

DENOMINATION OR DOMINATION? THE ROLE OF RELIGION IN SCHOOLS IN IRELAND AND FRANCE AND ITS IMPACT ON THE RIGHTS OF THE CHILD UNDER INTERNATIONAL LAW

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ABSTRACT

Both the French and Irish Republics have enacted legislation which allows religious discrimination against school children, namely under the *Loi No. 2004-228 du 15 Mars 2004* and the *Equal Status Act 2000*. These provisions are contrary to international law according to the International Convention on the Rights of the Child and have been heavily criticised by various United Nations committees. Furthermore, these policies fail to consider the republican values both states claim to uphold, as well as ignoring the rising pluralism and multiculturalism in their jurisdictions. The French and Irish systems can be viewed as polar opposites: one places a ban on religion and religious symbols; while the other enables an educational climate which is over-saturated with religious schools.

Keywords: International law, rights of the child, convention on the rights of the child, France, Ireland, Catholicism, Islam, Secularism, republicanism, migration, demographic shifts, children, education, schools, human rights

I. Introduction

At present in Ireland and France, the role of religion in the national education systems could be viewed as being polar opposites. One, Ireland, entails a system of schools almost run entirely by religious organisations and allows educational institutions to discriminate against children who do not prescribe to the school's faith. France, on the other hand, does not allow religion to be taught in public schools, nor does it allow pupils to publicly show their religion on school grounds by way of religious symbols. Despite both describing themselves constitutionally as secular republics, it is submitted that neither France or Ireland respect or protect the rights of the child to education and expression guaranteed under international law, nor do their legal provisions uphold the tenets of secularism or republicanism. The goal and purpose of this article is to highlight and criticise legislation and educational systems which discriminate against children and hinders their ability to receive an education. As such, this article considers the question: Does the French and Irish legal systems' religious discrimination against children in education violate international law?

The next section of this article will consider the current legislation in Ireland and France, Section 2.1 will analyse the Irish system which upholds an educational system whereby unbaptised children are legally discriminated against and prevented from attending schools based on their religion. To follow, section 2.2 will focus on the French 'headscarf ban' in

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schools and will be discussed in light of its ability to prevent Muslim girls from attending mainstream education. Section 3 will set out the international framework concerning the rights of children, in particular their rights to education and freedom expression. There will be particular emphasis on the United Nations Convention on the Rights of the Child and the International Convention on Civil and Political Rights. Section 4 will offer some reflection on the rights of the child and the violations incurred by France and Ireland with consideration of republican theory, international legal precedent and scholarly commentary. Finally, Section 5 will conclude the article.

Both states have received widespread criticism and considered failures with objectionable policies, which will be discussed in Section 4. In Ireland, the state has ‘contracted out’¹ the issue of education to religious institutions, thus is not actively making sufficient and adequate education available in terms of international obligations, while in France the state bars access to public school education, de facto, by virtue of other policies, namely the imposition of school dress codes in order to protect the rights of others, a ground considered by Temperman to be ‘too vague’.²

It is worth clarifying that the intention and goal of this article is not to attack France or Ireland, nor is it to blindly promote religion or religious education. Rather, this article seeks to highlight the injustices suffered by children, and to draw attention to discrimination endured by children by their own state. Children have a right to education, and this is vital to the development and growth of not only the child, but of society.

II. Case Studies – Irish and French Approaches to Education and Religion

II.1. Ireland – Denomination Domination

At present in Ireland, denominational or religious primary and post-primary institutes are afforded the right to exclude children from admission if their faith differs from that of the prescribed school ethos. Section 7(3)(c) of the Equal Status Act 2000 reads that there shall be no discrimination:

‘Where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school...’³

While this is normally only invoked when a class is over-subscribed, a denominational school is well within its rights under the law to refuse a place to a child solely on the basis of their religion differing from that of the school ethos. The ethos of a school has varying definitions, but has been described as the ‘spirit’, ‘climate’ or ‘ambience’ of a school.⁴ On first reading, this may appear warranted on the basis of freedom of association and in order to uphold the religious integrity of the school. Upon further inspection however, the provision is deeply troubling

¹ Temperman, “State Neutrality in Public School Education: An Analysis of the Interplay Between the Neutrality Principle, the Right to Adequate Education, Children's Right to Freedom of Religion or Belief, Parental Liberties, and the Position of Teachers” 32(4) *Human Rights Quarterly* (2010) 865, 868

² *Idem*, p 889.

³ Equal Status Act 2000, section 7(3)(c) [Ireland].

⁴ Alder “The Meaning of School Ethos” 16(1) *Westminster Studies in Education*, (1993) 59, 60.

considering that an overwhelming majority of schools in Ireland belong to the Catholic denomination. Of the 3,228 primary schools recognised in Ireland, 98% (3,168) are under Catholic denomination.⁵ As such there is a severe lack of multi-denominational or non-denominational schools in the Irish state. The fact that no system of state-run secular public schooling exists in Ireland only deepens concern; all schools require a patron in order to be recognised and receive funding, which is defined as an individual who:

‘shall carry out the functions and exercise the powers conferred on the patron by this Act and such other functions and powers as may be conferred on the patron by any Act of the *Oireachtas* (Irish Parliament) or instrument made thereunder, deed, charter, articles of management or other such instrument relating to the establishment or operation of the school.’⁶

While a patron may be an individual, a group of persons, or a corporate body, in most cases the patron is a local parish priest or the bishop of the diocese. As such, non-Catholic children are at a heightened risk of discrimination on the basis of their religion (or lack thereof) as well as a potentially outright denial of their right to education. This is particularly worrying considering non-Catholic children living in rural or isolated areas may not have access to either a non-denominational school nor a school whose ethos matches their faith, and as such may have to travel long distances to a school, be baptised in the Catholic faith simply to be eligible for attendance or may not be capable of attending school at all.

Historically a Catholic and mostly ethnically homogenous nation, Ireland has begun to see a shift in demographics in recent years, partly due to a rise in immigration. According to the 2011 and 2016 censuses, the percentage of the Irish population identifying as Roman Catholic has fallen by 3.4%, Church of Ireland has seen a decrease of 2% and those identifying as Christian fell by 9.1%, whereas Islam (+28.9%), Hinduism (+34.1%), and ‘no religion’ (+73.6%) have all seen major increases in following.⁷ While Catholics still make up 78.3% of the population, the rising numbers of non-Christian faiths should be taken into consideration with regards to education, in particular the sharp increase in those aligning with no faith.

The Constitution of Ireland, *Bunreacht na hÉireann*, holds that ‘The State guarantees not to endow any religion’ and as such does not discriminate among schools based on religion with regards to funding and equal status under the law.⁸ On this basis, Ireland is legally a secular state, much like the French Republic. However, this loses credibility considering the numerous references to God and religion found in other sections of the *Bunreacht*. Article 44.1 reads that:

“The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence and shall respect and honour religion.”⁹

Furthermore, the Preamble pronounces:

“In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,

⁵ Mawhinney, ‘A discriminating education system: religious admission policies in Irish schools and international human rights law’ 20 *International Journal of Children’s Rights* (2012) 603, 603

⁶ *Idem*, section 8(6).

⁷ Central Statistics Office of Ireland, *Census of Ireland* (2016), page 72.

⁸ *Bunreacht na hÉireann*, article 44.2.2⁰.

⁹ *Idem*, article 44.1.

we, the people of Éire humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, who sustained our fathers through centuries of trial...”¹⁰

Hardly an ideal vision of secularism and a far-cry from the French notion of *laïcité*. This has led to the *Bunreacht* to be described by Hogan as ‘the antithesis of neutrality’.¹¹

Article 44.2.3° of the *Bunreacht* holds that: “The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status”.¹² On this basis, one could argue that section 7(3) of the Equal Status Act is in fact unconstitutional, as the state has made provision that discriminates and imposes a disability on the grounds of religion in the area of education policy. The Irish legislature has imposed a direct disability which hinders non-Catholic children from attending school and upholds a culture of religiously segregated education.

Irish Courts have considered the interpretation of Article 44.2.3 ° of the Constitution and religious freedom within the *Bunreacht*. Most notably, in *McGee v Attorney General*, Walsh J decreed that the provisions of Article 44.2.3 ° guaranteed that: ‘no person shall directly or indirectly be coerced or compelled to act contrary to his conscience in so far as the practice of religion is concerned.’¹³ This judgement from 1974 has not rung true, as it is not the case in Irish society today. According to a survey carried out by Equate, an NGO which seeks to promote equality in education in Ireland, 1 in 5 parents in Ireland baptised their children in the Catholic faith solely for the purposes of being eligible to attend a school.¹⁴

Irish law does not take the rising multiculturalism seen in Irish society into account and does not promote a culture of pluralism. A widely-publicised news report in 2017 centred around a family of Indian-born Hindus, who had lived in Ireland for nine years and naturalised as citizens, were refused a place for their daughter in seven local schools on account of her religion. The Panicker-Kalangara family claimed that the exclusion of their 6-year old daughter Eva made them consider leaving Ireland and rather than sending their daughter to a school 5 minutes away from their home with her friends, Eva was enrolled in another Catholic school seven kilometres away. There were no Hindu or non-denominational schools nearby. Eva’s father claimed when he inquired to the schools as to why his daughter was placed on a waiting list when her classmates in pre-school had been granted admission:

“... They said they would keep her on the list for the next year. Next year, what would happen is she would have gone back on the same list. There’s no chance... They accept the Catholics first, then the catchment area, then the past pupils’ children, then they have teachers’ children and then comes the non-Catholics in the catchment area... By the time you’ve gone through the list you won’t get a place.”¹⁵

¹⁰ *Idem*, Preamble to *Bunreacht na hÉireann*.

¹¹ Hogan “A Veiled Problem: Religion in Schools in Ireland” 8(1) *Trinity College Law Review* (2005) 5, 10.

¹² *Bunreacht na hÉireann*, *supra* note 8, Article 44.2.3.°

¹³ *McGee v Attorney General* [1974] IR 284, 316.

¹⁴ C. O’Brien, “One in five baptised child just to gain entry to school” *The Irish Times* (Dublin, 16th February 2017), at: <https://www.irishtimes.com/news/education/one-in-five-baptised-child-just-to-gain-entry-to-school-1.2975741> (accessed on 2 April 2018).

¹⁵ H. Halpin, ‘All the children that live in our building got places in local schools - our daughter didn’t’ *The Journal*, (May 16th 2017), at: <http://www.thejournal.ie/hindu-family-denied-place-at-seven-schools-because-of-religion-3390328-May2017/> (accessed on 2 April 2018).

The Catholic Primary School Managers' Association also confirmed that they were given legal advice which 'confirmed that schools with enrolment policies that favour Catholics were not breaking the law: only in cases where the school refuses to admit a person who is not of that denomination the school must prove that this is essential to maintain the ethos'.¹⁶ As such, Irish law has established a culture which has potential to coerce or influence children into prescribing to a religion against their will (and of their parents) and enables the violation of a child's right to education. As will be discussed later, this is strictly contrary to international law.

II.2. France – State Domination

In 2004, the French legislature enacted *Loi No. 2004-228 du 15 Mars 2004*, which inserted a prohibition on wearing religious symbols in public schools into the *Code Civil*. Translated from French, the law reads: 'In schools, public colleges and high schools, the wearing of signs or dresses by which students ostensibly manifest a religious affiliation is prohibited.'¹⁷

France prides itself as a republic and the notion of secularism, or *laïcité*, is central to this. *Laïcité* supports the free exercise of religion, without promoting religion or religious life, nor does France provide financial support or legal recognition to religious orders.¹⁸ The right of access to education is enshrined in the Constitution of 1958, and instruction in public schools is to be without the influence of religion. Secular education in France was considered to be the ideological foundation of the young republican against the influence of the conservative powers of the Catholic Church.¹⁹ The first article of the French Constitution defines France as an "indivisible, secular (*laïque*), democratic, and social Republic, securing equality before the law for all its citizens without distinction of origin, race, or religion.'²⁰ The French interpretation of secularism differs greatly from its Irish counterpart.

French secularism stems from the separation of state and church adopted in 1905. The law guarantees the freedom of conscience and the free exercise of religion, meaning the state is neutral in religious affairs and respects the beliefs and faiths of all citizens.²¹ In 2017, the Minister of National Education Jean-Michel Blanquer stated in a communication celebrating the anniversary of the separation of church and state that the mission of *laïcité* is "... to educate minors and lead them to freedom and citizenship... to protect them from any political, religious, ideological or economic influence."²² Lyon and Spini identify two opposing interpretations of *laïcité*. First, where ostentatious religious symbols act as 'a form of religious propaganda' which oppose certain values which are protected in French Republicanism, such as tolerance and equality; and second, where '*laïcité* only requires neutrality from the state, and not from its citizens', and as such banning the *hijab* is 'in breach of this neutrality'.²³ The latter interpretation

¹⁶ Mawhinney 2012, *supra* note 5, 610.

¹⁷ *Loi n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*, Art. L. 141-5-1.

¹⁸ Hogan 2005, *supra* note 11, page 6.

¹⁹ Hörner and Many 'France' in Hörner, Döbert, Reuter and von Kopp (eds) *The Education Systems of Europe* (2nd ed, Springer, 2007), page 274.

²⁰ *Constitution française du 4 octobre 1958*, Article 1.

²¹ Williame, 'Teaching Religious Issues in French Public Schools: From Abstentionist *Laïcité* to a return to Religion in Education', in Jackson, Miedema, Weisse and Williame (eds) *Religion and Education in Europe: Development, Contexts, and Debates* (Waxmann, 2007), page 88.

²² J.M. Blanquer, *Communication en conseil des ministres: la laïcité à l'école* (8th December 2017), at: <http://www.education.gouv.fr/cid124231/communication-en-conseil-des-ministres-la-laicite-a-l-ecole.html&xtmc=laicite&xtnp=1&xtr=3> (accessed 20th March 2018).

²³ Lyon & Spini, 'Unveiling the Headscarf Debate', 12(3) *Feminist Legal Studies* (2004) 333, 336.

appears to be more in line with republican theory and has greater potential to protect the rights of the child in education. This will be discussed in greater detail in a later section.

France provides a system of state-run public schools, where the vast majority of pupils attend. In France only 16% of students attend privately run schools, with 90% of these establishments belonging to the Catholic denomination.²⁴ Religion is not taught as a singular course or is it promoted in public schools, instead education focuses on promoting moral and civic values. It is also worth noting that the Law of 28th March 1882 provides for the closure of schools every Wednesday to facilitate parents to provide for the religious education of their children outside of the school setting.²⁵

The ban on religious symbols and clothes in schools has been subject to much controversy and debate, particularly considering the prohibition appears to disproportionately affect Muslim girls who choose to wear a headscarf or *hijab* to school. As the law only prohibits wearing religious symbols which are considered ostentatious, students wearing symbols or religious dress from other religions, such as Christianity or Judaism, are less likely to be affected. This has led to the prohibition to be dubbed the ‘headscarf ban’ or ‘*foulard* ban’ by commentators.²⁶ Laborde has noted: ‘the *hijab* in school infringed the neutrality of the public sphere, and therefore the equality of all citizens; second, it was a symbol of sexist domination denying the freedom of the girls wearing it; and finally, accepting it would increase the public recognition of cultural difference and therefore undermine the common identity of the nation.’²⁷

French legislators argue that the ban is to protect the rights of students and to uphold the tenets of republican education. Advocates held that the ban is designed to uphold the ‘individual autonomy’ of women which may be infringed by wearing a *hijab*, to ensure ‘secular equality’ whereby a faith-free public sphere respects all citizens regardless of creed, and to celebrate ‘national cohesion’ by removing symbols of divisiveness that hinder ‘integration of minorities into the national community’.²⁸ This last point is particularly worrying. If the French Republic guarantees equal treatment without distinction of origin, race, or religion, why is a religious symbol banned on the basis of justifying integration? De Bula Baines argues that the animosity towards the *hijab* stems from the notion that a headscarf worn by a Muslim girl signifies a ‘refusal to become French’.²⁹ Heine has also proposed that the *hijab* represents a ‘threat to French national identity... it would disrupt the transmission of common republican values, among which the value of *laïcité* is preponderant.’³⁰

II.2.1. Jurisprudence of the European Court of Human Rights

The most serious punishment for wearing a headscarf to school in France is expulsion, and several cases have been brought forward for judicial review in the European Court of Human Rights. In these cases, the ECtHR has followed the *Şahin v Turkey* precedent; whereby a medical student was not permitted to wear her *hijab* to Istanbul University, as according to the

²⁴ Hogan 2005, *supra* note 11, page 13.

²⁵ *Ibid.*

²⁶ See C. DeBula Baines, L’Affaire des Foulards–Discrimination, or the Price of a Secular Public Education System, 29 Vanderbilt Journal of Transnational Law (1996), 303; Laborde, ‘State paternalism and religious dress code’ 10(2) International Journal of Constitutional Law (2012), 398.

²⁷ Heine, ‘The *Hijab* controversy and French Republicanism: Critical analysis and normative propositions’ 7(2) French Politics (2009) 167, 173.

²⁸ Laborde, ‘State paternalism and religious dress code’ 10(2) International Journal of Constitutional Law (2012), 398, 398.

²⁹ C. DeBula Baines, L’Affaire des Foulards–Discrimination, or the Price of a Secular Public Education System, 29 Vanderbilt Journal of Transnational Law (1996), 303, 311.

³⁰ Heine 2009, *supra* note 27, 176.

Court it may be ‘...necessary to place restrictions on freedom to manifest one’s religion or belief in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected.’³¹

The cases of *Atkas* and *Dogru* were both brought to the ECtHR arguing the ban on ostentatious religious symbols violated the European Convention on Human Rights, in particular articles 9 (freedom of thought) and 14 (prohibition on discrimination).³² In *Atkas v France*, a 16-year old Muslim girl was expelled from a French school due to her wishes to wear a religious headscarf to school and her refusal to remove it.³³ The applicant sought to wear a hat to school, a non-religious item of clothing, in place of the *hijab*. This was also rejected by the school and as such she was permanently excluded from the institution. The case was appealed to the ECtHR and subsequently rejected on the grounds of “...the desire to protect the rights and freedoms of others, and to preserve public order.”³⁴ In *Dogru v France*, where another Muslim schoolgirl was expelled for wearing a *hijab* in physical education lessons, the ECtHR held there had been no violation of the Convention on the basis:

‘...that it was for the national authorities, in the exercise of their margin of appreciation, to take great care to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion... the penalty of expulsion does not appear disproportionate.’³⁵

Both judgements are silent and unclear as to how a child wearing a religious symbol, or a non-religious item of clothing in its place, is a threat to public order or the rights of others. These judgements place strong emphasis on the margin of appreciation in order to uphold a narrow view of secularism. Perhaps this heavy margin was offered on the basis that the ban on religious symbols is prescribed in legislation, however the *Loi No. 2004-228 du 15 Mars 2004* also does not offer any reasoning behind the ban on ostentatious religious symbols. French law only states that they are prohibited. The Court deemed discrimination against a child to be justifiable and as such failed to protect the applicants’ rights to education due to their religious convictions. As will be discussed below, the UN Human Rights Committee has taken an opposite approach to margin of appreciation and the justiciability of discrimination against children based on their religion.

III. International Legal Framework and the Rights of Children

This section will consider the international legal framework concerning the rights of children with regard to education, freedom of expression and opinion, anti-discrimination, and religious freedom. In particular the United Nations Convention on the Rights of the Child, International Convention on Civil and Political Rights, UNESCO Convention against Discrimination in Education will be discussed, as well as acknowledging how the legal systems of France and Ireland are incompatible with these treaties.

III.1. United Nations International Convention on the Rights of the Child

³¹ *Sahin v Turkey* App. No. 44774/98, 44 Eur. H.R. Rep. 99 (2005) at 106.

³² European Convention on Human Rights (1953), articles 9 and 14.

³³ *Aktas v France* (43563/08) Unreported June 30, 2009 (ECHR).

³⁴ *Ibid.*

³⁵ *Dogru v France* App. No. 27058/05 71, 76.

The United Nations Convention on the Rights of the Child, drafted in 1989 and signed by 140 nation states, was ratified by France in 1990, and by Ireland in 1992. The Convention (hereafter, the CRC) sets out the civil, political, economic, social, health and cultural rights guaranteed to all children, ranging from the definition of a 'child', to the right to life, to the protection from abuse and neglect. Article 2 of the CRC outlines that state parties 'shall respect and ensure the rights set forth in the Convention to each child... without discrimination of any kind, irrespective of his or her race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'.³⁶ This section will discuss how neither jurisdiction has upheld the tenets of the CRC with regards to protecting children from religious discrimination and ensuring access to education.

A variety of rights are affected by and at risk of violation due to the role of religion in the Irish and French educational systems. In particular, we will be focusing on the rights envisioned under Articles 12, 13, 14, and 28 as these sections are most at risk of violation by Ireland and France's policies. These provisions are also being addressed on the basis that they concern freedom of expression and opinion, anti-discrimination, and the right to education.

Article 12 concerns the respect for the views of children capable of forming their own opinions. The article reads: 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'³⁷ This should be taken into consideration concerning the ban of ostentatious religious symbols and expression in French schools. Pupils in high school are more than capable for forming their own views and opinions, as such they should have the right to freely express their religion in school. The same can be said for non-Catholic children in Ireland who are refused school places on account of their religion.

The right to freedom of expression is guaranteed under Article 13, and under paragraph 13(2) may be restricted to protect the rights or reputation of others, national security, public order, or public health or morals.³⁸ It is unclear exactly how a Muslim child wearing a headscarf in a French public school or admitting unbaptised children to Catholic ethos schools can affect any of these limitations. It is vital to uphold the rights to freedom of expression and opinion enshrined under Articles 12 and 13. As opined by Liu: 'Freedom of expression is the basis of human rights, the source of humanity and the mother of truth. To block freedom of speech is to trample on human rights, to strangle humanity...'³⁹

Article 14(1) stipulates that all state parties will 'respect the right of the child to freedom of thought, conscience and religion', and subsection 3 notes that the 'freedom to manifest one's religion may be subject to limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others'.⁴⁰ The restriction on the manifestation and expression of religion in schools in France and Ireland are prescribed under legislation, however whether or not such bans are necessary to protect the grounds listed, such as public safety and order, is questionable and not explained under the Equal Status Act 2000 nor the *Loi No. 2004-228 du 15 Mars 2004*.

³⁶ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, article 2(1).

³⁷ *Idem*, article 12(1).

³⁸ Convention of the Rights of the Child 1989, *supra* note 36, Article 13.

³⁹ Mokrosinska, 'The People's Right to Know and State Secrecy' *Canadian Journal of Law and Jurisprudence* (2018) 87.

⁴⁰ Convention of the Rights of the Child 1989, *supra* note 36, Article 14 (1) and (3).

The right to education is enshrined in Article 28 of the CRC and guarantees its progressive application on the basis of equality.⁴¹ In particular, state parties should endeavour to make primary and secondary education ‘compulsory and available to all’, and to take ‘appropriate measures to ensure school discipline is administered in a manner consistent with the child’s human dignity and in conformity’ with the Convention.⁴² This right is most at risk of violation by France and Ireland’s educational systems. Discrimination against children in their pursuit of education is contrary to international law. In Ireland’s case, it is by creating legal barriers which make it more difficult for non-Catholic children to gain admission to schools. While this was most likely not the intention of the *Oireachtas* (Irish Parliament) in drafting the Equal Status Act⁴³, it is certainly a highly unsatisfactory outcome, and has negligently not been amended. In France, the expulsion of Muslim girls for wearing a headscarf to school also infringes their right to education, as well as their right to appropriate school discipline consistent with the CRC. The punishment of Muslim girls for wearing a headscarf singles out these pupils purely on the basis of their religion and their expression of such, which they have a right to do under the CRC. This is especially worrying as for many Muslims, wearing a *hijab* is a central aspect of their faith and religious convictions. Furthermore, it may hinder devout Muslim parents from sending their daughters to public schools and may be forced to send their daughters to private institutions which align with their faith. Such school discipline disproportionately affects Muslim girls to such a point that it should be considered discrimination and contravenes the provisions of the Convention.

III.2. UN International Convention on Civil and Political Rights

Similar rights are also found in the International Convention on Civil and Political Rights (hereafter, ICCPR). Article 18 guarantees that everyone shall have the right to freedom of religion, and to ‘manifest their religion or belief in worship, observance, practice, and teaching’.⁴⁴ The ICCPR also holds that ‘no one shall be subject to coercion which would impair his freedom to have or to adopt a religion of their choice’.⁴⁵ This right is threatened in Ireland due to the overwhelming majority of Catholic denominational schools and the exclusion of non-Catholic children from admissions. This is also violated by France as Muslim girls are barred from manifesting their religion by observing and practicing the Islamic tradition of wearing a *hijab*.

III.3. UNESCO Convention against Discrimination in Education

Another international legal text worth considering is the UNESCO Convention against Discrimination in Education. Drafted in 1960, the Convention was ratified by France in 1961, and has never been signed by Ireland. Article 1 defines discrimination as ‘any distinction, exclusion, elimination or preference based on race, colour, sex, language, religion, opinion, national or social origin, economic condition or birth, which has the effect of nullifying or impairing equality of treatment in education’.⁴⁶ This includes depriving access to education and establishing and maintaining separate educational institutions for different persons. Article 2 elaborates that there shall be no discrimination where:

⁴¹ *Idem*, Article 28.

⁴² *Idem*, Article 28(2).

⁴³ Equal Status Act 2000, *supra* note 3.

⁴⁴ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, Article 18.

⁴⁵ *Ibid*, Article 18(2).

⁴⁶ UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960, Article 1.

‘... establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if *participation in such systems or attendance at such institutions is optional...*’⁴⁷

Furthermore, Article 3 holds that state parties must ensure by legislation that there is no discrimination in the admission of pupils to educational institutions.⁴⁸ Ireland's refusal to sign the UNESCO Convention is intriguing, as one can't help but ponder if this was a conscious decision. Considering the provisions prescribed are contrary to Irish law which explicitly allows religious discrimination and has given rise to a society with an educational system which is oversaturated with Catholic ethos schools, was this treaty intentionally left unsigned? This is a strong example of how the Irish educational system is out-of-line with international norms and standards.

IV. Reflection and Arguments - International Criticism, Secularism, Republicanism and State Indoctrination

Both the Irish and French systems have been subject to criticism both in legal scholarship and in the international law arena. It is interesting how greatly the interpretation of secularism differs between the two states. France, a state that guarantees the equal treatment of citizens on the basis of *liberté, égalité, fraternité*, creates an environment which prohibits a child's right to express themselves and disproportionately impacts (and punishes) a particular religious group and gender. Ireland, a state which declares itself as secular within its constitution, allows for the discrimination and exclusion of children from education based on their religion in a system overwhelmingly dominated by Catholic schools. One could almost imagine them being at the opposite ends of a spectrum, at one end prohibiting all religion in schools, and the other essentially enforcing a religious denomination upon students. What both states appear to be lacking is the appreciation of pluralism in societies which are experiencing a shift in demographics and culture. McDonagh argues ‘pluralism is vital to the survival of liberal democracy... government policies relating to education should protect and foster a number of different school models in order for the state to be neutral’.⁴⁹ Temperman has also posited that an unneutral education system could theoretically ‘foster and condone state indoctrination’.⁵⁰ In Ireland, this notion has potentially traversed from the theoretical realm and into reality.

IV.1. United Nations' Criticism of Ireland and France

The United Nations Human Rights Committee and the Committee on the CRC has expressed its disapproval of Irish and French religious discrimination policies. In its Fourth Periodic Report of Ireland, the UN Human Rights Committee criticised current Irish procedure and the Equal Status Act, where the Human Rights Committee urged the Irish state to ‘introduce legislation to prohibit discrimination in access to schools on the grounds of religion, belief or other status’.⁵¹ The Committee also expressed concern at the “slow progress in increasing access to secular education through the establishment of non-denominational schools” and the apparent reluctance to accommodate minority faith or non-faith children.⁵² In 2005, the

⁴⁷ *Idem*, Article 2. Emphasis added by author.

⁴⁸ *Idem*, Article 3.

⁴⁹ McDonagh, “‘They can live in the desert but nowhere else’: Human Rights, freedom of religion and the demand for State control over access to faith schools’ 20(5) *The Bar Review* (2015) 124, 126.

⁵⁰ Temperman 2010, *supra* note 1, page 886.

⁵¹ UN Human Rights Committee, *Concluding observations on the fourth periodic report of Ireland*, 19th August 2014, CCPR/C/IRL/CO/4.

⁵² *Ibid.*

Committee on the Elimination of Racial Discrimination urged Ireland to ‘amend the existing legislative framework so that no discrimination may take place as far as the admission of pupils of all religions in schools is concerned’.⁵³

French policy has not been spared from the scrutiny of the international community either. The UN Committee on the CRC has criticised the ban on wearing religious symbols in school at its Summary Records of its 967th and 968th meetings, which deemed French law to be inconsistent with the Convention.⁵⁴ In 2004, the Committee on the CRC highlighted this in their Concluding Observations and drew attention to the rights guaranteed under Articles 14 and 28. The Committee expressed their concern over “... the alleged rise in discrimination, including that based on religion. The Committee is also concerned that the new legislation . . . on wearing religious symbols and clothing in public schools may be counterproductive, by neglecting the principle of the best interests of the child and the right of the child to access to education...”⁵⁵

In 2003, the UN Human Rights Committee declared in *Leirvåg et al v Norway*, that educational systems which include compulsory religious instruction with no or limited possibility of exemption violates the rights to freedom of thought, conscience and religion under Article 18 of the ICCPR.⁵⁶ Here, the complainants were all humanists who sought to have their children exempt from the compulsory Christian teaching contained in the Norwegian education system on the basis they wanted their children to form their own religious views independently or at home. All children had been rejected full exemption from class afforded under Norwegian law, and as such were only granted partial exemption. The complainants argued that despite the partial exemption, their children: ‘were required to learn and recite prayers from the Bible; learned Bible passages by heart to perform in a Christmas concert; taught that disobeying God was the “worst thing someone could do”, and were sent to the school kitchen during religion classes’ (where children were also sent as punishment for misbehaving in class).⁵⁷ The complainants also noted that their children exhibited signs of loyalty conflicts between what they were taught by their parents versus teachings in school, and experienced bullying due to their family’s non-Christian beliefs. Overall, the complainants submitted it was their children’s right to choose and hold a religion or life stance of their own and that the compulsory Christian religion classes force them to participate in a learning process that includes indoctrination into the direction of a religious or Christian life stance. The Committee held that there was indeed a breach of international law and that the rights of the parents and children were violated by Norway.⁵⁸ In particular the Committee noted the Norwegian system ‘...does not currently protect the liberty of parents to ensure that the religious and moral education of their children is in conformity with their own convictions.’⁵⁹ Aspects of this case echo the current climate in Ireland, and it is likely that a similar case taken against the Irish state would succeed. This is supposed on the basis that the current system in Ireland fosters an educational culture where children are taught in an environment where one religion dominates the curriculum which may amount to indoctrination. Furthermore, the Irish system does not afford parents the liberty to ensure that their children’s beliefs are in conformity with their own.

⁵³ UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations*, Ireland, 14 April 2005, CERD/C/IRL/CO/2, paragraph 18.

⁵⁴ Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child, France*, 30th June 2004, U.N. Doc. CRC/C/15/Add.240.

⁵⁵ *Idem*, paragraph 25.

⁵⁶ *Leirvåg v Norway*, UNCHR, [2004] CCPR/C/82/D/1155/2003.

⁵⁷ *Leirvåg v Norway* 2004, *supra* note 56, paragraphs 3.1 – 6.2.

⁵⁸ *Ibid*, paragraph 15.

⁵⁹ *Ibid*, paragraph 14.6.

IV.2. Republican Theory and State Neutrality

As mentioned previously, both France and Ireland are republican nation-states. Central to republicanism are the ideals of liberty, sovereignty of the people, and the notion of freedom as non-domination. Hickey and Daly posit ‘domination arises where one individual or group or the state itself, enjoys the unchecked capacity to interfere in the choices of another individual, or group’.⁶⁰ Overall, republicans conceive freedom through the law rather than from it.⁶¹ In France, the outright ban on religious dress in school, which disproportionately impacts Muslim girls, is a direct interference in the choices of a group of individuals and as such, dominates them. In Ireland, the absence of any form of state-run secular schooling, and the provisions which allow a predominately Catholic education system to exclude non-Catholic children also interferes with the capacity of individuals to make their own freely formed decisions.

Laborde argues that critical republicanism sharply rejects recent moves towards the state regulation of Muslim (particularly female) dress and practices and that the republican values of freedom, equality and community are in need of ‘rescue’.⁶² As discussed above, advocates of the French law argued that the ban on the *hijab* protected Muslim women and upheld their autonomy as people. However, such paternalistic governance is patronising and supports a narrow and conservative view of the Islamic community. Such ideals envision Muslim women and girls as submissive and forced to dress modestly and contradict the tenets of republicanism which treats citizens as sovereign beings capable of forming their own decisions. Laborde offers a feminist critique and highlights young women are not necessarily victims: ‘they are agents and subjects of their spiritual lives, and they assert their agency in relation to their religion, the *hijab* can be an ingenious way to reconcile a commitment to faith and family on the one hand, and freedom in the public sphere on the other’.⁶³ No plausible interpretation of the three central republican ideals of equality, freedom, and community justifies neither a ban on religious signs in schools, nor excluding non-baptised children from enrolment.⁶⁴ Both states have failed to implement the spirit and values of

Building upon Lyon and Spini’s interpretation of *laïcité* as a neutral state (as opposed to neutral citizens) the French ideal of secularism appears to be approaching the realm of anti-Islam rather than anti-religion or religious neutrality. The excessive focus on the *hijab* by legislators, along with the paternalistic approach of needing to protect and free Muslim women from the clutches of Islam, further emphasises this point. Westbrook has suggested that, unfortunately, Islamic communities have become the latest public ‘enemies’ in Western society since the end of the Cold War, arguing that ‘Islam is substituted for communism or fascism as the ideology of the barbarians.’⁶⁵

V.3. Potential to Incite Radicalization?

It is not uncommon for those who feel oppressed or discriminated against to retaliate against their antagonists. A troubling trend appears to have emerged, whereby the French ban on headscarves has contributed to a rise in Islamic radicalism. Amghar has observed that girls expelled from French schools for wearing a *hijab* to school began to wear a more conservative

⁶⁰ Daly and Hickey, ‘Religious Freedom and the ‘right to discriminate’ in the school admissions context: a neo-republican critique’ 31(4) *Legal Studies* (2011), page 2 - 3.

⁶¹ *Ibid.*

⁶² Laborde 2012, *supra* note 28, 398.

⁶³ Laborde 2012, *supra* note 28, 401.

⁶⁴ *Idem*, 399.

⁶⁵ DeBula Baines 1996, *supra* note 29, 313.

full-face headscarf called a *niqab* in a fashion known as ‘*salafi*’.⁶⁶ Salafism symbolises a deeper and more profound religious belief and is, according to Roy, ‘a conscious path of religious radicalization for young women’.⁶⁷ This has also been recognised by Verkuyten, who suggests that discrimination ‘...is sometimes associated with more radical beliefs and actions...The discrimination that Muslim minority youth face can lead to stronger Muslim group identification with an engagement in the related religious normative practices such as Islamic clothing...and growing a beard’.⁶⁸

Verkuyten has noted that radicalised Islamists often welcome European policies which prejudice or ostracise the Muslim community ‘...because they see this as a confirmation of oppression, injustice, and hostility toward Islam and they try to use it for political provocation and escalation purposes’.⁶⁹ Ozdamar and Akbaba concur, arguing ‘Members of a religious minority perceive discriminatory policies as fundamental threats to their moral framework and develop antagonistic feelings toward the perpetrators of such policies. Acts of discrimination by government are perceived by the victims as evidence of the government’s intolerance and lack of respect for other belief systems.’⁷⁰ Body-Gendrot supports such a claim, highlighting that in France, teachers and principals claimed ‘to fear the accommodation of religious particularisms and pressed for a law “protecting” them from the threat of the Islamization of France... Fears of fanaticism are the worst to combat and no one can evaluate how serious the threat of radical Islam is’.⁷¹ It is interesting how in enacting laws aimed at reducing religious radicalisation and from infringing the rights of others, the French legislature has created a culture which gives rise to religious fundamentalism and radicalization.

V. Conclusions

In considering the academic and legal arguments discussed, the French and Irish education systems violate the rights enshrined in the Convention on the Rights of the Child. These jurisdictions have enacted legislation which can prevent children from attending school and from receiving an education as guaranteed under Article 28 of the CRC.⁷² In France, children can be prevented from attending school for openly expressing their religion, and in Ireland children are excluded from attending schools due to their religious affiliations differing from that of the educational institution. It would be in the best interests of the children of Ireland and France for the legislatures of each state to reconsider educational policy in light of their international legal obligations under the Convention and the UNESCO Convention against Discrimination in Education. It is also submitted that Ireland become party to the UNESCO Convention to further uphold the rights of children in Ireland.

The *Loi No. 2004-228 du 15 Mars 2004* should be repealed from French law and be replaced with legislation which is more representative of the ideals of republicanism. For example, enacting legislation which prohibits being coerced into following a religion or a particular interpretation of a religion by another, such as being forced to wear a *hijab* against one’s will. This upholds the republican ideal of freedom as non-domination as it places control and choice back into the hands of the Muslim woman, rather than the state making that decision on her

⁶⁶ *Idem*, 404.

⁶⁷ *Idem*, 404.

⁶⁸ Verkuyten, ‘Religious Fundamentalism and Radicalization Among Muslim Minority Youth in Europe’ 23(1) *European Psychologist* (2018) 21, 26.

⁶⁹ *Idem*, 27.

⁷⁰ Ozdamar & Akbaba, ‘Religious Discrimination and International Crises: International Effects of Domestic Inequality’ *Foreign Policy Analysis* (2013) 1, 4-5.

⁷¹ Body-Gendrot, ‘France Upside-Down over a Headscarf’ 68(3) *Sociology of Religion* (2007) 298, 301.

⁷² *Convention on the Rights of the Child*, *supra* note 36, Article 28.

behalf. This also reflects Lyon and Spini's interpretation of secularism as neutrality on behalf of the state, not the citizens.

Ireland should follow suit and repeal Section 7(3)(c) of the Equal Status Act and remove the exemption for schools to discriminate against children on account of their religion. Furthermore, Ireland should cease the patron model of education as the sole system of school governance and introduce a public state-run education system. This system should be either multi-denominational or secular, no preference should be given to any one religion. This system should run in tangent with the patron system and aim to alleviate the failings and discrimination endured by non-Catholic children in Ireland. The notion of pluralism should be central to this new education system.