillægslove (herunder Lov om abnorme Børns Undervisning), Departementsskrivelser m.m. (1883), 36.

<sup>100</sup>Stortingsforhandlinger, 1879, Tredie Del. Oth. Prp. No. 2. See the attached recommendation from the legislative commission, 1878: 6.

<sup>101</sup>Otto Mejlænder, *Love, Anordninger, Traktater, Resolutioner, Kundgjørelser, Departementsskrivelser, Cirkulærer m.m. for Kongeriket Norge. 9de Bind. 1877–82* (Christiania: Chr. Tønsberg, 1883), 859–61, quote from Chapter 1.

<sup>102</sup>See *Lov om Folkeskolen i Kjøbstæderne* (1889), § 9; *Lov om Folkeskolen paa Landet* (1889), § 10.

<sup>103</sup>Johans Tveit Sandvin, 'Fra fattigforsorg til differensiert omsorgssystem – framveksten av åndssvakeomsorg i Norge', in *Handikaphistorisk forskning i Norge and Norden*, eds. E. Simonsen and I.-L. Sæther (Oslo: Universitetet i Oslo, 1996), 24.

<sup>104</sup>Eva Simonsen, "... det baand, som er i liv og død av broderfavntag spundet". Om dansk-norske forbindelser i omsorgen for åndssvake, i *Festskrift til Birgit Kirkebæk. En specialpædagogisk verden*, ed. I. Wass (Copenhagen: Dansk psykologisk Forlag, 1998), 33–4.

<sup>105</sup>See note 100 above, 1.

<sup>106</sup>Stortingsforhandlinger, 1879, Tredie Del. Oth. Prp. No. 2. Udkast til Lov om Skoler for abnorme Børn, 34.

<sup>107</sup>*Ibid.*, 1–6.



draft bill, the state ought no longer to differentiate between abnormal children and other children in terms of educational rights. It was time for society to 'bring Christian and secular instruction to the abnormal children, which none of society's members could do without'.<sup>108</sup> Implicitly, abnormal children ought therefore to benefit from compulsory education just like any other children of the people. However, what of compulsory school attendance, which was a statutory provision in respect of other groups of particularly vulnerable children?

With reference to the relationship between compulsory school attendance and compulsory education, the Commission's recommendation states that:

In our country, any child is subject to, if not compulsory school attendance, then compulsory education, because the law demands that any child whose education is not satisfactorily provided for in any other way, should be referred to the publicly run Common School.<sup>109</sup>

Following in-depth discussions, the Commission found that the abnormal children's education and education would have to be a greater imperative than any wish their parents might have for home schooling based on the Public Education Act for Market Towns of 1848<sup>110</sup> and the Peasantry Education Act of 1860.<sup>111</sup> The time had come to think afresh about the compulsory school attendance issue based on social welfare considerations. Against this background the Commission proposed the introduction of unconditional compulsory school attendance specifically for abnormal children, by way of an exception to the law and based on the same premise as the statutory provisions for compulsory school attendance for neglected and poor children.<sup>112</sup> The reasoning was simple: 'Undoubtedly, it needs to be recognised that abnormal children need the care of society to an even greater extent than normal children.'<sup>113</sup>

The government followed the Commission's recommendations to a fair degree, but decided not to act on the Commission's recommendation to introduce unconditional compulsory school attendance for abnormal children. It appears that liberal ideas and the parental prerogative held too strong a position in Norwegian society. In principle, the 1881 legislation therefore introduced *compulsory education* also for abnormal children, whether provided by society or in the home.<sup>114</sup> Statutory compulsory education brought with it a responsibility for public authorities to provide special education by establishing more special needs schools. The following quote is from the parliamentary debate in the early phase of the Bill's conception: 'While government authorities impose compulsory education, they must provide the means by which to deliver it.'<sup>115</sup> For children who were blind or deaf and dumb, the *means* of delivering access to education existed.<sup>116</sup> There were fewer institutions available for those considered to be feeble-minded. For this group of vulnerable children and young people, the Education Act for Abnormal Children did not come into force until 1892. At this point, society's means of educational provision consisted of three private schools, transferred to public ownership in 1896, 1899 and 1901 respectively. Later on, a special school for the lame was set up under the same legislation. The ministry maintained

<sup>108</sup>*Ibid.*, 4–5.

<sup>109</sup>*Ibid.*, 6.

<sup>110</sup>*Lov om Almueskolevæsenet i Kjøpstæderne* (1848), § 15.

<sup>111</sup>*Lov om Almueskole-væsenet paa Landet* (1860), § 50.

<sup>112</sup>Stortingsforhandling, 1879, Tredie Del. Oth. Prp. No. 2. See the report from the commission.

<sup>113</sup>*Ibid.*, 6.

<sup>114</sup>Mejlænder, *Love, Anordninger, Traktater*, 859–61.

<sup>115</sup>See note 112 above, 6.

<sup>116</sup>Re schooling for the deaf, see Froestad, *Faglige diskurser*.

that society has a 'duty to protect their right to achieve the degree of human development' of which they are capable, but provided no further grounds for its stance.

Schools for the abnormal were regularly located far away from the children's homes. The ministry was aware that it might be an emotional wrench, but parents would have to ensure that no misguided love or 'unfounded prejudice against the institutions' could stop the children from travelling to them.<sup>117</sup> It was obvious that the legislators felt that special schools could give the children better assistance than most homes were capable of. In practice, this would probably involve a threat to the parental prerogative of people who were responsible for blind, deaf and dumb and feeble-minded children, but further in-depth analysis of the legislation suggests to me that 'school attendance' was nevertheless not compulsory; it was the 'attainment' of the educational objectives, so far as possible, that was obligatory. Consequently, it was permissible for this education to be provided privately. Parents who wanted and were able to pay for the education could freely choose the school to which they wanted to send their children.

The draft amendment of 1893 to the Education Act for Abnormal Children proposed that 'Parents who despite having received a summons keep their children away from school, are subject to the payment of penalties.'<sup>118</sup> There were no exceptions, and none were introduced when the amendment to the Act of 1881 regarding the Education of Abnormal Children was eventually passed on 2 May 1896.<sup>119</sup> The ministry reserved the right to suspend the parental prerogative if this was found to be beneficial to the child, unless the parents could afford to pay for the education themselves. In real terms, this was based on the principle of the Poor Law Commission. Parents who were unable to make provisions for the education of their abnormal children had to accept that their children were placed in special schools. This was the inevitable consequence for most of them, and to all intents and purposes *compulsory school attendance* was introduced for abnormal children in the late 1800s, despite the legislative provision for compulsory education and the ministry's objections to doing away with the parental prerogative in matters of schooling for abnormal children. Any principled objections based on the parental prerogative were never expressed during the parliamentary debate. The overriding concern was society's protection of 'the abnormal', now a new group of common school pupils with a special need for social welfare assistance.

### The socio-political function of education legislation

In parallel with the European process of modernisation that followed in the wake of the Enlightenment, and drawing on ideas rooted in Renaissance humanism, an ever-clearer understanding grew amongst the Norwegian elite that schooling for vulnerable children was society's responsibility. Belief in the innate worth of human beings, children and young people's readiness for education, and in the achievements attainable through edification and education in terms of moral and spiritual development formed the basis for ideas of a link between schooling and child welfare. It is hardly coincidental that a publicly funded social welfare system started to emerge more or less at the same time as child-rescue institutions

<sup>117</sup>See note 112 above, 6ff.

<sup>118</sup>Stortingsforhandlinger, 1893, Ot. Prp. No. 33. *Om Udfærdigelse av en Lov om Behandling av forsømte Børn.*

<sup>119</sup>Theiste, *Lov om behandling av forsømte barn.*

were set up, decisions were made about compulsory school attendance for certain groups of vulnerable children, and there was a breakthrough for special needs education.

At the beginning of the early nineteenth century, children and young people had long been seen primarily as a resource for their parents, and public authorities could only exceptionally intervene with the parents' educational primacy. Throughout the century the family was, in principle, considered to be society's primary institution for the provision of edification and education. Yet as the century proceeded, there was increasing attention paid to the fact that poor and neglected children of the people were entitled to special support from society if their parents failed them. After 1814 the Norwegian state introduced special restrictions on the parental prerogative through the education legislation, as an early socio-political tool. Towards the end of the century there was general acceptance in society that it was the government's job to impose *compulsory school attendance* for certain groups of children. Protecting and assisting children was a societal task, even if it meant introducing unconditional compulsory school attendance and moving the children away from home. Not all neglected children could be moved to new families or follow normal common school classes. For particularly challenging cases, such as children who were liable to end up as criminals, institutions were established in the mid-1800s offering specially adapted education programmes. Society saw restrictions to the parental prerogative, and compulsory school attendance for particularly vulnerable children, not merely as a child welfare initiative and a means of protecting society, but also as a tool for the prevention of poverty.

Questions concerning the education of abnormal children could not be handled in the same way as for the other groups. In the wake of the Enlightenment's educational optimism there was a widespread view that children who were blind, deaf and dumb or feeble-minded would benefit from schooling, for their own part and for society's sake. On this basis the Education Commission suggested unconditional compulsory school attendance also for abnormal children, which trumped the parental prerogative. The reasoning was that the abnormal children, more than anyone, were in need of society's protection. The authorities did not, however, choose to take the experts' advice. Based on liberal ideas and the parental prerogative, only *compulsory education* was introduced for abnormal children, not *compulsory school attendance*. At the same time, the legislation stipulated that children who did not receive sufficiently good education at home would have to be referred to special institutions for schooling. Consequently, to all intents and purposes, school attendance was in practice compulsory also for abnormal children.

Overall, we can conclude that after 1814 Norwegian educational legislation, as well as the compulsory school attendance issue, were meant to play a part in providing child welfare and social assistance, partly by forming a premise for intervention and the forcible removal of children to new families/institutions, partly by being a poverty prevention measure, and partly by providing a special safeguard for children and young people with a learning disability. Through its nineteenth-century educational legislation the Norwegian state presented itself as a representative of communal interests by warranting child welfare initiatives and by restricting the parental prerogative in an educational context if this served the interests of the child. At the same time, the preparatory works to the Bill reveal an acute awareness of the parental prerogative as an educational principle on the one hand and of child welfare as a government responsibility on the other, as well as of the complexities of the relationship between the two. In this way, the educational legislation of the early part of the century acquired an overtly socio-political function, and thus points towards the world's first Child

Welfare Act of 1896. In this article I have discussed the role of compulsory school attendance as a child-welfare initiative, edification and education as a poverty-prevention initiative, and the idea that schooling for abnormal children would benefit society as well as the children concerned. Obvious questions follow on from this discussion: To what extent were the ideas discussed in this article implemented? How were these ideas received by the directors of the schools and the disabled individuals concerned? These questions form an interesting area for further research.

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No potential conflict of interest was reported by the author.

### Notes on contributor

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