PRESERVING IDENTITY: COMPARISON OF MINORITIES' RIGHTS TO EDUCATE CHILDREN IN FRANCE AND THE UNITED STATES

CALEB MACDONALD*

ABSTRACT

To what extent parents should control their child's education is a hotly debated issue. Some view campaigns for parental rights as a detraction from the quality of public school education. Others worry that children will be harmed by a parent's failure to meet educational standards, or by a desire to indoctrinate children with perspectives many find repulsive. Additionally, school attendance can help children develop socially, and attendance in public schools provides an opportunity for schools to train children on virtues that benefit democratic societies. But, as majoritarian governments tighten their grip on political levers, individual rights protections become even more necessary to protect minority groups from forced assimilation into the majority perspective.

This Comment considers parental rights regarding the education of their children, focusing specifically on homeschooling as one tool available to minority parents to protect their children from assimilation into the majority perspective. This Comment begins by comparing recent legislation in France and recently enacted legislation in various American states, and then examines these laws in the context of each nation's legal scheme before concluding that each nation provides minority parents a source of protection for their rights that is not available in the other nation. For example, parents in France may seek a right to homeschool under the International Covenant on Civil and Political Rights because France incorporates international treaties into its domestic law. The United States does not. However, the United States' judiciary, unlike the judiciary in France, can identify and protect rights under the nation's constitution. By

* I want to acknowledge everyone who has helped me with this piece. Specifically, I want to thank Aaron Earlywine and Gabrielle Struik who helped me develop my piece from an idea into a coherent essay. I also want to thank Professor Sumudu Atapattu who reviewed my piece and provided insightful edits. In addition, I want to thank everyone at WILJ who has helped with this piece including the current senior editorial board. Lastly, I want to dedicate this Comment to my wife Abby. Thank you for supporting me during my law school journey.

https://doi.org/10.59015/wilj.ELSE7947

protecting parental rights through the judiciary, the United States ensures that the rights of minority groups are insulated from the winds of political change. The United States Supreme Court can do this by applying a standard of intermediate scrutiny to state efforts to restrict parental rights in education.

INTRODUCTION

In 2022, France effectively banned homeschooling.[1] France is not the first European country to do so, but its reason is uniquely controversial.[2] France's homeschooling law was part of a greater legislative package that the French government hoped would protect French secularism from Islamist extremism.[3] States across the United States have also passed legislation regulating public school curricula.[4] Florida, in particular, has targeted legislation at minorities, banning the teaching of critical race theory and certain theories of sexual and gender identity.[5]

France and the United States are interesting case studies. In both France and the United States, the minority groups' identities are at risk of being infringed upon by education policies aimed toward assimilating children to the dominant perspective. Additionally, France treats international treaties as binding in domestic courts, while the United States does not.[6] Also, each country has a divergent system of legal rights which highlights how different legal systems respond to individual rights. In France, the legislature defines the scope of individual rights. In the United States, individual rights are defined through legislation and judicial recognition of rights in the nation's constitution. Last, the two countries provide contrasting political perspectives toward a controversial practice—modern homeschooling—that can, in some circumstances, serve as a tool for the protection of minority identities.

---

1 Décret 2022-182 du 15 février 2022 relatif aux modalités de délivrance de l'autorisation d'instruction dans la famille [Decree 2022-182 of February 15, 2022 on the Terms and Conditions for Authorizing Family Education], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇOISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Feb. 16, 2022, p. 0039.

2 Luke Julian, Comment, *Parents Versus Parens Patriae: The Troubling Legality of Germany's Homeschool Ban and a Textual Basis for Its Removal*, 36 EMORY INT'L L. REV. 201, 209 (2022) (explaining that Germany and the Netherlands both have homeschooling bans, however the Netherlands, has a carveout, permitting parents to homeschool when "the conscience of the parents cannot be satisfied with the available schools" and critical mass of likeminded families makes starting a new school unjustifiable).

3 Adam Sage, *Parents Face Jail for Home-Schooling in French Curbs on Islamic Extremism*, THE TIMES, (Nov. 19, 2020), https://www.thetimes.co.uk/article/parents-face-jail-for-home-schooling-in-french-curbs-on-islamic-extremism-2680zmcqs [https://perma.cc/EXT2-SGKA].

4 Alice Markham-Cantor et al., *28 States, 71 Bills, and an Education System Transformed: A Running Tally of how Republicans are Remaking the American Classroom*, N.Y. MAGAZINE: INTELLIGENCER (May 8, 2023), https://nymag.com/intelligencer/2023/05/us-education-state-school-laws.html [https://perma.cc/75EP-JXFP].

5 *Id.*

6 CHRISTIAN TOMUSCHAT, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 4 (2008).

Using education to coercively assimilate cultural minority groups is, unfortunately, not foreign to the United States's or France's past. In African colonies, the French government used education to "make the Africans culturally French."[7] Those who assimilated were promised the same social equality granted to European Frenchmen.[8] However, assimilation came at the cost of their own language, dress, religion, and other cultural expressions.[9] Few Africans who assimilated received the promised social equality.[10] Similarly, the United States used its education policy to forcibly assimilate Native Americans to white, European culture.[11] The federal government funded private missionary schools to acculturate Native American youth into Christianity, and the government ran its own federal boarding schools aimed at assimilating Native American children.[12] Now, both countries are at risk of repeating past mistakes: using education to coercively assimilate cultural minorities.

Alternatives to government-controlled schools, like homeschooling, can help protect the identities of cultural minorities. While homeschooling is often associated with religious fundamentalism,[13] it provides a forum for parents who disagree with the government's curricular choices to either teach material contrary to the government's curricula or to augment the curriculum with the parent's own perspective.

Recent education legislation in both France and various states in the United States highlights how the government can limit which perspectives are taught in government-run schools and how the government can limit alternative venues of education. When these laws are motivated by anti-minority animus, minority identities are placed at risk. France's new law was motivated by a desire to combat Islamist separatism, but it bans homeschooling for almost all parents.[14] Homeschooling in the United States remains an option for parents in all

---

[7] R.N. EGUDU, MODERN AFRICAN POETRY AND THE AFRICAN PREDICAMENT 30 (Palgrave MacMillan ed., 1978).

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Ryan Seelau, Regaining Control over the Children: Reversing the Legacy of Assimilative Policies in Education, Child Welfare, and Juvenile Justice that Targeted Native American Youth, 37 AM. INDIAN L. REV. 63, 83 (2012).

[12] *Id.*

[13] Andre Koppelman, *The Nonproblem of Fundamentalism*, 18 WM. & MARY BILL RTS. J. 915, 917–18 (2010) (speaking of the reputation of religious "fundamentalism" that many attribute to homeschooling).

[14] Emmanuel Macron, President of the French Republic*, Speech by the President of the Republic on the Theme of the Fight Against Separatism* (Oct. 2, 2020).

fifty states. However, some states have passed controversial legislation that shapes public school curricula to teach certain subjects in ways that further marginalize certain groups.[15]

Before presenting a roadmap for this Comment, it is important to articulate the Comment's scope. This is not a defense of the practice of homeschooling. While I am sympathetic to aspects of homeschooling,[16] I acknowledge that limited regulation of the practice can lead to children receiving an insufficient education when compared to their peers. Homeschooling can also require time commitments and training that many parents do not have—especially parents with fewer economic resources. Additionally, the homeschooling environment can cultivate beliefs in children that are outside the cultural mainstream. Homeschooling is often a tool used to create separate societies that are at odds with the societies within which they live. However, as governments increasingly pass laws aimed at assimilating children into the majority perspective, alternative avenues of education may be necessary for minority parents to help pass the unique aspects of their identities to their children. Homeschooling—with a higher degree of customization and control than a public school or private school—can be such a tool. And, as shown later in this Comment, parents in the United States are using homeschooling as such a tool.[17]

This Comment will consider, in detail, education law in the United States and France, focusing specifically on the options available for parents to educate their children who are under the age of eighteen and what rights those parents have to protect their children from coerced assimilation into the dominant cultural perspective. This Comment will argue that protecting alternative channels for the education of underage children is an important tool that minority parents can use to ensure that their cultural identity passes from one generation to the next. Part I looks at the history of education and homeschooling in each country, while also considering current cultural issues that each nation passed education laws to solve. Part II analyzes the differences in the two nations' legal systems, specifically highlighting the nature of parental rights in the United States and the quest for the integration of French minority groups into mainstream culture in French law. Part III concludes that the source of

---

[15] *See* Markham-Cantor, *supra* note 4.

[16] I was homeschooled in the United States from kindergarten through the third grade. Additionally, my wife was homeschooled for high school in the United States.

[17] *See* Katie Reilly, *For Black Parents Resisting White-Washed History, Homeschooling is an Increasingly Popular Option*, TIME (Feb. 28, 2022), https://time.com/6151375/black-families-homeschooling/ [https://perma.cc/Y6VQ-RZGF].

homeschooling's strength in the United States is the same source of its weakness in France: politics. The American system of dual federalism places the statutory right to homeschool on surer footing, making it unlikely that homeschooling would meet the fate it has met in France. But parents in France are not without hope: their rights may be protected by international treaties that have been incorporated into French law.

I. BACKGROUND

The history of education in France and the United States has been vastly different over the last 150 years. Despite these differences, the legislatures in both France and individual US states have used political power to pass education laws aimed at producing homogenous cultures in the public school systems.[18] What differentiates the United States from France is that states within the United States have left parallel systems of private schools and homeschools free from strict government regulation.[19] This Part will provide a brief overview of the history and aims of each country's education system and will consider each country's history of homeschooling.

A. A BRIEF HISTORY OF EDUCATION LAW IN FRANCE

French education policy is rooted in the struggle to create a coherent, unified, and distinctly French identity across the various regions that existed prior to the French Republic.[20] Before the 1880s, French education was a patchwork of local schools, largely inaccessible to most

---

[18] *See* Markham-Cantor, *supra* note 4; *see also* Emmanuel Macron, President of the French Republic, *Speech by the President of the Republic on the Theme of the Fight Against Separatism* (Oct. 2, 2020).

[19] *See* Vivian E. Hamilton, *Home, Schooling, & State: Education In, and for, a Diverse Democracy*, 98 N.C. L. REV. 1347, 1374 (2020) ("[N]early half of all states allow parents to homeschool children without having any meaningful contact with education officials. A dozen of these states do not require parents to notify the state of their intent to homeschool. Another ten require a one-time notification, after which they may avoid any ongoing outside contact.202 At least fourteen states impose no curricular requirements. Nine states do impose some assessment requirement (typically maintaining some record of progress or submitting to standardized testing), but these are frequently not enforced or state officials grant parents exemptions from compliance. Only ten states require parents to have some academic qualifications—typically to have completed high school or obtained a GED. However, some provide religious exemptions or permit parents who lack a high school degree or its equivalent to demonstrate in some other way their capacity to teach.").

[20] *See generally* Macron, *supra* note 14.

of the population.[21] In the 1870s, several factors—including the requirement of elementary school education for employment in the growing public and private employment spheres and the elimination of a year of mandatory military service for students attaining a certain level of education—contributed to the rise in school attendance in rural areas.[22]

As attendance increased, the French government passed a series of laws called the "Ferry Laws" that made education "secular, compulsory, and free."[23] The government intended these sweeping enactments to transform children—especially children in rural areas—from "savage children" to civilized ones.[24] Children learned hygiene, dress, and etiquette, but, most importantly, they learned to be patriots.[25] To this end, education taught a new religion**:** "Catechism was replaced by civic lessons. Biblical history, proscribed in secular schools was replaced by the sainted history of France."**[26]**

The motivation behind the Ferry Laws can only be understood by considering the principle of *laïcité*. Laïcité, roughly translated as "secularism," is the concept that the public and private spheres are separate and that religion sits squarely in the private sphere.**[27]** The Ferry Acts implemented this concept, making French education "secular" since 1882.**[28]** The laïcité principle was further codified in a 1905 law that protects the freedom of conscience and the free exercise of religion, and established a strong separation between church and state.**[29]** Though not explicit, an inescapable implication of laïcité is that "religious expression should be kept in the home and places of worship, and not in public schools."**[30]** The Ferry Laws entrenched laïcité in France's education policy, serving as the organizing goal toward which education policy was aimed. Children were to prize laïcité as they learned to become citizens of the Republic.

---

[21] *See* EUGENE WEBER, PEASANTS INTO FRENCHMEN: THE MODERNIZATION OF RURAL FRANCE, 1870-1914 308 (1976).

[22] *Id.* at 328.

[23] Anne Corbett, *Secular, Free and Compulsory: Republican Values in French Education, in* EDUCATION IN FRANCE: CONTINUITY & CHANGE IN THE MITTERRAND YEARS, 1981-1995 5, 7 (Anne Corbett & Bob Moon eds., 1996).

[24] WEBER, *supra* note 21 at 329.

[25] *Id.*

[26] *Id.* at 336.

[27] MARIE DES NEIGES LEONARD, RACIAL DIVERSITY IN CONTEMPORARY FRANCE 115 (2022).

[28] *See id.*

[29] *Id.*

[30] *Id.*

1. French Education and Homeschooling

A brief overview of the Ferry Laws and laïcité may suggest that homeschooling—with its perceived isolationist tendencies—never had a place in the French education system. However, an education law passed in 1882 established that education is compulsory for children six to thirteen years, but also that the father—or any person whom the father chooses—may provide that education.[31] Prior to the 2021 law that effectively banned most forms of homeschooling, parents could homeschool their children if their children passed subject matter tests to ensure they were receiving an education similar to what their public school attending peers received.[32] Article 4 of the March 28, 1882 education law essentially translates as follows:

> Primary instruction is compulsory for all boys and girls from the end of their sixth year until the end of their thirteenth year. This instruction is implemented either within public or private schools, which may be primary or secondary schools, or within families, where the father, or any person designated by the father teaches.[33]

The law remained largely unchanged for over a century, but ignorance of the right to homeschool was widespread in France while the practice was legal.[34] When the practice of homeschooling did receive attention, it was often portrayed as a sectarian endeavor aimed at cultivating values distinct from general French society.[35]

2. The Foulard Affair

In the nineteenth century, regional differences within the country were the biggest obstacle to a unified French identity.[36] A new "threat"

---

[31] André D. Robert & Jean-Yves Seguy, *L'instruction dans les Familles et la loi du 28 Mars 1882: Paradoxe, Controverses, Mise en Oeuvre (1880-1914) [Family Education and the Law of March 28, 1882: Paradox, Controversies, Implementation (1880-1914)]*, 144 HISTOIRE DE L'EDUCATION, 29, 29 (2015).

[32] *Id.* at 29–30.

[33] Philippe Bongrand, *"Compulsory Schooling" Despite the Law: How Education Policy Underpins the Widespread Ignorance of the Right to Home Educate in France*, 10 J. SCH. CHOICE 320, 321 (2016).

[34] *Id.* at 322.

[35] *See, e.g., id.* at 326 (arguing that misconceptions of homeschooling are based, in part, on media treatment of extreme instances by referencing press coverage of the death of a young child who was homeschooled by parents of a religious sect who did not believe in medical intervention).

[36] DEBORAH REED-DANAHAY, EDUCATION AND IDENTITY IN RURAL FRANCE: THE POLITICS OF SCHOOLING at 24–25 (1996).

emerged in the twentieth century, and the fear of this new threat reached a fever-pitch in 1989.[37] Ernest Cheniere, a school principal, expelled three Muslim girls for wearing hijabs at school.[38] Cheniere defended his actions by claiming that the girls' actions violated the 1905 laïcité law.[39] Ultimately, France's Education Minister—after seeking advice from the Conseil d'Etat, France's highest administrative court—overturned the suspension, allowing headscarves in schools.[40]

But the entire incident, dubbed the "*foulard* affair" (*foulard* means headscarf), unearthed French prejudices against Islam that were rooted in its colonial past.[41] Many in France—on both the right and the left—viewed the hijab as a symbol of immigrants' rejection of laïcité and refusal to integrate into French society.[42] Ironically, the French Education Minister's decision to reinstate the girls reflected the same concerns. He and his fellow socialists thought that reinstating the girls would help them replace their religious identities with French identity.[43]

The debate reignited in 1994 when François Bayrou, the newly appointed Minister of Education, sought to ban "ostentatious signs" of religious belief.[44] Bayrou claimed that the headscarf was an ostentatious sign but yarmulkes or crucifixes were not ostentatious.[45] The Conseil d'Etat ruled that Minister Bayrou had no legal basis for banning the headscarf, presumably because the legislation targeted only Muslims.[46] A decade later, French President Chirac pushed a bill through parliament banning all students in public schools from wearing religious symbols "which lead to the wearer being immediately perceived and recognized by his or her religious affiliation."[47] To avoid being struck down as discriminatory, the government phrased the bill generally, applying it also to conspicuous symbols worn by other religious groups.[48]

---

[37] David Beriss, *Scarves, Schools and Segregation*, *in* EDUCATION IN FRANCE: CONTINUITY & CHANGE IN THE MITTERRAND YEARS, 1981-1995 377, 377 (Anne Corbett & Bob Moon eds., 1996).

[38] LEONARD, *supra* note 27, at 116.

[39] *Id.*

[40] *Id.*

[41] N.M. Thomas, *On Headscarves and Heterogeneity: Reflections on the French Foulard Affair*, 29 DIALECTICAL ANTHROPOLOGY 373, 376 (2005).

[42] LEONARD, *supra* note 27, at 117.

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.* at 118.

[48] *Id.*

3. Recent French Legislation to Combat "Islamist Separatism"

The fear of "Islamist separatism" has increased in the last couple of decades as France has dealt with serious acts of violence committed by Islamist extremists.[49] Muslims are estimated to comprise between 6 to 8.8 percent of France's population and Islam is France's second most popular religion.[50] Many of France's Muslim immigrants come from North Africa—the site of France's colonial past.[51] Muslims are often treated as homogenous and portrayed as unwilling to integrate into French culture.[52]

In October 2020, President Emmanuel Macron gave a speech promoting legislation aimed at combating "Islamist separatism":

> Schools are our republican crucible. They completely protect our children in the face of all religious symbols, religion. They are central to the notion of laïcité [secularism], and are where we form consciences so that children become free, rational citizens able to choose their own destinies. Schools are therefore a collective treasure. They make it possible to build the Republic that we share . . .
>
> In light of all these tendencies that are keeping thousands of children from being educated about citizenship, from having access to culture, to our history, to our values, to the experience of diversity that lies at the heart of the republican school system, I made a decision. We discussed it at length with the ministers, and it is no doubt one of the most radical decisions taken since the laws of 1882 and those instituting co-ed education in 1969. Starting in the fall of 2021, going to school will be mandatory for all children over age 3. Home schooling will be strictly limited, restricted mainly to health reasons. We are changing the paradigm, and that's essential. And our schools can in no case be subject to foreign interference.[53]

The legislation—including the homeschooling ban—passed in 2021.[54] The government hoped that the legislation would undermine "Islamist separatism," which it defined as "social life being, in effect, organized and controlled by groups with religious inspiration, rigoristic and militant, and for some carrying a political project with ideas of split

---

[49] *See generally* Michel Rose, *Attacks in France in Recent Years*, REUTERS (Oct. 13, 2023, 7:36 AM), https://www.reuters.com/world/europe/attacks-france-recent-years-2023-10-13/ [https://perma.cc/W4X7-J7VK].

[50] LEONARD, *supra* note 27, at 109.

[51] *Id.* at 109–10.

[52] *See id.* at 110.

[53] Macron, *supra* note 14.

[54] LEONARD, *supra* note 27, at 111; Décret 2022-182 du 15 février 2022 relatif aux modalités de délivrance de l'autorisation d'instruction dans la famille, *supra* note 1.

and secession."[55] Shortly after, France's education ministry launched an advertising campaign promoting laïcité.[56]

B. CONTEMPORARY ISSUES AND HOMESCHOOLING IN THE UNITED STATES

Whereas homeschooling in France was relatively uncommon before the 2021 legislation, 11.1 percent of households with school-age children in the United States homeschool.[57] The number is on the rise, precipitated by the COVID-19 pandemic.[58] A comparison of homeschooling rates from the 2019-2020 school year to the 2020-2021 school year saw homeschooling rise across the country.[59] Black families saw the greatest increase in percentage of families homeschooling by race from 3.3 to 16.1 percent.[60] Many black families gravitated toward homeschooling to protect their children from lower-funded schools, higher rates of discipline, and to teach their children lessons that included America's racist past.[61] Much of this coincided with state legislatures across the country passing laws requiring, or prohibiting, the teaching of specific perspectives about matters of race, sexual orientation, and gender identity.[62] In particular, Florida passed several bills forbidding public school teachers from teaching about systemic racism and controlling the books available in school libraries.[63]

Yet even as Florida's state government has exerted tighter control over public school curricula, Florida has left homeschooling largely unregulated.[64] A family can homeschool in Florida simply by notifying the school district superintendent, keeping a portfolio of educational materials, and supplying that portfolio if asked.[65] At the end of a school

---

55 LEONARD, *supra* note 27 at 111.

56 *Id.* at 114.

57 Reilly, *supra* note 17.

58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.*

62 *See* Markham-Cantor, *supra* note 4.

63 *Id.*

64 *See Homeschool Laws by State*, HOME SCHOOLING LEGAL DEFENSE ASSOCIATION, https://hslda.org/legal?gclid=CjwKCAjwysipBhBXEiwApJOcu7fToiwQ8qeXcJcQtEHiSlDBT4NGHa6tD5bpKcVF7fnRuZaSmoJnxoCjAcQAvD_BwE [https://perma.cc/XA9L-Y6JE] (last visited Oct. 20, 2023).

65 FLA. STAT. §§ 1002.41(1)(a), (1)(d), (1)(e) (2024).

year, the parent prepares the child for an evaluation provided by one of several methods.[66] So long as the child passes the assessment, the parent can carry on homeschooling.[67] Some families from minority groups are seeking greater control over their children's education to ensure their unique perspectives are communicated and preserved in future generations.[68] The fact that this is a surprisingly accessible opportunity can only be understood by looking at a brief survey of American education history.

1. The Origins of Public Schools in the United States

The concept of free, public education began gaining popularity in the United States in the 1830s.[69] At that time, Horace Mann, Massachusetts's Secretary of the state's Board of Education, began advocating for government-funded schools available to all children in Massachusetts.[70] These "common schools" started providing free education for white children in local communities, and they spread from the Northeast to much of the rest of the country.[71] Political leaders praised these schools as producing "virtuous, industrious, and intelligent citizens."[72]

Attendance ballooned after the Civil War, and by the 1870s, public schools enrolled 70 percent of the nation's children.[73] Many saw schools as essential for producing "a more skilled workforce, more patriotic immigrants, and the promotion of personal economic opportunity through academic merit (for whites) and political submission and physical and psychological acclimation to racial caste (for blacks)."[74] Even though *Brown v. Board of Education* struck down segregated schools as unconstitutional in 1954,[75] the racist system created by segregation

---

66 FLA. STAT. §§ 1002.41(1)(f)1–5.

67 FLA. STAT. § 1002.41(2).

68 Reilly, *supra* note 17.

69 NANCY KOBER & DIANE STARK RENTNER, HISTORY AND EVOLUTION OF PUBLIC EDUCATION IN THE US 2 (2020).

70 *Id.*

71 BENJAMIN JUSTICE & COLIN MACLEOD, HAVE A LITTLE FAITH: RELIGION, DEMOCRACY, AND THE AMERICAN PUBLIC SCHOOL 58 (2016).

72 *Id.*

73 *Id.*

74 *Id.* at 58–59 (parentheticals in original).

75 Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954).

persisted and is still producing disparate educational outcomes between white and black students.[76]

2. The Emergence of Homeschooling in the Twentieth Century

Around the same time as *Brown*, the modern homeschooling movement gained momentum.[77] Several factors contributed toward the heightened distrust of the public-school system. First, several books were published casting suspicion on the efficacy of public education.[78] Second, many white Americans disagreed with *Brown* and viewed the Supreme Court's decision as federal government overreach.[79] Third, Christian households were increasingly concerned with the public schools' trend toward secularity.[80]

Some revolutionary-minded individuals also found homeschooling appealing. John Holt—a former schoolteacher—published several books describing the state of public school education.[81] After initially trying to reform the school system, Holt left the school system and became a proponent of homeschooling.[82] Thus, the burgeoning movement was an eclectic collection of individuals that included fundamentalist Christians, environmental activists, and college-educated homesteaders.[83] These groups were united in "old-fashioned independence, a skepticism of experts, and a willingness to trust themselves."[84]

---

[76] *See generally* EMMA GARCIA, SCHOOLS ARE STILL SEGREGATED, AND BLACK CHILDREN ARE PAYING A PRICE (2020).

[77] JAMES G. DWYER & SHAWN F. PETERS, HOMESCHOOLING: THE HISTORY AND PHILOSOPHY OF A CONTROVERSIAL PRACTICE 33, 40–41 (2019).

[78] *Id.* at 33–34.

[79] *Id.* at 33.

[80] *Id.* at 33–34. Especially impactful were Supreme Court rulings that public Bible-reading and school-sponsored prayers were violations of the First Amendment's Establishment Clause.

[81] *Id.* at 44.

[82] *Id.* at 46.

[83] *Id.* at 49.

[84] *Id.*

3. The Legal Context Enabling a Robust Homeschooling Culture in the United States

Widespread political support undergirds homeschooling's status as legal in all fifty states.[85] And, most states have little regulation of homeschooling curricula.[86] This ethos of limited regulation, while common in many spheres of American public life, is likely due to the presumption that parents have their child's best interests in mind.[87]

While the Supreme Court has never decided whether there is a constitutional right to homeschool, a series of decisions in the twentieth century shaped the apportionment of educational authority in American law.[88] These cases limited the government's ability to prohibit instruction in a foreign language and required state governments to allow private schools as an alternative to public schools.[89] In *Pierce v. Society of Sisters*, the majority wrote

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.[90]

Pierce did not guarantee the right to homeschool, but it did establish that a state government cannot pass a law compelling school attendance that had no rational basis for serving the child's well-being.[91]

The Court's decisions in the 1920s established "that parents have *some* substantive right under the due process clause to make decisions about their children's schooling."[92] But the right is not absolute. A 1940s case established that the parent's interest and the child's interest are not coextensive, and the government has a legitimate interest in protecting children from harm caused by parents.[93]

---

[85] *The Ultimate Guide to Homeschooling*, NAVIGATE SCHOOL CHOICE, https://myschoolchoice.com/types-of-schools/homeschooling [https://perma.cc/VML6-QA7X] (last visited Feb. 21, 2025).

[86] *Homeschool Laws by State*, *supra* note 64.

[87] Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L. J. 75, 95 (2021).

[88] DWYER & PETERS, *supra* note 77, at 51.

[89] *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Soc. of Sisters*, 268 U.S. 510 (1925).

[90] *Pierce*, 268 U.S. at 535.

[91] *Id.*; *see* DWYER & PETERS, *supra* note 77, at 51–52.

[92] DWYER & PETERS, *supra* note 77, at 53 (emphasis in original).

[93] Prince v. Massachusetts, 321 U.S. 158, 166–67 (1944).

Wisconsin v. Yoder dealt specifically with homeschooling.[94] The Court's ruling, while limited in scope, "held that Wisconsin's compulsory schooling law was unconstitutional as applied specifically" to certain Amish communities.[95] The Court reaffirmed the government's authority over education, but, because the intent to homeschool arose out of religious convictions, the Court struck down the Wisconsin law at issue because it violated the petitioners' First Amendment rights.[96] Though the Court did not expressly find a right to homeschool in the Constitution, homeschooling advocates found comfort in the Court's willingness to "resist excessive government control of child-rearing" in cases like *Yoder*.[97]

II. ANALYSIS

In this Part, this Comment considers what legal protections are offered by the International Covenant on Civil and Political Rights (ICCPR)—an international treaty ratified by both France and the United States.[98] It then looks at the structure of each nation's legal system and how the constitutional, judicial, and legislative systems of each nation impact the right to homeschool. First, this Comment considers France's system, focusing specifically on how laïcité impacts the French education policy. Then it looks at France's position in the European Council and its constitutional structure, focusing specifically on how the rights of French citizens are created by the legislature and not as judicially recognized rights. Second, this Comment analyzes the United States' legal system, considering Supreme Court precedents, confusion in lower courts due to the lack of a clear standard of scrutiny, and the regulatory system of homeschooling in the United States. This Comment concludes by articulating an intermediate standard of scrutiny that the Supreme Court should adopt when evaluating government regulations of parental rights in education. This standard would help protect the perspectives of cultural

---

[94] *Wisconsin v. Yoder,* 406 U.S. 205 (1972); DWYER & PETERS, *supra* note 77, at 55.

[95] DWYER & PETERS, *supra* note 77, at 55.

[96] *Id.* at 55–56.

[97] *Id.* at 58.

[98] *See Ratification Status for CCPR – International Covenant on Civil and Political Rights*, U.N. HUM. RTS. TREATY BODIES, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en [https://perma.cc/W3FV-JYHH] (last visited Feb. 22, 2025).

minority groups as state legislatures increasingly use their power to entrench the majority's perspective in law.

A. ICCPR: GREATER PROTECTIONS OFFERED TO FRENCH CITIZENS THAN UNITED STATES CITIZENS

The ICCPR is an international treaty that creates obligations for member nations to "promote universal respect for, and observance of, human rights and freedoms" according to the treaty's articles.[99] Several articles are relevant to this analysis. First, Article 26 prohibits discrimination by member nations "on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other states."[100] Second, Article 27 requires member nations "in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."[101]

Both France and the United States have ratified the ICCPR.[102] As ratifiers of the treaty, each country is subject to scrutiny by the United Nations's Human Rights Committee which is the treaty's primary enforcer.[103] Under the treaty, member nations submit reports that are scrutinized by the Committee.[104] The Committee then assesses the nation's compliance with the ICCPR, and where the Committee finds that the nation has fallen short, it notes concerns and suggests actions by the nation.[105] Beyond this, the Committee has no other ways to enforce the ICCPR.[106] This limits its effectiveness as an independent venue for the vindication of the rights protected by the treaty.[107]

---

[99] G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966).
[100] *Id.* art. 26.
[101] *Id.* art. 27.
[102] *See* U.N. HUM. RTS. TREATY BODIES, *supra* note 98.
[103] TOMUSCHAT, *supra* note 6, at 3.
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*

The ICCPR's impact has been greater in nations that incorporate its provisions into national laws.[108] France has done so.[109] Because of this, French citizens may bring claims under the ICCPR in French court.[110] The United States, however, has refused to make the declaration "self-executing within its domestic legal system."[111] Within the United States, state courts have also been reluctant to find the ICCPR's articles binding.[112]

This variance in whether the ICCPR's articles are binding on each nation's legal systems becomes especially relevant when considering the most recent country reports issued by the UN's Human Rights Committee. The Committee identified "school district regulations on educational materials and books" as an area of concern for the United States.[113] However, a citizen within one of these school districts whose regulations violate a provision of the ICCPR cannot enforce their rights within the United States' court systems. The best such a citizen could do would be to lobby for their legislature to adopt the provisions as binding state or federal law.

The Committee also identified issues in France with the bill that includes the homeschooling ban.[114] Specifically, the Committee was concerned that the legislation would disrupt the freedom of association, freedom of conscience, freedom of religion, and the prohibition of discrimination—all rights guaranteed by the ICCPR.[115] Even after France responded to the Committee's initial findings, the Committee remained concerned about France's use of the law to limit the freedoms above, especially the freedom of association.[116]

---

[108] *Id.*

[109] *See* Faurisson v. France, Comm. No. 550/1993 U.N. Doc. CCPR/C/58/D/550/1993 (1996), §§ 4.3–4.4 (relying on 1958 Const. Art. 55 (Fr.); *see also* 1958 CONST. Art. 55 (Fr.) (making international treaties binding law in France).

[110] *See* Faurisson v. France, Comm. No. 550/1993 U.N. Doc. CCPR/C/58/D/550/1993 (1996), §§ 4.3–4.4

[111] Tomuschat, *supra* note 6, at 3.

[112] *See* David Kaye, *State Execution of the International Covenant on Civil and Political Rights*, 3 U.C. IRVINE L. REV. 95, 212 (2013).

[113] Hum. Rts. Comm., *Concluding Observations on the Fifth Periodic Report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/5 (Dec. 7, 2023).

[114] Hum. Rts. Comm., *List of Issue Prior to Submission of the Sixth Periodic Report of France*, U.N. Doc. CCPR/C/FRA/QPR/6 (Sept. 24, 2021).

[115] *Id.* at ¶ 23.

[116] Hum. Rts. Comm., *International Covenant on Civil and Political Rights*, U.N. Doc. CCPR/C/FRA/CO/6, ¶¶ 36–37, 40–45 (Dec. 3, 2024).

The Committee's continued concern suggests that France's bill may be challengeable under the ICCPR. Since the ICCPR is binding on French courts, a French citizen who can prove that, for example, the prohibition on homeschooling violates a right under the ICCPR, could vindicate their rights under the ICCPR in French courts.

B. FRANCE'S LEGAL SYSTEM: LEGISLATIVE RIGHTS AND THE THREAT OF MAJORITARIAN INFLUENCE

The analysis of France's legal structure begins by looking at a European Court of Human Rights ruling that upheld a similar homeschooling ban in Germany. This decision removed any barriers erected by the European Convention of Human Rights (which the court enforces) to such a law in France. Then, this Part turns to the text of the law, the French court decision upholding the law's constitutionality, and how France's system of legislatively created rights can imperil minority groups when political sentiment turns against them, as illustrated by the homeschooling ban.

1. Konrad v. Germany: No Right to Homeschooling Guaranteed by the European Convention of Human Rights

The European Court of Human Rights (ECtHR) enforces the European Convention of Human Rights (ECHR) against member nations that violate the rights of individuals.[117] As a member nation of the Council of Europe and a signatory to the ECHR, France is bound to guarantee the rights protected in the ECHR for its citizens.[118] If a member nation violates the ECHR, the harmed individual may bring suit in the ECtHR, provided local remedies are exhausted, and, if the court finds that the member nation violated the individual's rights under the ECHR, the court may award damages and, often, require changes to the national law.[119]

Individuals in France who wish to homeschool their children in violation of the new law almost certainly have no recourse to the ECtHR. In *Konrad v. Germany*, the ECtHR upheld a similar homeschooling law

---

[117] John G. Merrils, *European Court of Human Rights*, ENCYCLOPAEDIA BRITANNICA (Dec. 21, 2023), https://www.britannica.com/topic/European-Court-of-Human-Rights [https://perma.cc/8KMV-GKPV].

[118] Matthew J. Gabel, *Council of Europe*, ENCYCLOPAEDIA BRITANNICA (Jan. 5, 2024), https://www.britannica.com/topic/Council-of-Europe [https://perma.cc/TA48-MFPE].

[119] Merrils, *supra* note 117.

promulgated by a German province, ruling that the law violated no provisions of the ECHR.[120] The Konrads objected to the content being taught at private or government-run schools on religious grounds.[121] To prevent their children from encountering this content, they decided to homeschool their children using a Christian curriculum.[122] Their application to homeschool was rejected by the education office on the ground that it violated a local law.[123]

The Konrads sued. An administrative court in Germany dismissed the Konrads' request for an exemption, holding that the parental right to educate children in accordance with religious and philosophical convictions was limited by the government's obligation to provide education.[124] However, "education" meant more than progressing through a curriculum: a proper education, according to the administrative court, played an important socializing role.[125] By banning homeschooling, the government furthered children's interest in interacting with others from different backgrounds "and [in] acquir[ing] social skills" that they could not acquire while homeschooled.[126] The government's interest in making education compulsory at public or private schools exceeded the parental right to control all aspects of a child's education.[127]

On appeal, a higher administrative court upheld the initial ruling but placed more emphasis on the social skills developed in school than the quality of education received.[128] In the eyes of the appeals court, the parental interest in homeschooling a child was not greater than the child's interest in social interactions at school. Germany's Federal Constitutional Court upheld the law, finding that the interference with the Konrads' rights was proportionate to the societal interest "in avoiding the emergence of parallel societies based on separate philosophical convictions," and also the interest in integrating minorities.[129]

---

[120] *See* Konrad v. Germany, App. No. 35504/03, (Sept. 11, 2006), https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001769 25&filename=001769 25.pdf&TID=thkbhnilzk [https://perma.cc/GA8C-R5AW].

[121] *Id.* Specifically, they objected to the use of fairy tales in school lessons, the content of the sex education curricula, and the rise of violence on school campuses.

[122] *Id.*

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] *Id.*

[129] *Id.*

The ECtHR considered whether the provincial law that made school attendance compulsory in German state or private schools violated the ECHR. Specifically, the court considered Article 2 of Protocol No. 1 to the ECHR:

> No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.[130]

The court interpreted the protocol to "safeguard pluralism in education, which is essential for the preservation of the 'democratic society.'"[131] And, while parents do have a right for their children to be educated in accordance with their religious and philosophical convictions, the court found this right was secondary to the child's right to education.[132] Because the parental right was secondary, "respect is only due to convictions on the part of the parents which do not conflict with the child's right to education."[133]

The court then defined the scope of the child's right to education. First, the court considered the language of the protocol, and concluded that it contains an implicit assumption that the government may regulate education.[134] Then, it looked at various member nations and found laws compelling education, several with no exception for homeschooling.[135] The court concluded that the German Constitutional Court's holding that private or public school attendance was necessary to prevent "the emergence of parallel societies based on separate philosophical convictions and the importance of integrating minorities into society" was justified and within the government's "margin of appreciation in setting up and interpreting rules for their education systems."[136] So, in *Konrad*, the ECtHR affirmed homeschooling bans promulgated by member nations so long as, at minimum, the ban is motivated by a desire to prevent the emergence of parallel societies that prevent the integration of minority groups into society at large.

---

[130] European Convention of Human Rights, Art. 2, Protocol 1.
[131] Konrad v. Germany, App. No. 35504/03.
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.*

The ECtHR's ruling in *Konrad* almost certainly means that France's law would survive a challenge claiming that it violates rights protected by the ECHR. The law was debated and passed following speeches made by President Emmanuel Macron in 2020.[137] In a speech he made on October 2, 2020, Macron articulated what he believed to be a threat to France's republican way of life:

> What we need to tackle is Islamist separatism. A conscious, theorized, political-religious project is materializing through repeated deviations from the Republic's values, which is often reflected by the formation of a counter-society as shown by children being taken out of school, the development of separate community sporting and cultural activities serving as a pretext for teaching principles which aren't in accordance with the Republic's laws. It's indoctrination and, through this, the negation of our principles, gender equality and human dignity.[138]

With the law passed in this spirit, the portions that effectively ban homeschooling are promulgated on the same foundation approved by the ECtHR: nations in the European Council can limit the rights of parents to direct their child's education when doing so is connected to preventing the emergence of parallel societies that undermine the philosophical unity of the nation and that undermine the integration of minority groups into society at large.

While nations have an obligation to protect citizens from dangerous groups, the ECtHR's parameters effectively grant member nations virtually unlimited leeway in drafting education legislation that takes education decisions out of parents' hands. Consider the ECtHR's first justification for limiting parental rights in its relationship to France's law: to prevent the emergence of parallel societies that undermine the nation's philosophical unity. In *Konrad*, the court spent no time considering what Germany's "philosophical unity" was or which parallel societies might emerge to undermine that unity. This strongly suggests that a member nation is free to define its own philosophical unity. In France, one could define laïcité as France's unifying philosophical principle. However, as articulated later in this section, laïcité has been defined as inherently opposed to Islam. This creates a serious problem: any public expression of Islam is understood as opposing laïcité. Therefore, a public

---

[137] *Law of August 24, 2021 Reinforcing Respect for the Principles of the Republic*, VIE PUBLIQUE, (Aug. 25, 2021), https://www.vie-publique.fr/loi/277621-loi-separatisme-respect-des-principes-de-la-republique-24-aout-2021 [https://perma.cc/V7L2-R6EL].

[138] Macron, *supra* note 14.

expression of Islam is, necessarily, an expression of a parallel society that undermines France's philosophical unity.

Additionally, *Konrad*'s principles are so vague that legislation can sweep broadly, and, if part of legislation prevents the emergence of parallel societies that undermine the nation's philosophical unity, challengers will have no recourse to the ECHR. Since France's legislation has the effect of tackling "Islamist separatism,"[139] a "dangerous" parallel society, it does not matter that the legislation also strips parents who are not teaching their children the ideology of Islamist separatism of the right to homeschool. The court's ruling in *Konrad* has no limiting principle other than the government's own restraint which, in France, are the actions of democratically elected actors.

2. France's Constitutional Council's Decision: Deference to the Legislature in Education Policy

In 2021, France passed a series of bills stated to combat Islamist extremism.[140] Article 49 of the bill titled "Reinforcing Respect for the Principles of the Republic" severely limited when French students may be homeschooled.[141] Prior to the passing of the law, Macron stated in a speech that the measures were targeted at combatting community isolation to strengthen France's republican values.[142]

Prior to its promulgation, these bills were reviewed by France's Constitutional Council, a French court that reviews the constitutionality of drafted laws prior to their enactment.[143] The council upheld the provisions limiting homeschooling as lawful for several reasons. First, the council held that the legislation was consistent with France's 1882 Compulsory

---

[139] *Id.*

[140] Hakim El Karoui, *Reinforcing the Principles of the Republic: A French Paradox*, INSTITUT MONTAIGNE (March 10, 2021), https://www.institutmontaigne.org/en/expressions/french-brief-reinforcing-principles-republic-french-paradox [https://perma.cc/79MV-MM8B].

[141] Loi 2021-1109 du 24 aout 2021 confortant le respect des principes de la Republique [Law 2021-1109 of August 24, 2021 on Reinforcing Respect for the Principles of the Republic], JOURNAL OFFICIEL DE LA PREPUBLIQUE FRANCAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Aug. 25, 2021, p. 156.

[142] Macron, *supra* note 14.

[143] *General Overview*, Conseil Constitutionnel [Constitutional Court], https://www.conseil-constitutionnel.fr/en/general-overview [https://perma.cc/924F-38PS] (last visited Jan. 2, 2024). The Constitutional Council is distinct from the Conseil d'Etat, and its powers are limited to reviewing the constitutionality of laws before they are passed. *Id.* The Constitutional Council is not a superior court to the Conseil d'Etat.

School Attendance Law.[144] Those laws guaranteed compulsory education[145] "given either in primary or secondary educational establishments, or in public or free schools, or in families, by the father of the family himself or by any person he chooses."[146] The Council interpreted the Ferry Laws as guaranteeing compulsory education but placed less weight on the method.[147] Since the new law did not undermine the guarantee of compulsory education, it was deemed constitutional.[148] As the analysis above showed, this interpretation is consistent with the ECtHR's interpretation in *Konrad v. Germany*.

Second, the Council considered Article 34 of France's Constitution.[149] Article 34 allocates to parliament the statutory right to determine the basic principles of education.[150] The Council acknowledged this deference granted to the legislature, and held that the law was constitutional in requiring administrative authorities to ensure a child's educator has the "capacity . . . to instruct" and that the specific circumstances exist that permit homeschooling.[151] Enforcement of the provision will only violate the rights of parents or children if administrative authorities base their decisions to permit or prohibit homeschooling on discriminatory criteria rather than the criteria articulated by the statute.[152]

Third, the Council held that the law had "neither the aim nor effect of infringing on the freedom of conscience or opinion of people" who wish to homeschool.[153] The Council did not go into detail as to why the law is consistent with the freedom of conscience or opinion, other than stating that the law complies with these rights because agencies are to determine the right to homeschool solely by considering the child's best interests.[154]

---

[144] Conseil Constitutionnel [CC] [Constitutional Court] decision No. 2021-823DC, ¶¶ 72-73, Aug. 13, 2021 (Fr.).

[145] Edward W. Fox, *The History of French Education*, 35 CURRENT HISTORY 65, 70 (1958). The law required state schools to be free and attendance "compulsory" (that is mandatory) for students through elementary school. *Id.*

[146] CC, no. 2021-823DC, ¶ 72, Aug. 13, 2021 (Fr.).

[147] *Id.*

[148] *Id.*

[149] *Id.*, ¶ 74.

[150] 1958 CONST. Art. 34 (Fr.).

[151] CC, no. 2021-823DC, ¶ 76, Aug. 13, 2021 (Fr.).

[152] *Id.*

[153] *Id.*, ¶ 78.

[154] *Id.*

By centering the child's right to receive a quality education and be integrated into society, the Constitutional Council affirmed the law as constitutional as it pertains to education. There are two features to France's constitutional system relevant to this decision that have adverse impacts on cultural minorities—and specifically Muslims—in France: (1) the lawmaking power to define the scope of the constitutional right to education and (2) the legal shift in laïcité from a neutral principle of secularity to a non-neutral principle that aims to advance "Frenchness" against Islamist separatism.

The French Constitution does not guarantee rights to the individual, but delegates which powers are available to the executive, judiciary, and legislative branches of the French government.[155] Because of this, the Constitutional Council's review of legislative action is limited to determining whether the body that passed the law has the authority to do so under France's Constitution.[156] While the Council may annul laws that violate general principles or fundamental rights as described in the Declaration of the Rights of Man, it does not have the authority to create and define rights according to the French Constitution.[157] This can explain the references the Council makes to "the freedom of conscience"[158] and "the right to respect for private life"[159] in its decision. Unlike the United States' legal system, France is a civil law system, and its Constitutional Council has no authority to create rights through doctrinal interpretation and precedent.[160] Because the legislature grants individual rights by statute, France's citizens have greater flexibility to define rights through political action which can result in new rights granted (or old ones repealed) as political opinions change.[161] Whether this flexibility is a virtue or a vice depends upon whether elected officials "pass unjust laws."[162]

---

[155] Nicolas M. Kublicki, *An Overview of the French Legal System From an American Perspective*, 12 B.U. Int'l L.J. 57, 79–80 (1994).

[156] *Id.* at 79.

[157] *Id.* at 82.

[158] CC, no. 2021-823DC, Aug. 13, 2021, ¶ 78 (Fr.).

[159] *Id.* at ¶ 79.

[160] *Id.*

[161] Kublicki, *supra* note 155 at 89. There is a narrow exception to the principle that the French Constitutional Council cannot recognize rights outside those granted by statute. *Id.* The Constitutional Council can strike down statutes that are repugnant to the general principles of the Declaration of the Rights of Man. *Id.* at 89–90. However, these principles are broadly construed and are not often used as grounds for invalidating statutes. *Id.*

[162] *Id.*

Unfortunately, in their stated attempt to combat Islamist extremism, France's legislature has drafted broad laws that severely limit the rights of other cultural minorities to educate their children as they see fit. Much of this is explained by the subtle shift in laïcité from a neutral principle of freedom of conscience to a politicized principle as a negation of Islam.[163] Initially a principle requiring religious neutrality by government actors, laïcité "has increasingly been interpreted as generating obligations of religious neutrality for individuals and, whereas it once encompassed religious freedom, it now serves as a legal ground for curtailing it."[164] This can be seen in the *foulard* controversy that resulted in a French law that banned Muslim headscarves (along with other "ostentatious" religious symbols) in French schools.[165] Laïcité has also been used to justify "burqa bans" in public spaces.[166] By being politically shaped as anti-Islam and legally enshrined in legislation that appears neutral but disproportionately affect Muslims, laïcité has become a principle that claims to advance particular national or republican values that are defined by the majority at the expense of minority groups.[167]

Now, through the passage of the 2021 law, France seeks to advance a particular national identity in a variety of public sectors—including education. As demonstrated above, because of this shift in laïcité from a principle of religious neutrality to a conception of national identity, the legislature can justify actions that curtail religious rights in education by arguing that these actions are to prevent the emergence of parallel societies with philosophical convictions contradictory to society at large. Because of the ECtHR's decision in *Konrad v. Germany*, and the French Constitutional Council's limited role in reviewing the constitutionality of legislative decisions, French minority groups who wish to educate their children according to their philosophical or religious convictions appear to have no recourse in France but to comply with the law and lobby for political change.

---

[163] Malthe Hilal-Harvald, *Islam as a Civilizational Threat: Constitutional Identity, Militant Democracy, and Judicial Review in Western Europe*, 21 GERMAN L.J. 1228, 1235 (2020).

[164] Stephanie Hennette Vauchez, *Is French* Laicite *Still Liberal? The Republican Project under Pressure (2004–15)*, 17 HUM. RTS. L. REV. 285, 287 (2017).

[165] Hilal-Harvald, *supra* note 163, at 1234–1235.

[166] Vauchez, *supra* note 164, at 305–309.

[167] *Id.* at 312.

C. LAW AND RIGHTS IN EDUCATION IN THE UNITED STATES

While the right to homeschool in the United States is secure now, the right has not been guaranteed by the Supreme Court. Additionally, Supreme Court decisions that implicate parental authority in education provide unclear rules for the circuit courts to apply. Where the Supreme Court has sown confusion, the states have been broadly unified in guaranteeing the right to homeschool by statute. However, given the dangers of placing rights solely in the hands of the legislature—as seen in the analysis of the right to homeschool in France—the Supreme Court should adopt a standard of intermediate scrutiny to protect minorities from the winds of political change when analyzing statutes that limit parental authority to direct their child's education.

1. Meyer, Pierce, and Yoder: Supreme Court Precedent and the Right to Homeschool

Supreme Court cases addressing parental rights in education advance three principles that are often in tension: the government has an interest in educating its children, parents have a right to guide their children's education, and children have a right to sufficient education.[168] While these broad principles provide some guidance, the lack of clear standards has led to confusion in lower courts about how to evaluate challenges to government regulations that limit parents' liberty in making educational decisions for their children.[169]

The earliest relevant case that grappled with this tension is *Meyer v. Nebraska* where the Supreme Court considered the validity of a statute that prohibited teachers from teaching students any language but English.[170] The petitioner was a German teacher who was charged with a misdemeanor for violating the statute.[171] The Supreme Court held that the statute violated the Fourteenth Amendment by "unreasonably infring[ing] the liberty" of the teacher.[172] The Court acknowledged the difficulty of articulating specific, substantive rights contained within the Fourteenth Amendment, but also stated that freedoms protected by the Amendment

---

[168] *See* Meyer v. Nebraska, 262 U.S. 390, 399–400 (1923).
[169] Margaret Ryzner, *A Curious Parental Right*, 71 SMU L. REV. 127, 129 (2018).
[170] *Meyer*, 262 U.S. at 396–97.
[171] *Id.*
[172] *Id.* at 399.

"may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect."[173] The Court acknowledged freedoms recognized by the Fourteenth Amendment including "the right . . . to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."[174]

The Court implied that these rights are grounded in the fact that they have long been recognized.[175] Regarding education, the Court declared that "the American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted."[176] With this came a corresponding right: "the power of the parents to control the education of their own."[177] The Nebraska legislature's prohibition on non-English teaching infringed both rights, and the Court found the measure "arbitrary and without reasonable relation to any end within the competency of the state."[178]

But, the parental right to control their child's education is not absolute. Parents have a duty to give children a good education and a state can enforce this through passing laws compelling education.[179] Additionally, a state may require that English is taught.[180] But a state can go too far. The Court acknowledged that the legislature's desire "to foster a homogenous people with American ideals" may be admirable, but a state could not accomplish this by arbitrary or unreasonable means.[181]

Two years later the Court decided *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary* on similar grounds. The Oregon legislature passed a statute compelling public school attendance for children between eight and sixteen years old.[182] The statute was challenged

---

[173] *See generally*, *id.* at 399–400; Pierce v. Soc'y of Sisters of Holy Names of Jesus & Mary, 268 U.S. 510, 535 (1925); Wisconsin v. Yoder, 406 U.S. 205, 233 (1972).

[174] *Meyer*, 262 U.S. at 399.

[175] *Id.*

[176] *Id.* at 400.

[177] *Id.* at 401.

[178] *Id.* at 402.

[179] *Id.* at 400.

[180] *Id.* at 400–01.

[181] *Id.* at 399–400, 402.

[182] *Pierce,* 268 U.S. at 530.

by a Catholic school and a military prep school.[183] The Court in *Pierce* found that the reasoning in *Meyer* undermined the Oregon statute, and that the Oregon statute "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control."[184] And, while Oregon had an interest in shaping the education of its young citizens, the child's parents "ha[d] the right, coupled with the high duty, to recognize and prepare him for additional obligations."[185]

Pierce and *Meyer* were decided before the Supreme Court articulated its current standards of scrutiny for laws that limit individual rights.[186] Because of this, courts and scholars disagree about what standard applies to laws that limit a parent's right to control their child's education. Stephen Gilles, a professor of Constitutional Law at Quinnipiac University, reads *Pierce* and *Meyer* as treating parental rights in education as primary.[187] Gilles argues that both *Pierce* and *Meyer* show that legislation that interferes with the parental right to make educational decisions is only upheld if the prohibited activities are inherently unreasonable.[188] Since the Oregon and Nebraska statutes both prohibited wide swaths of reasonable actions taken by parents in educating their children—like enrolling them in a private school or teaching them a foreign language—the statute violated the parents' substantive due process rights.[189] Gilles's articulation is distinct from a rational basis review. Rational basis review simply requires that the statute must be rationally related to the governmental interest it serves.[190] Under Gilles's theory, a state's regulation of parental rights related to education would only be sustained if it solely forbids parents from taking unreasonable actions—a standard likely akin to strict scrutiny.[191] James Dwyer, a professor of law at William & Mary Law School, and Shawn Peters, a lecturer at the University of Wisconsin–Madison, disagree with Gilles and argue that *Pierce* and *Meyer* only apply a standard akin to rational basis review.[192]

---

[183] *Id.* at 532–533.
[184] *Id.* at 534–535.
[185] *Id.* at 535.
[186] Margaret Ryznar, *A Curious Parental Right*, 71 SMU L.REV. 127, 133 (2018).
[187] Stephen G. Gilles, *On Educating Children: A Parentalist Manifesto*, 63 UNIV. OF CHI. L.REV. 937 (1996).
[188] *Id.* at 938–939.
[189] *Id.* at 937–938, n.3.
[190] Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 301 (2022).
[191] Gilles, *supra* note 187, at 939.
[192] DWYER & PETERS, *supra* note 77 at 51–52.

The answer may be somewhere between Gilles's reading and Dwyer's and Peters's reading. While the Court in *Meyer* asked whether the means were reasonably related to the state's interest, the statute at issue would likely be upheld under the Court's current rational basis test.[193] This strongly suggests that the Court applied intermediate or strict scrutiny.[194] The parental right to control a child's education, according to the Court, is balanced by the child's right to education and the state's interest in that education.[195] And, though the parental right prevails in *Meyer* over the state's interest, the Court does not treat it as absolute like other long-protected rights. This Comment will revisit the issue of scrutiny in Part III.

What further complicates these cases is that parental rights are not the only rights affirmed. The cases also articulate a theory of the child's rights. *Meyer* stated that the Nebraska law violated the parents' right to control their children's education and a child's right to acquire knowledge.[196] Dwyer and Peters read the cases as treating the child's right as primary, arguing that "the outcome should have been different if the challenge were to laws the state could have shown to be protective of some secular interests of children."[197] Where Gilles argues that *Pierce* and *Meyer* grant parents broad authority, Dwyer and Peters claim that the cases grant parents narrower authority:

> The upshot of this trio of Supreme Court decisions in the 1920s, as concerns constitutional protection of parents' preferences regarding children's education, was therefore that parents have some substantive right under the due process clause to make decisions about their children's schooling. That right clearly includes the power to select a private rather than public school and to choose a school in which some instruction occurs in a foreign language. But that right clearly does not preclude the state from requiring that children attend some school or from imposing reasonable regulations on any private schools in order to ensure they fulfill children's educational interests as the state sees them.[198]

---

[193] Heather M. Good, *The Forgotten Child of our Constitution: The Parental Free Exercise Right to Direct the Education and Religious Upbringing of Children*, 54 EMORY L.J. 641, 647 (2005).

[194] *Id.*

[195] Meyer v. Nebraska, 262 U.S. 390, 401 (1923).

[196] *Id.*

[197] DWYER & PETERS, *supra* note 77 at 52.

[198] *Id.* at 53. Dwyer and Peters also analyze *Farrington v. Tokushige*, a case where the Supreme Court struck down a Hawaiian territorial law, hence why they speak of a "trio" of cases. 273 U.S. 284 (1927).

The next significant case was decided almost fifty years after *Meyer* and *Pierce*. In *Wisconsin v. Yoder*, an Amish group challenged a Wisconsin statute that compelled school attendance at a public or private school until the age of sixteen.[199] The petitioners objected to the statute because they held "a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence."[200] Since the petitioners were objecting on religious grounds, the Court looked to the First and Fourteenth Amendments.[201] Despite a state's undisputed power to "impose reasonable regulations for the control and duration of basic education," if a state imposes regulations that "impinge on fundamental rights . . . such as those protected by the Free Exercise Clause . . . and the traditional interest of parents with respect to the religious upbringing of their children," the state's interest must be balanced against the parents' interest.[202] Though the Court identified First Amendment rights and parents' traditional rights, most of the discussion revolved around the exercise of religion protected by the First Amendment.[203] The Court found that the government's interest in compulsory public or private education through the age of sixteen did not outweigh the Amish community's interest in educating their children according to their well-proven, three-hundred-year-old customs.[204] In dicta, the Court went to great lengths to clarify that it was not apportioning authority between the government, parents, and children.[205]

In *Yoder*, the Court considered and dismissed a theory of educational authority that vested sole authority in the states to cultivate the virtues of liberal democracy.[206] The Court wrote, "there can be no assumption that today's majority is 'right' and the Amish and others like them are 'wrong.' A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different."[207] Since Wisconsin did not prove harm to the petitioners'

---

[199] Wisconsin v. Yoder, 406 U.S. 205.
[200] *Id.* at 210.
[201] *Id.* at 214.
[202] *Id.* at 213–214.
[203] *Id.* at 214–22.
[204] *Id.* at 234–35.
[205] *Id.* at 231.
[206] *Id.* at 221–22.
[207] *Id.* at 223–24.

children's health or safety, the Court saw no reason to force the Amish parents to change their mode of education.[208]

Gilles claims that, while the decision in *Yoder* is ultimately grounded in the First Amendment's Free Exercise Clause, the Court "incorporates the idea at the core of *Pierce*: that parental educational rights trump even legitimate governmental purposes unless 'harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred.'"[209] To Gilles, the core of the Court's reasoning in *Yoder*, *Pierce*, and *Meyer* is captured well by the *Pierce* decision: "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[210]

Dwyer and Peters once again disagree with Gilles's claims that *Yoder* embodies a spirit of recognizing broad parental rights. They argue that *Yoder* created a narrow carve out for religious beliefs for the Amish "because of their unique history in America and insular way of life."[211] They think the Court went to great lengths to limit the scope of its holding while explicitly articulating that states can pass reasonable legislation related to a child's education.[212]

As evidenced by the disagreement between Gilles, Dwyer, and Peters, the debate about whether to privilege parental interests, governmental interests, or children's interests is far from over. *Yoder*—the most recent and most explicit precedent granting parents educational authority—did not establish anything like a broad rule.[213] Lower courts have interpreted *Yoder* as being unique given the burden suffered by the Amish and the Court's limiting language.[214] Even a broad reading of *Yoder* would limit its protections to religious practices severely burdened by education laws since the Court based its decision on the Free Exercise Clause.[215] *Yoder*, by itself, protects no right to homeschooling made for non-religious reasons.

---

[208] *Id.* at 233–34.

[209] Gilles, *supra* note 187 at 1011.

[210] 268 U.S. at 535.

[211] DWYER & PETERS, *supra* note 77 at 56.

[212] *Id.* at 55.

[213] *Id.* at 59.

[214] *See e.g.*, Combs v. Homer-Center Sch. Distr., 540 F.3d 231, 250 (3d Cir. 2008).

[215] *See* Gilles, *supra* note 187, at 1011. By connecting *Yoder* to the substantive due process language in *Pierce*, Gilles broadens the reach of *Yoder* somewhat, but *Yoder's* holding would still not reach beyond the burdening of religious beliefs.

Pierce and *Meyer* at least—under Gilles's reading—protect parents' reasonable educational decisions, religious and non-religious, from governmental interference. [216] But, as referenced above, the Court in *Pierce* and *Meyer* is not abundantly clear about the constitutional source of parental rights. Both rely on a substantive due process theory—that contained within "liberty" and historically recognized rights is the right to control one's child's education.[217] Gilles argues that this theory is on firmer footing because of *Planned Parenthood v. Casey*.[218] According to Gilles, *Casey* puts forth the proposition "that government may not coerce the choices individuals make within the sphere of protected liberty so long as reasonable people can disagree which choice is preferable" and that this principle applies to personal decisions about child rearing and education.[219]

But the substantive due process foundation for Gilles's readings of the Court's precedents was weakened by *Dobbs v. Jackson Women's Health Org*.[220] In *Dobbs*, the Supreme Court overturned *Casey* and cautioned against using substantive due process as a substitute for the Court's own policy preferences.[221] The Court stated that the rights guaranteed in the due process clause are limited to those "'deeply rooted in the Nation's history and tradition' and 'implicit in the concept of ordered liberty.'"[222] While an argument may be made that parental rights over aspects of educational control are deeply rooted in our nation's history and tradition, the modern conception of homeschooling may not have a sufficiently robust past to merit constitutional protection under the Due Process Clause.[223]

2. Lower Courts and Inconsistent Levels of Scrutiny

As seen in the disagreements between academics on the scope of the Court's holdings, lower courts have also struggled to apply *Meyer*,

---

[216] *Id.* at 1005.

[217] *Id.* at 1002.

[218] *Id.* at 1003–004.

[219] *Id.*

[220] *See* Dobbs v. Jackson Women's Health Org, 597 U.S. 215.

[221] *Id.* at 239–241.

[222] *Id.* at 298–299 (quoting Washington v. Glucksberg, 521 U.S. 702 (1997)).

[223] For example, in 1983 the Fourth Circuit upheld a North Carolina compulsory school attendance law that did not permit homeschooling. Duro v. Dist. Att'y, Second Jud. Dist. of N. Carolina, 712 F.2d 96 (4th Cir. 1983). This suggests that modern homeschooling does not have the deep roots that other parental rights may have.

Pierce, and *Yoder* to parental rights issues, leading to the inconsistent application of standards of scrutiny.[224]

Parental rights claims made under the Due Process Clause of the Fourteenth Amendment are often resolved under rational basis review.[225] However, when considering parental claims, the circuits will frequently recharacterize the right in question to avoid deciding whether the parent's right to control their education is "fundamental."[226] In these instances, rational basis review applies.[227] But, courts have also applied strict scrutiny for certain infringements on parental rights.[228] One Ninth Circuit case, addressing the parental right to raise children, stated that "the right to rear children without undue governmental interference is a fundamental component of due process."[229] The Supreme Court's precedents have created confusion in the lower courts, and the Court has provided little guidance on which standard of scrutiny applies to parental rights claims under the Due Process Clause.[230]

Despite the confusion about the proper standard of scrutiny, what is clear is that a state can regulate homeschooling.[231] Courts have upheld state regulation of curriculum standards for homeschoolers, annual reporting requirements, standardized testing for homeschoolers, and others.[232] Yet, even though states can regulate homeschooling, the key distinction is that, as long as homeschooling stays legal, the parent is still directing the child's education. And, while the courts are willing to uphold homeschooling regulations, state governments are likely unable to completely eliminate parental choice in education because of *Pierce*.[233]

---

[224] Ryzner, *supra* note 148 at 129.

[225] *Id.* at 139.

[226] *See* Leebaert v. Harrington, 332 F.3d 134 (2d Cir. 2003) (rejecting parent's claim that their choice to withdraw their child from a health education class violated their fundamental right to parent, characterizing the parent's claim instead as the right to dictate public school curriculum, a right that is not fundamental and subject to rational basis review). For a deeper discussion of the use of recharacterizing parental rights claims to avoid determining whether parental rights in education are "fundamental," *see* Ryzner, *supra* note 169 at 138–41.

[227] Ryzner, *supra* note 169 at 138–41.

[228] *Id.* at 141.

[229] Nunez v. City of San Diego, 114 F.3d 935, 951 (9th Cir. 1997).

[230] Ryzner, *supra* note 169 at 142. The Court addressed the scope of parental rights in the context of grandparent visitation rights, but the Court could not come to a majority and the plurality provided no standard of scrutiny. *See* Troxel v. Granville, 530 U.S. 57 (2000).

[231] Hamilton, *supra* note 19 at 1371.

[232] *Id.*

[233] 268 U.S. at 534–35 ("we think it entirely plain that the [Oregon statute] unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control").

The government's ability to regulate homeschooling coupled with confusion about the proper standard of scrutiny suggests that homeschooling's current legal stability does not come from the courts. Its stability is a product of the political process.

3. Statutory Protections for Homeschooling

Meyer, *Pierce*, and *Yoder* leave much room for states to regulate.[234] Texas, for example, has no laws specifically regulating homeschooling, and instead recognizes the right to homeschool as contained in the right to send children to private schools.[235] Many states require homeschoolers to be educated on certain subject matters.[236] Many regulations similar to these survived lawsuits, conferring a legal legitimacy to these regulations.[237] However, the trend in the homeschooling sphere is toward deregulation. The Home School Legal Defense Association and other organizations regularly lobby state legislatures to relax homeschooling regulation.[238] Vivian Hamilton neatly articulates this tension between court rules and homeschooling statutes:

> Despite judicial decisions confirming that robust regulation of homeschooling will withstand legal challenges in courts, state legislatures have instead steadily withdrawn their oversight of the educations of homeschooled children. As a result, parents have near-absolute authority over their children's educations and experiences.[239]

While the lack of regulation around homeschooling presents very real concerns regarding the quality of education children receive,[240] a lack of regulation also empowers parents outside the political majority to ensure their distinct perspective is communicated with their children. Even in states that have more extensive regulations, these regulations often only provide a baseline for a homeschooler's education. Parents can add

---

[234] Courtenay E. Moran, *How to Regulate Homeschooling: Why History Supports the Theory of Parental Choice*, 2011 U. Ill. L. Rev. 1061, 1068 (2011).

[235] Texas Educ. Agency v. Leeper, 893 S.W.2d 432 (Tex. 1994).

[236] *See e.g.*, Rhode Island Stat. § 16-19-2 (2022) ("reading, writing, geography, arithmetic, the history of the United States, the history of Rhode Island, and the principles of American government shall be taught in the English language substantially to the same extent as these subjects are required to be taught in the public school . . .").

[237] Hamilton, *supra* note 19 at 1371.

[238] *Id.* at 1365.

[239] *Id.* at 1374.

[240] *See generally*, DWYER & PETERS, *supra* note 77 at 126–56; *see also* Hamilton, *supra* note 19 at 1385–87.

educational materials that supplement the prescribed curriculum or that introduce materials not addressed by the prescribed curriculum.

Thus, in a state like Florida that has passed legislation prohibiting the teaching of "Critical Race Theory" in public schools, homeschooling parents can disregard that law and teach whatever historical perspective they wish, as long as their child passes the assessment required by the state.[241] Even under the narrowest reading of *Pierce* and *Meyer*, it is unlikely that a state could ever pass a statute that forbids homeschooling parents from teaching alternative perspectives to what the state's school curriculum prescribes. The trend toward deregulation of homeschooling gives parents in minority groups the latitude to craft an education for their children that protects them from government-directed assimilation into the majority.

III. INTERMEDIATE SCRUTINY: PROTECTING PARENTAL RIGHTS TO PROTECT MINORITIES

Homeschooling was illegal in most of the United States until as recently as the 1980s.[242] However, it was common before the nineteenth century.[243] This rapid change in the United States' political landscape should put advocates for parental rights in educational choice on notice that recent developments in France can occur in the United States as well. Since international treaties are not binding on courts in the United States as they are in France, additional protections must come from judicially recognized rights. Given the brief analysis of the state of parental rights jurisprudence in the United States, the Supreme Court is unlikely to recognize a fundamental right to homeschool.[244] But the Supreme Court has also recognized parents' rights in guiding their children's education and upbringing.[245] This right is not absolute and must be balanced with the child's interests and the government's obligation to protect the child's interests.[246] In her Comment about parental rights and the free exercise

---

[241] 2022 Fla. Laws 72, HB 7; *see also* Katheryn Russell-Brown, *"The Stop WOKE Act": HB 7, Race, & Florida's 21st Century Anti-literacy Campaign*, 47 N.Y.U. Rev. L. & Soc. Change 338, 362 (2023) (identifying critical race theory indoctrination as a main opponent to the Florida legislature's "law and order" campaign including in passing HB 7).

[242] Kimberly A. Yuracko, *Education Off the Grid: Constitutional Constraints on Homeschooling*, 96 Cal. L.Rev. 123, 124 (2008).

[243] *Id.*

[244] *See* infra Part II.

[245] *See* 262 U.S. 401.

[246] Good, *supra* note 193 at 649.

clause, Heather Good articulates a standard of intermediate scrutiny to apply in parental rights cases that balances five factors: (1) the legitimacy of the government's interest, (2) whether the government has created reasonable accommodations, (3) the cost to the government to grant the claimant's request, (4) the child's best interests, and (5) the parent's best interest.[247]

Good's standard of intermediate scrutiny is based on the complicated nature of parental rights and the Supreme Court's precedent. Rational basis review is too deferential to the government. Strict scrutiny, however, prevents the government from playing an important role in protecting the rights of children. And, while the Supreme Court's cases do not interact with these competing rights using the language of standards of scrutiny, the complicated interplay of these rights is present in *Pierce*, *Meyer*, and *Yoder*. If the Court were to rule that intermediate scrutiny applied to regulations that restricted parental rights to direct their child's education—like homeschooling regulations—the Court would simply be saying out loud what its previous decisions have whispered: parental rights implicate governmental interests and children's rights. The balancing test suggested by Good "provides protection for parental . . . rights while remaining true to Supreme Court precedent and our nation's historical foundations."[248] Additionally, this would resolve the circuit courts' split and give courts guidance in applying Supreme Court doctrine.

Good's standard of intermediate scrutiny would further the goal animating this Comment: to protect the unique identities of minority groups. She articulates well the implications of a lower, rational basis review: "Under a rational basis standard of review, the educational system is not encouraged to promote diversity or tolerance of competing religious claims. Rather, the local government is given the authority to teach majority views, while silencing minority voices . . . . Thus . . . the child and parent's views become effectively silenced."[249] Like we have seen in France, statutorily created rights can place minorities at risk when the political majority acts contrary to minority groups' interests. In the effort

---

[247] *Id.* at 679. Since Good's focus is the parental right to educate children according to the parents' religious convictions, she includes several factors specifically relevant to the free exercise of religion. *Id.* Though protections under the Free Exercise clause would offer protections to some cultural minorities, groups that are marginalized for non-religious reasons would not find safety under a heightened scrutiny that solely applies to parental rights related to the free exercise of religion.

[248] *Id.*

[249] *Id.* at 678.

to combat extreme ideologies, majoritarian legislation can snuff out expressions of cultural minorities that are wholly consistent with a liberal, pluralistic society. An intermediate standard of scrutiny protects the parental right, the child's right, and the government's interest. And, while the right to homeschool would not be absolute under this standard, to limit that right the state would need to demonstrate how the regulation substantially advances the state's interest.

IV. CONCLUSION

Comparing France's and the United States's approach to educational rights highlights the different mechanisms in legal systems that protect individual rights. When majority groups seize the reins of political power, the presence of—or absence of—these mechanisms are vitally important for minority groups adversely affected by the majority's political actions.

In France, the legal force of international treaties in domestic courts of law provides a layer of protection not available in the United States. Because France has incorporated the rights protected by the ICCPR into its domestic laws, minorities in France may have a pathway to vindicate their parental rights in education in a way not available to parents in the United States.

Besides the rights in the ICCPR, parents in France have little recourse outside of passing different laws—something likely out of reach for parents who wish to teach their children politically unpopular ideas. French parents are limited to this because rights in France are established through statute—not through judicial recognition of rights in the nation's constitution. The French system, then, provides fewer checks to counteract a tyranny of the majority.

Parents in the United States do not have recourse under the ICCPR because international treaties like the ICCPR are not binding on courts in the United States. However, the Supreme Court can hold that the nation's constitution protects various rights. While it is unlikely that the Supreme Court would find that the right to homeschool is a fundamental right, the Court could properly balance the government's interests, the parents' interest, and the child's interest by subjecting legislation that restricts parental rights to intermediate scrutiny. Requiring the government to provide more than a rational basis for its legislation provides an added layer of protection to minority groups that contain parents hoping to educate their children in accordance with their minority identity.