



JOHNS HOPKINS
SCHOOL of EDUCATION

Institute for Education Policy



FRANCE by André Legrand and Charles L. Glenn

Legrand, A. & Glenn, C. L. (2012). France. In C. L. Glenn & J. De Groof (Eds.), *Balancing freedom, autonomy and accountability in education: Volume 2* (175-208). Tilburg, NL: Wolf Legal Publishers.

Overview

Education has always occupied a prominent place in the political and legal landscape of France. Since the first French Constitution, that of 1791, education was, along with Public Assistance, the only public service with constitutional warrant, and it aroused, for an entire decade, a constant debate and an “incredible profusion of revolutionary texts . . . , hundreds of texts, whose bibliography even today is not complete: innumerable speeches in the successive Assemblies, proposals for laws and decrees, brochures, articles scattered throughout the press, civic catechisms”,¹ which testify to the close ties between political-pedagogical discourse and the political vision of the transformation of power. “It is essential to teach the people to read, to write, and to count – that is the formula which appears in all the proposals. . . . But above all it is necessary that the new education shape new *moeurs*, that it produce ‘true republicans.’”

The debate between ‘education’ (the formation of character and loyalties) and ‘instruction’ (teaching knowledge and skills) was very intense at this period. Historians correctly emphasize the diversity of revolutionary political proposals for education and, thus, the contrast between two great traditions whose opposition runs throughout French history.² At the heart of the pedagogical problem was a Gordian

knot which the revolutionaries had to cut, separating Girondins and Montagnards: was the Revolution a new starting-point for history, an absolute beginning, or was it a daughter of the Enlightenment, a moment in continuity of human history?³ The revolutionaries shaped their proposals to emphasize education or instruction depending on how they responded to this question. From the time of Talleyrand's Report on Public Instruction in September 1791 the three great questions about education which would agitate the period from 1789 to 1796 were posed: Is the freedom to teach a right of citizens? Should there be a national *education*? Should the central administration control and direct such national education? While a positive response to the first two did not create great problems, there was a lively debate about the third. During the first stage (1789- 1792), State intervention was rejected lest the central authorities seize control of public instruction and put it to use for its own ends. Condorcet, in the spirit of the Enlightenment, insisted that the independence of instruction was one of the rights of Humanity.⁴ By contrast, for a Montagnard like Le Peletier de Saint Fargeau the rights of the State were essential. The primary goal of National Education was to eliminate social inequality by tearing children away from their families in order to indoctrinate them, in boarding schools, in patriotic and egalitarian sentiments.

It is this latter tradition which would inspire the republican doctrine when it finally triumphed toward the end of the nineteenth century. Jules Ferry was not an heir of the Enlightenment: he did not share the views of Condorcet and wanted a school stressing not only instruction, but one focused over all on education. The school was for him a political instrument to promote the values of the State.⁵ In the French tradition, the right to education is perceived more as a public freedom than as an individual privilege. For the revolutionaries, it was a right of the citizen and not a human right. "Even though it gives him the means to cultivate his own talents, the public education system, in its institutional purposes, is not concerned with the individual as a private entity. Even though it raises the intellectual and technical level of the country, it does not aim at the population as a whole, in the quantitative or cumulative sense of the word; its concern is with the citizen."⁶

The debate about the relationship between school, State, and civil society has thus always been at the heart of French society, more than in any other country. Analyzing these relationships since the middle of the sixteenth century, Antoinette Ashworth⁷ distinguished three periods : the period when the State primarily left the school in the hands of the civil society (especially the Catholic Church), limiting itself to a general supervision, was followed, in the nineteenth century, by a period when the State took responsibility for public education but, with a growing recognition of educational freedom, State and civil society divided the roles, each in its own sphere of action, on the basis of contested boundaries. In reaction against the Napoleonic University, the structure of centralized control of secondary and higher education, the principle of

educational freedom was included in the revised Charter of 1830 and then in the Constitution of 1848. This would be given statutory authority for elementary schooling in 1833 in the Loi Guizot, for secondary schooling in 1850 in the Loi Falloux, for higher education in 1875, and for technical and vocational education in 1919 (Loi Astier).

From the beginning of the Fifth Republic in 1958, Ashworth adds, France entered the period of conflict over schools. The basic cause of this conflict grew out of the growing control of the State over education and the corresponding eviction of civil society: in the Gaullist vision, the school became an instrument to promote the policies of a State committed to economic development through seeking to plan the flow of pupils to meet the needs of the economy. That led in particular to the establishment of an authoritarian central management of pupil selection which became one of the important sources of the unpopularity of the national education system. Even the enactment of the Loi Debré in 1959 had an ambivalent significance: while it allowed for the first time in many decades the possibility of public funding of private schools, it was at the cost of their acceptance of a significant degree of control by the State, including the obligation to follow the official curriculum established by the government. Under this law, Catholic schools (and a scattering of other non-public schools) are funded through contracts with the government premised on the theory that the State can pay for the secular portion of schooling in religious schools while allowing them to continue to express their distinctive character; as we will see, there is a constant tension over how this distinctiveness is to be reconciled with government regulation and a government-defined curriculum.

As is often the case, the distinction of periods is not altogether consistent ; they overlapped to a considerable extent and, in particular, the conflict between public schooling and private Catholic schooling, which has been a clear dividing line and a permanent source of division between the Right and the Left, continued throughout the nineteenth and twentieth centuries. Some authors call this an “age-old quarrel,” “ever-renewed,” or an “endless story.” It began again in 2007-2008, with the financing of the schooling of children outside of their residential communities. The school is a subject of passions. One no longer really demonstrates in the street (*en masse*, by the hundreds of thousands) about anything but education.⁸ If we could go into the details here, we would find a much more complicated story, of course.⁹ Claude Durand-Prinborgne comments that, “Of all the [forms of] freedom of thought, this is the one which has aroused the most debates and unchained the most passion,” because it involves “a real competition between forces which claim the right to educate”.¹⁰ Since 1960, France has managed to live with, and support, a dual system, though the controversies have by no means disappeared. The millions who gathered at Versailles and in Paris in 1984 in defense of the non-public school, the demonstrations a decade later in defense of the public school, and the continuing

controversy over the wearing of the *hijab* or *foulard islamique* in schools shows that the French are still capable of becoming impassioned over education.

On the other hand, the great conflict about private schooling, in 1981-1985, has had an unexpected effect. When they came to power, the Left had announced their intention of nationalizing schooling, which would have put an end to private schooling with public funding under contracts. This goal of creating a “unified public service” of education obliged the Minister of National Education, Alain Savary, to invent an antidote to this unification: the notion of the “school project” (*projet d'établissement*) defining “its identity, whether that be spiritual, pedagogical, cultural . . .” became the means of restoring flexibility and freedom in the system.¹¹

The evolution had begun earlier. There has been a tendency to under-estimate the political evolution inherent in the change, in 1974, from the ‘imperial’ vision of the Republic characterizing the Gaullist period to that which Giscard d’Estaing developed, which was much more liberal, and the corresponding transformation of the understanding of the State and its relationship with citizens. The emergence of the individual, the affirmation of important new rights for the benefit of those invoking them inspired, at the end of the seventies, the enactment of several laws instituting new forms of “administrative democracy” (obligation to explain the decisions of the government, improvement of provisions for appeals, right of access to administrative documents . . .) which also penetrated which had been the closed universe of the school. The influence of the international environment through international covenants and the development of the jurisprudence of the European Court of Human Rights completed the process: a new approach attributes more importance to personal distinctiveness and recognizes the rights which parents and pupils have acquired.

The decade 1975-1985 thus opened a new stage in the history of education in France, with the effort to find a way of functioning which would be more supple, a more individualistic approach, more open to the immediate local situation. Lelièvre et Nique speak of “the slow death of the educator-State”¹² primarily ties to the progressive reintegration of civil society into the school. If it were necessary to prove this assertion, this could be done easily on the basis of the two following pieces of evidence: first, the appearance, under Anglo-Saxon influence, of concerns about “positive discrimination,” with the creation of “priority education zones,” a remarkable development in the traditional conception of the principle of equality. This was followed by the position of the Conseil d’Etat in its 1989 opinion on the wearing of the Islamic headscarf in schools. In recognizing that pupils have a right to freedom of religious expression, the Conseil d’Etat aligned itself with the position taken in the jurisprudence of a number of other countries: pupils do not abandon their rights at the door of the school, and even if the school’s special character imposes

certain limitations, pupils continue to possess a number of rights within the school.

The balance remains fragile. In the first place, the new ideas are not accepted by everyone and are in particular strongly contested by teachers, who see a challenge to their authority. The enactment, in 2004, of the law prohibiting the wearing of any religious symbols in public schools is evidence of the stiffening of the position of the state authorities which may lead to steps backward. “The quarrel over the [public education] monopoly may well be over, but that over the methods of educational freedom, of the freedom of the one being taught, is still smouldering.”¹³ That is the theme of this survey.

The structure of schooling

The system of public instruction--significantly always referred to as “national education” since the 1930s--is administered centrally from Paris, though with considerable administrative decentralization in recent years. The country (the ‘hexagon’) is divided into 26 educational regions (*académies*), with others serving Corsica and overseas territories, each headed by a rector with a staff of inspectors and other administrators. Public education, which serves about 80% of pupils, is explicitly secular, with the exception of that in Alsace and Lorraine which, for historical reasons, is confessional, with schools either Catholic or Protestant and religious instruction part of the regular program of studies.¹⁴

French educational policy is characterized by an uneasy mix of a highly meritocratic system of selection with a strong concern for equality.¹⁵ This led, between 1959 and 1977, to wide-ranging structural changes intended to postpone selection and to increase the common educational experiences of pupils at least through lower secondary schooling.¹⁶

With a million employees, the Ministry of National Education has been called the largest employer in Europe, “the largest homogeneous administration in the world.” For some critics, this has resulted in a hyper-bureaucratized educational system, “a system closed in on itself, with neither doors nor windows, where sounds from the outside cannot penetrate,” and which runs on its way “like an insane machine or a *bateau ivre*” which even the State cannot really control.¹⁷ Parents and local elected officials have, critics charge, little influence over public schools or even understanding of what they are and are not accomplishing.

The State and the *collectivités territoriales* [local and regional authorities]—elected officials at all levels and thus the nation—cannot be satisfied to realize that nearly a

fifth of the budget of the State is spend without real accountability for the results, for the means employed, and without a read knowledge of the procedures which are actually in operation.¹⁸

For its defenders, however. the unitary French system ensures equal opportunity, rational planning, and uniform quality. The mobility and promotion opportunities of teachers are ensured by their membership in a very large professional corps, access to which is ensured through open competition. Religious and political differences are resolutely excluded from public schools.¹⁹ And recent efforts have increased the autonomy of individual schools and the involvement of local authorities in decisions about what goes on in them. As the Cour des comptes ruled in 2008, “the role of communes in the realm of education now extends well beyond the construction and maintenance of public schools. Local educational policies are implemented integrating the resources for pupil guidance and support, complementary public services (transportation, school meals), recreational activities offered to pupils, coordinated or not with the initiatives of partnerships promoted by the State in the context of the struggle against school failure, of urban development, and of delinquency prevention.”

Despite some recent experiments with the “*projet d’établissement*” (discussed below), diversity and parent choice on the basis of the distinctive character of individual schools are not much promoted in the public system. It can be very difficult for parents to exercise choice among public schools. The issue of the *carte scolaire* (school attendance zones) is therefore very controversial, especially in secondary education. Until the early Sixties, families were free to choose secondary schools. The universalization of access to the *collège* (intermediate school), at the beginning of the Fifth Republic, and the massive construction of new schools which that required, required putting in place a planning structure to guarantee the adequacy of local school capacity to local school-age populations. The *carte scolaire* also served a planning purpose each year, allowing the administrative authorities to decide whether to create or to eliminate teaching positions in order to ensure, sometimes at the expense of arbitrary reassignment of teachers, the staffing required as pupil enrollments changed.

The existence of the *carte scolaire* had important consequences for the clients of the educational system. France was divided into zones for the mandatory assignment of pupils and freedom of school choice disappeared. This disappearance was felt by more and more parents as an intolerable restriction on their freedom and the conflict was all the more heated as belief faded in the principle (often mythical) on which the public school of the Republic was founded: all schools are equal and instruction is the same everywhere.²⁰ Efforts at flexibility were developed, with limited effects, and there were even promises by Nicolas Sarkozy, in his election campaign, to suppress

the *carte scolaire*. But they were not really kept: the measures taken had above all the effect of intensifying even more the ‘ghettoization’ of certain schools²¹ and the unpopularity of public schools that they often generated is one of the causes of the attachment to the existence of private schools.

According to a sociological study of the motivations of parents, it is frustration with what is perceived at the rigidity and the high failure rate in the public system, rather than religious factors as such, which influences most who choose non- public schools. The Catholic schools are by no means an elite system, attracting many pupils from farming and artisan families and evidencing less social-class selection in access to the higher grades than do the public schools. Families may choose a Catholic school, perceived as more flexible about responding to individual needs, when a child has experienced difficulty in a public school, then switch back to a public school when the child is doing well again.²²

The parity of funding for non-public schools under contract has made them seem, to many parents, a haven from the strikes and disorder that sometimes afflict the public schools. In addition, the non-public schools are less subject to the disruptions caused by periodic efforts to use the educational system as an instrument of ‘democratization’ and other policy initiatives. These and other factors have led to “a growing attachment on the part of a great number of families to the existence of a double network (*réseau*) of schooling.”²³

Non-public schools may be created and administered by an individual, an association or a society, which may have a religious or philosophical basis. Their sponsors may sign a contract entitling them to a public subsidy in exchange for a considerable measure of State control. The great majority have done so; there are only some 60,000 pupils in the country attending non-public schools which are not subsidized through a government contract.

The distribution of non-public schools varies widely across the country. Brittany and the Vendée, in the West, have a high proportion of their pupils, 40 percent or more, in Catholic schools, while more secularized regions have low numbers. The Catholic schools are used by many families who are not active Catholics, and there is a high rate of transfer in both directions between public and non-public schools.

The legal framework

The Constitution makes the organization of public, free of charge and secular education, at every grade, a duty of the State. A word of explanation is in order here.

The French Republic is *laïque*, as are its schools. The word has an elaborate history and connotations which go far beyond the English word “secular,” with which we are obliged to translate it. *Laïc/laïque* can mean simply religiously- neutral, but it can also refer to a set of convictions about the nature of reality, of the good society, of appropriate human relationships, and so forth. Used in this sense, the word does not mean a neutrality that makes no distinction among competing worldviews, but is itself expressive of a worldview that rejects the right of its competitors to have any influence upon public life. We can find an echo of this, for example, in the celebrated instruction issued by the Minister of Education, in November 1989, in response to a political crisis over the insistence of some Muslim girls on covering their hair in school.²⁴ Lionel Jospin ends with the ringing words, “Together, it is up to us to make alive and understood the ideal of secularism (*laïcité*).”²⁵

The freedom to create and administer private educational institutions of any nature is protected constitutionally. The law of December 31, 1959 (*Loi Debré*) made it possible for private educational establishments to choose among four forms of relationship with the State:

- integration – simply being taken into the public system, contingent upon a recognized need and suitability; this alternative was chosen only by some industry-sponsored schools
- independence – no change of status; few schools have chosen this alternative
- simple contract (*contrat simple*: hereafter “CS”) – enter into a three-year contract with the State to provide instruction of an acceptable equivalence to that in public schools, with teacher salary costs assumed by the State; this option is now open only to elementary schools, about half of which have chosen it in preference to the more constraining association contract.
- association contract (*contrat d’association*: hereafter “CA”) – enter into an open- ended contract with the State involving more extensive public control of the school’s program; “instruction is provided according to the rules and programs of public education.” Teacher salary are assumed by the State, and operational costs by local authorities. This is now the only option for non-public lower- secondary (*collège*) and upper-secondary (*lycée*) schools.

This law was proposed as a means of bringing to an end a conflict that has persisted through many French regimes, and on the basis of a new understanding of *laïcité* as entailing respect for differences of conviction. It can, indeed, be argued that “The

freedom of private education, external pluralism, is simply an extension of the *laïcité* of the State.”²⁶

The *loi Guermeur*, adopted in 1977, extended the provisions of the earlier law, increased protections for the distinctive character of a contracting school, and in particular improved the situation of teachers working in non-public schools.

Freedom to establish non-state schools

Freedom to provide education outside of the state system – articulated eloquently by Mirabeau and Condorcet in the early 1790s – has been reaffirmed repeatedly over the past two centuries, though that freedom was sometimes restricted by, for example, forbidding the teaching of religion in public schools (*loi du 9 décembre 1905*) or forbidding members of religious orders from teaching (*loi Goblet* du 30 octobre 1886). Almost 12,000 Catholic schools serving a million and a half pupils were closed in the two years which followed,²⁷ though the reconciliations brought about by World War I resulted in a growing tolerance for religious schools.

An attempt to explicitly incorporate a guarantee of educational freedom into the preamble to the post-war Constitution of 27 October 1946 was narrowly defeated,²⁸ but it was confirmed indirectly. The decision n° 77-87 DC of the *Conseil constitutionnel* confirmed, in 1977, that this freedom falls within one of the three categories of principles enunciated by the Preamble to the Constitution of 1946, the fundamental principles recognized by the laws of the French Republic. On the other hand, the *Loi Debré* of December 31st, 1959, adopted by a 427 to 71 vote, asserts that “the State proclaims and respects educational freedom” (*la liberté de l’enseignement*). And, after some resistance, France has ended up by accepting that the principle be included in the First Protocol to the European Convention on Human Rights, which it ratified.

The right to establish a non-public secondary school is based on the *loi Falloux* of 1850, while the right to establish an elementary school dates from the 1833 *loi Guizot*, the principle of which was confirmed in the 1880s. Although more than 90 percent of non-public schools in France are publicly-subsidized, it is important to distinguish the process for gaining approval of a new school from that of gaining public funding, since requirements for the latter include five years of operation without subsidy.

There are two sets of conditions for opening a school: personal and material; these have not changed substantially in more than a century.²⁹ The founder, who must be a French citizen or citizen of another member of the European Union or of the

European Economic Area (such as Norway), must be at least 21 in the case of an elementary school, and 25 in that of a secondary school, and must not have been forbidden to teach or convicted of a crime against morality. Thus the application must give an account of the founder's previous employment and relevant activities. He or she must also have academic qualifications to be a teacher; for the secondary level, documented experience as a teacher is also required. The conditions also include a suitable facility that meets health and safety requirements.

Once an individual or organization have declared the intention of starting a school, various public officials have 30 days within which to object. Monchambert describes this as an intermediate approach between complete freedom to start a school and the requirement to obtain prior approval. Any objection, it is important to note, may not be based upon disagreement with the educational approach of the proposed school, or concern that it will draw pupils from local public schools. Officials may object only if the facility is unsuitable, the organizer of the school has a dubious record, or for other reasons specified by law.

Once a school has been in existence for five years, it is eligible for a contract with the State. The requirement that a school have operated for some time without subsidy is a serious impediment to the establishment of Islamic schools in France.³⁰

Most of the requirements are straightforward—adequate staff and facilities—but there is an additional requirement for the CA that has caused considerable conflict: that the school meet a recognized educational need. Does this imply that a contract will only be granted if the existing public schools have insufficient capacity, or does “need” refer, rather, to demand on the part of parents for the form of education or the religious character that the new school provides? In the former case, it would be the needs of the public system rather than the demands of educational freedom that would prevail. Legislation in 1971 and a decision by the *Conseil d'Etat* in 1980 have made it clear that the *loi Debré* was intended to extend the choice of parents, and not simply to make up for the limits of the public education system³¹: the freedom of parents, said a member of the Conseil d'Etat, requires accepting some competition.”

In the case of schools seeking a simple contract (CS), the conditions are less ambiguous: five years of operation, qualification of teachers, number of pupils, adequacy of facilities. Public officials have no authority to form a judgment as to whether the contract is opportune, if the schools meets those criteria.³²

Homeschooling

Under a law enacted in 1882 and amended in 1946 and 1998, “there is no requirement of scholarization in the sense of attending a school but rather a requirement of instruction.” The law requires municipal supervision of children being schooled at home. While the text of the law, as drafted in 1882, requires only that the child acquire “the elementary notions of reading, writing, and calculation,” an administrative judge has ruled that this should be equivalent to what the child would learn in school at the same age, and that it is the responsibility of the family to demonstrate that this requirement has been met. The decision of a school inspector that two home-schooled children who were not receiving an equivalent education would be required to attend school was upheld.³³

It has been suggested that members of ‘sects’ from other EU members as well as France have taken advantage of the relatively liberal French laws for private schools which do not seek public funding. Legislation in 1998 defined the content of the knowledge that the child should acquire, strengthened the control of authorities over home schooling and informal schools so that parents could not turn their children over to the education provided by a harmful sect. This intervention was justified on the basis of article 29 of the International Convention on the Rights of the Child.³⁴

School choice not limited by family income

While public schooling has been tuition-free, because of the Preamble to the Constitution, there is little opportunity for parents to select among public primary schools, though in most regions there is a limited selection at the intermediate and upper secondary levels. The Conseil d’Etat ruled in 1973 that pupils could be assigned to schools based upon a geographical district (*sectorisation*).³⁵ At the elementary level, the mayor is to provide a *certificat d’inscription* indicating which school a child is to attend.

After 1980, the laws decentralizing education led to a new problem, the question of schooling outside of the commune where a pupil resides. It often happens that parents demand the enrollment of their child in a school located outside of the commune where they live. They must be accommodated if the reason is that there is no school in their residential commune, or the health of the child, the enrolment of an older sibling in the school, or situations arising from the parents’ work, especially if the commune where they reside does not offer recreation or child care outside of school hours that is compatible with their work schedule (Durand-Prinborgne 1998, 60). In such cases, their demand must be met and the commune where they live must reimburse the commune where their child is enrolled. In all other cases, however, the transfer of the child must be approved

by the mayor of the community where the family resides. If he refuses, and if the commune where the parents seek to enroll the child will not agree to do so without charge, the parents cannot obtain satisfaction.³⁶

The issue arose again in 2004, with the enactment of a new law on decentralization, extending the previous system to private schools, without imposing the requirements established for public schools. After many controversies, in 2009, the *loi Carle* resolved the issue: it imposed on communes of residence the requirement to share in the operating costs of private elementary schools on the same terms as apply to public schools. The Conseil constitutionnel (décision n° 2009-591 DC du 22 octobre 2009) validated these arrangements on the basis that this law simply applied the principle of educational freedom to the extent that, taking into account the reasons specified, parents had no other possible choice than a school outside of their commune and this choice was not simply the result of caprice on their part.

At the intermediate level (*collège*), enrolment is handled by the school, normally on the basis of residence in the assigned zone though with the possibility of an exception. A few experiments – originally, five zones involving 149 schools – with allowing parents to choose among several *collèges* were introduced during the 1983-84 academic year. It turned out that only about ten percent of parents wanted to choose a school outside of their attendance zone, and that more than three out of four of these selections could be accommodated. The possibility of exceptions was expanded in subsequent years with strong support from organizations of parents.^{37 38 39} This policy runs into practical difficulties, however. In 2007, as a presidential candidate, Nicolas Sarkozy had promised to eliminate the *carte scolaire* but, conscious of the very great difficulties which this would create, his successive ministers of National Education had left it in place and instead developed additional possibilities of exceptions. The general belief is that this policy has not actually improved the freedom of choice and has above all had the effect of reinforcing the “ghettoization” of some *collèges*. Meanwhile, elaborate procedures exist for determining which applicants will be admitted to over-subscribed *lycées* (upper-secondary schools): the question is, however, easier at that level than at the intermediate level because of the multiplicity of optional academic programs whose selection is an important element in the strategy of parents.

Local government is responsible to provide and maintain the facilities for elementary schools, while intermediate schools are provided by the ninety-nine (geographical) departments, and upper-secondary schools by the thirty “academies,” regional education authorities. There was much controversy during the 1990s about the extent of required or permitted municipal support to non-public schools, with anti-clerical communes resisting the required payments, while strongly-Catholic communes sought to provide assistance beyond that allowed by law.⁴⁰ The *loi Guermeur* requires communes to

calculate their payments for facility maintenance costs on the basis of the per-pupil cost of operation of local public schools.

The purpose of the *loi Debré* of 1959, under which public funding was provided for private schools, was stated clearly in its preamble: “it is a fact that many families, making use of the fundamental liberties that they possess, confide their children to private schools; it is equally true that many private schools find themselves in a difficult situation materially and cannot provide their teachers with sufficient salaries.”⁴¹ The law sought to improve the quality of education provided (at a time of rapid expansion of enrolments), while respecting educational freedom on the part of parents and of the organizers of non-public schools.

The contract may cover an entire school or only certain classes; instruction in all classes under contract must follow the rules and programs that apply to public schools.⁴²

In schools under contract, teacher salaries are paid directly by the Ministry of National Education. Administrators are not, and this is considered an important guarantee of the administrator’s independence to protect the distinctive character of the school.⁴³ The salaries of administrators of schools under *contrat d’association* are paid from the per-pupil lump sum for operational costs, based upon the costs of equivalent public schools. This is paid by local government in the case of elementary schools, by the department in the case of lower-secondary schools (*collèges*) and by the region in the case of upper-secondary schools (*lycées*). These operational costs also include maintenance, heat, light, cleaning, and so forth; the amount is based upon the per pupil operational costs in local public schools.⁴⁴

Local government (or in the case of secondary schools, the department or region) may pay part of the operating costs of schools under a *contrat simple* (CS), though not to exceed the per pupil support to public schools, but this payment is voluntary and varies depending on the local political climate.

The cost of building or renovating facilities for use by non-public schools under contract is in some cases assisted with public funds. A law enacted in 1886 forbids such support for elementary schools. Communes may, however, offer loan guarantees and finance computer equipment. In secondary education, the essential difference is between general and technical or vocational instruction. In the former, as a result of the *loi Falloux* of 1850, the support of local government cannot exceed ten percent of the annual expenses of the school. Attempts to annul this provision in 1993-1994 failed as a result of the massive resistance to this effort. For technical or vocational instruction, by contrast, the *loi Astier* of 1919 doesn’t impose any limitation on public funding. In comprehensive (“*polyvalent*”) secondary schools with both general and technical/vocational programs, the financing

must be worked out class by class: freedom of funding for the technical sections, limitation for the others.

The bottom line, of course, is whether public subsidy allows families to exercise the right to choose among schools without a financial penalty. In the case of *contrat d'association* (CA) schools, a government decree in 1960 provided that families could be asked for contributions only for certain specified purposes: cost of religious instruction and ceremonies, sports or classroom equipment, or payments on the mortgage for the facilities. CS schools may charge for the costs not covered by government payment of teacher salaries. In either case, the school's contract must specify in detail and justify the costs that will be charged to parents, and this is subject to verification by government inspectors.⁴⁵

School distinctiveness protected by law and policy

Educational freedom, according to the *Conseil constitutionnel*, is “one of the fundamental principles recognized by the laws of the Republic.”⁴⁶ The general principle has been interpreted to protect a significant zone of freedom for private schools, those under contract as well as those that have chosen to remain more independent of government. At least in theory, government officials should not impose requirements upon these schools which are not authorized specifically by legislation; in fact, the line is sometimes not so clear in practice.⁴⁷

Government inspection of private schools which are not under contract is limited to questions of morality, hygiene, and meeting the requirements of compulsory school attendance. Schools under contract, however, are subject to much closer supervision, including whether they are following the instructional programs prescribed for public schools. It has been noted that in fact many of them do not take advantage of the autonomy which they actually possess, whether for lack of alternative ideas or because parents are mostly concerned about performance on the government-prescribed examinations and insist that the private school imitate public schools.⁴⁸

The *loi Debré* of 1959 provided for approval of alternative approaches to education, whether in public or private schools, in the name of experimentation, under which changes could be made in schedules and other aspects of the instructional program.⁴⁹ Additional gestures in the direction of autonomy for public schools have been made over the last two decades. Several reports commissioned by Alain Savary called for a greater measure of responsibility at the school level as a way of improving the quality

and responsiveness of a too-centralized educational system.⁵⁰ The minister concurred:

above all, it appeared clear in 1981 that a system theoretically uniform (even though it was not that in actuality) could not provide an equal opportunity for a school population whose diversity was increasing. . . . the model of schooling, uniform in its rhythms, its forms of teaching, its criteria for evaluation tended to deny the diversity of the pupils.⁵¹

In 1982, he proposed that public schools develop distinctive profiles and, after much discussion, the *loi d'Orientation* of July 1989 (*loi Jospin*) required each school to develop and implement a *projet d'école* or a *projet d'établissement* and the *loi d'orientation* of April 2005 (*loi Fillon*) has confirmed that obligation. This should be based upon agreement among staff, parents and pupils, as well as local elected officials, about the guiding philosophy and values of the school, and should show how the program would be modified (within the fairly restrictive national curriculum) to give the school a distinctive mission.⁵²

Toulemonde suggests that the government's interest in "flexibility and pluralism" within the public educational system was in part an attempt to defuse the resentment in Socialist circles over the greater freedom of the publicly-funded private schools under contract. A redefined public system "might thus be able to make room for schools with varied educational projects, including [some] with a Christian dimension." Savary's proposed resolution to the conflict arising from a perceived effort to gain control of the private schools was to emphasize "three concepts (educational project, type of education, free choice by parents) which would provide a guarantee of recognition of the Christian educational project and of free choice of schools by parents. The contractual character of the relationship [of private schools] with the state [would be] maintained and extended for the first time to local government."⁵³

While this proposal proved unsatisfactory to both *laïc* and Catholic camps, it did result in measures which increased somewhat both the autonomy of public schools and the influence of local public officials. The law enacted in 2005 did indeed provide the possibility for the *projet d'école* or *projet d'établissement* to "plan experimentation for a maximum period of five years applied to the teaching of the academic disciplines, cross-disciplinary teaching, the pedagogical organization of the class or the school, cooperation with partners of the educational system, exchanges or pairing with foreign schools." But these possibilities are seldom used and frequently the changes are at the margins rather than the center of the mission of the school. Local government could, for example, provide educational and other activities in school buildings outside of school hours, and school staff could place somewhat

more emphasis on this or that aspect of the curriculum. “In reality,” however, “autonomy was considered a residual authority. The margin of manoeuvre is larger or smaller depending on whether the national regulations cover the [dimension of school activities] under consideration exhaustively or not.”⁵⁴

Association with the public educational system, Durand-Prinborgne points out, reduces the autonomy of private schools under contract, but at the same time the association is an unusual one because, in defining it, legislators built in provisions for autonomy and thus limited the authority of public officials.⁵⁵

Most government oversight applies to the 90 plus percent of non-public schools that operate under contract with the State. Those that do not are also subject to oversight, but primarily with respect to their operations rather than to their educational methods. This is not to say that schools—particularly secondary schools—are free from pressures to conform their instruction to that provided in public education. For the past two hundred years the French State has insisted upon its monopoly on the awarding of publicly-recognized diplomas and educational certificates, on the principle that “the republican government must never abdicate its right to provide supervision over French youth.” Pupils in non-public schools take the same examinations—notably some form of the baccalaureate—as those in public schools; only since 1992 have their teachers, despite being in many cases public employees, been allowed to participate in the grading of the national examination, and the facilities of non-public schools under contract are not used to give the exams.⁵⁶ Since the baccalaureate is required for admission to higher education, the contents upon which it is based must be covered in depth by any secondary school whose pupils have the goal of attending post-secondary education or having a widely-recognized qualification.

As noted below, the Constitutional Court recognized the connection between educational freedom and structural pluralism in a 1977 decision. The claim had been made that educational freedom must exist within a school, and that only the secular public school could satisfy this requirement. “For the supporters of an educational monopoly, the confessional school cannot pretend to represent educational freedom, since it is based upon a single conviction (*inspiration*). . . . the only free school which is an expression of pluralism is the public school. Because it is secular, the public system can provide education that respects all beliefs; this principle seems to them sufficient to protect freedom.”

This line of argument was rejected by the Constitutional Court, which held that, “to protect freedom, there must be pluralism, that is, ‘at every moment there must be a possibility of choice and of the expression of freedom.’”⁵⁷ But freedom can be real,

rather than just theoretical, only if there is the opportunity to exercise it; providing the means that freedom requires is essential.

On the other hand, the means by which support is provided to schools under contract has an inevitably limiting effect upon their autonomy. It would have been possible, Monchambert, to provide a lump sum to cover the costs of staff and operations, and thus leave more freedom to the individual school to shape its program. The much more restrictive system used suggests that the State's primary concern is to protect the freedom of the parent to choose a school, and the freedom of the pupil to receive an adequate education, more than the freedom of the school to be distinctive.⁵⁸

Distinctive character

In 2009-2010, there were almost 25,000 pupils attending unsubsidized private secondary schools in contrast with more than 1.1 million in subsidized secondary schools under contract with the state.

Almost all non-public schools are Catholic : 97,8 percent of the pupils in non- public elementary schools, 97,3 percent of those in non-public secondary schools in 2009-2010 and 90,2 percent in non-public vocational schools ; altogether, Catholic schools serve two million pupils. The real distinctiveness of these Catholic schools is sometimes called into question, since those that receive public funding are required to conform themselves in many respects to the ever-changing model of public schools. In a highly-secularized society, it is to be expected that the religious distinctiveness of Catholic schools is sometimes difficult to detect.

There are a few Protestant (15) and Jewish (around 250, with 30,000 pupils) schools, in part because those groups were strong supporters of the development of a secularized national system of education. More than 800 Protestant schools were voluntarily integrated into the State system in the 1880s, when public schools became officially secular. At present, one Protestant elementary and two secondary schools are under contract with the State, as are 49 Jewish elementary, 38 intermediate, and 39 upper secondary schools. On the other hand, schools are beginning to appear among the Evangelical churches. There are also about 400,000 pupils in secular non-public schools, of which about half are under contract; some offer alternative pedagogies, and one of their concerns is to ensure that these are permitted.⁵⁹ There are three Islamic secondary schools, none with contracts; the only Islamic school under contract is on the Island of Réunion in the Indian Ocean.

There are also schools whose distinctiveness consists of emphasis upon a regional

language. While long considered an obstacle to national unification and social progress, these languages (such as Breton, Corsican, Catalan, Occitan [Provençal] and Basque) have recently received more favorable attention. As of 1995-96, there were 3,573 pupils receiving half of their instruction through a regional language in elementary schools, in addition to 6,300 pupils in bilingual German/French classes in Alsace/Lorraine. This alternative instruction using regional languages in public schools should be distinguished from supplemental programs for “language and culture of origin” for immigrant pupils, which are funded by the nine governments which have concluded an agreement with France and which govern the countries from which those immigrants come.⁶⁰

In the years after 2000, a further step was taken in support of this form of alternative education. The government formalized an agreement to place under contract schools operated by the association Diwan which provide instruction through Breton, with French instruction beginning after initial literacy is achieved in Breton. Diwan operates 39 primary schools, six *collèges* and a *lycée*, based in Brittany and in Loire-Atlantique. There are 2,609 pupils in Diwan schools in Brittany, in addition to nearly 2,300 pupils in public bilingual classes and more than 2,000 in bilingual classes in Catholic schools which were already under contract (this could be seen as a belated echo of the Welsh-immersion schools across the Channel⁶¹).

The Diwan (Breton) schools are constantly faced with financial difficulties, which leads the sponsoring association to seek State support. In particular, on several occasions, it has sought their integration into the public system, while refusing to modify in any respect their pedagogy of “immersion” which excludes any use of French in the early grades and gives priority to Breton throughout the course of instruction. Asked to rule on a proposal for integration of the Diwan schools into the national system, worked out by Education Minister Jack Lang, the Conseil d’Etat struck it down in 2002, finding it contrary to the constitutional and legislative provisions making French the language of the Republic. These would not allow, in public instruction, either a quasi-exclusive use of a regional language or instruction half in a regional language, which would not guarantee the use of French for at least part of the various academic subjects.

Some authors have contended that private schools under contract are obligated to observe the same religious and philosophical neutrality as public schools,⁶² but this view has not prevailed. In the 1977 case mentioned above, the Constitutional Court ruled that “safeguarding the distinctive character of a school under contract . . . is simply to put into practice educational freedom.” This also as the effect, the Court found, of protecting the freedom of the pupil, the right to attend a school providing a differently-oriented education. It was with the intention of protecting this right against restriction in the name of *laïcité* that the legislators inserted into the *loi Debré*

the provision that schools under contract would provide the State- required instruction in a way that respected their distinctive character.⁶³

But is the distinctive character expressed, as some believe, only in the overall ambience of the school, in its supplemental activities, and not in the actual instruction? Must the instruction itself be *laïque*? Or can the school seek to translate its religious (or other) ethos into everything that it does? Catholic or Protestant theories of education deny that a clear boundary can—or should-- be made between the transmission of information and the communication of values. Aren't parents, in choosing a confessional school, expecting that it will provide education in a distinctive spirit?

Of course, by no means all parents are motivated by that concern; many simply believe that the discipline, the focus, the relationships in a confessional school are better for their child. But the rationale for publicly funding non-public schools is, at least in part, to make it possible for those parents who are seeking precisely the confessional dimension for their children to find it, consistently and without apology. Hence the on-going debate over what significance to attach to *caractère propre*.

The French government (unlike, for example, those in Belgium and the Netherlands) has refused to deal with the Catholic educational system as such, or with other groups that sponsor and organize schools; contracts are explicitly with individual schools. This means that the burden of maintaining religious or other distinctiveness rests upon the individual school and its leadership. In entering into a contract with the State, the school has a right to insert language which defines its distinctive character.⁶⁴

A further opportunity to define a distinctive character that determines aspects of the program of the school is provided by the recent emphasis upon the “educational project” which each school is expected to have. The *lois d'orientation* of 1989 and of 2005 laid a requirement upon schools at all levels to create a representative school-based management structure and, through it, to set out the educational goals and means of that particular school. The intention is to create a shared vision and a practical course of action to carry it out, and it rests upon an acceptance that all schools do not have to be alike in order to ensure national unity and equal opportunity.⁶⁵

While the *projets éducatifs* are not typically of a religious or ideological character, but bear upon program elements responding to local needs or the interests of the staff and students, they create a strong precedent for diversity among schools which are recognized as providing an equivalent, but no longer identical, education.

The elaboration of an educational project for the school—taking into account the social environment, the pupil intake, the types of instruction provided, the means available, and reflection on the most appropriate pedagogical methods—has as its goal to specify the goals and determine the stages to their accomplishment.⁶⁶

Schools may also seek approval to implement an experimental approach to the curriculum, which must be well-justified on pedagogical grounds. Before implementing such an approved approach, they must notify the parents of pupils presently enrolled, and assist any who object to enrol their children in another school.⁶⁷

Although schools under contract are expected to follow the national curriculum and sequence of instruction (unless an exception is granted), they are free to select their own textbooks to present the material. Even though the State may wish to promote certain attitudes, loyalties, and values through all of the schools, public and private it leaves both free to select from among textbooks that are produced independently and without government approval.⁶⁸

Decisions about admitting pupils

The Constitution and the penal code forbid anyone exercising public authority from discriminating in providing “any right provided by law to any person on the basis of his membership or non-membership in an ethnic group, a race, a nation, a religion.” This has been invoked against a mayor for refusing, even indirectly, to enroll North African children in a local public school. A government circular issued in 1984 spells out the requirements and procedures for enrolling foreign pupils.⁶⁹

Parents who wish to do so may register their child in private education, freely choosing their school provided that places are available. The *loi Debré* explicitly forbids schools under contract from discrimination in admission and requires that the instruction provided under contract show respect for freedom of conscience of the pupils:

The school, while maintaining its distinctive character, must provide this [State-mandated] instruction with total respect for freedom of conscience. All children without distinction of origin, opinions or beliefs, must be admitted (article 1, section 4).

This has the practical consequence that the distinctive character of the school cannot

serve as a basis for refusing admission of a pupil, and also that religious instruction cannot be a required subject in a school under contract. It must be so scheduled that pupils can be excused from participation, either at times not used for class, or at the beginning or the end of morning or the afternoon school sessions. Other religious observances may not be included in the regular schedule (*grille-horaire*).^{70 71}

On the other hand, it does not require that the regular instruction be purged of religious perspectives. As one authority on the subject has pointed out, “Freedom of conscience demands only that a doctrine not be imposed; so long as this Christian perspective (*inspiration*) is only ‘presented’ as the thought and belief of the teacher, it offends undoubtedly against neutrality of instruction, but not really against the freedom of conscience of the pupils.”⁷²

This also requires, as another has pointed out, “that opinions, convictions, doctrines opposed to those of the teacher, to those that give a distinctive character to the instruction and the school, not be made fun of; better, that they be presented with respect, impartiality, integrity, so that the pupils who profess them are not penalized for that reason.”⁷³

When parents enroll their child in a non-public school, they sign a contract which requires them to respect the way the school operates and “implies a voluntary adherence to that which distinguishes the school from comparable public schools.”⁷⁴ This does not imply, as we have seen, that the parent is surrendering, on behalf of the child, the right of conscience guaranteed by the *loi Debré*. The school under contract may not seek to impose belief, or offer an *enseignement de combat*, but, as we have seen, this would in any case be contrary to the intentions of contemporary Catholic education.

Catholic instruction which did not respect freedom of conscience or which refused to accept pupils because of their philosophical or religious views would lose its ‘distinctive character’ even from the point of view of the most solemn demands of the Church. Catholic instruction which, in an opposite way, renounced the proposition of faith, under any pretext whatsoever, would also lose its ‘distinctive character.’ Exposing and proposing are not the same as imposing.⁷⁵

Delafaye notes that, in fact, there are strongly-Catholic schools which welcome Muslim pupils and allow them to wear the *hijab*, and that “despite social situations which are particularly difficult, the acceptance of responsibility for pupils by teachers who are deeply committed [*motivés*] leads to results which are highly encouraging.”⁷⁶

A private school which is not under contract and thus is not providing a public service

is free to discriminate in admission, unless the discrimination is on the basis of race, which would be subject to criminal penalties.⁷⁷

Private schools, whether under contract or not, cannot be required to be coeducational, though there are only a few single-sex schools.⁷⁸

Rights of pupils

As André Legrand has written, citing Elisabeth et Robert Badinter,⁷⁹ “public instruction must not be subordinated to any political doctrine: that is the principle of the neutrality of the school. It must not be subordinated to any religious authority: that is the principle of the neutrality of the school. It must not be subordinated to any intellectual or pedagogical dogma: that is the principle of objectivity of the school.” This vision led, in the past, to consider the public school as a “sanctuary” where any political or religious expression by pupils should not be allowed. The school, said a circular by Minister of National Education Jean Zay in 1936, is “an inviolable refuge where the quarrels of men do not penetrate.” Although this view is still powerfully held, it has nevertheless retreated significantly as a result of the pressures of the international environment. In 1989, the Conseil d’Etat, asked by Minister of National Education Jospin to rule on whether the wearing of religious symbols by pupils was compatible with the principle of secularity (*laïcité*), replied in the affirmative on the basis of the international covenants signed by France, on condition that it was neither an act of propaganda nor an act of proselytism and that that wearing religious symbols was not “ostentatious.” It was on this basis that Jospin issued a circular on December 12, 1989, and administrative judges issued many decisions declaring illegal school regulations forbidding religious symbols absolutely.

The *loi d’orientation* of 1989 had already established the principal that pupils in lycées retained the rights of citizens in upholding their freedom of expression and of information. A government decree in February 1991 added freedoms of association and of assembly. While judges were more hesitant with respect to political matters, considered “by the nature proselytizing,”⁸⁰ than to religious matters, they forbade especially the holding of meetings in schools organized by political parties, but were more flexible about informational meetings organized by associations of secondary pupils on themes of political, economic, or social organization. This resembles the concern found in the jurisprudence of other countries for balance between the affirmation of the freedoms of pupils and the idea that the school remains a protected world where the concern for

education demands the protection of its clients against any propaganda neglecting that concern.⁸¹

Despite the hesitation of many school principals and many teachers, the opinion of the Conseil d'Etat and the Jospin circular had achieved a balanced compromise, enforced by judges, on the question of wearing religious symbols: but the debate resumed virulently in 2003 in the wake of a local conflict in a lycée of the Paris region. The President of the National Assembly created a parliamentary study group which proposed forbidding any « visible » religious symbols. President of the Republic Jacques Chirac created the Stasi Commission to study « the application of the principle of laïcité in the Republic ». The testimony of the French judge on the European Court of Human Rights, Jean-Paul Costa, before this Commission was startling : he explained that only a law could place restrictions on the freedom to express an opinion and that the reliance on a simple circular exposed France to a condemnation by the Strasbourg Court.

President Chirac then expressed his support for abandoning the former principles and adopting a law directly forbidding the wearing of « symbols or garments by which pupils express manifestly [« ostensiblement » -- a word whose significance was much debated] their religious membership ». The law adopted on March 15, 2004, by a very large majority and applying to public schools at all levels but not to private schools not to higher education institutions, led to forbidding the wearing of the Islamic headscarf (*hijab*) but also of hats or bandanas worn by pupils seeking thereby to evade the law, or the turbans worn by Sikh pupils, or of Jewish kippas. The European Court of Human Rights rejected, in 2009, the complaint brought by a pupil who had been expelled from her school for having worn a bonnet which sought to manifest her religious membership.

Decisions about staff

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The situation of staff in French schools – including private schools under contract - cannot be understood apart from the very high regard for *la fonction publique* (very inadequately translated as ‘public employment’ or ‘public service’) in France, in contrast with some other countries. Public employees make up a quarter of the French workforce, in contrast with 13 percent in Germany and Britain, and an even smaller proportion in the United States. What is more, opinion surveys show that the public in general has a distinctively high regard for government employees and for their work.⁸⁵

Employees of the Ministry of National Education—more than a million of them—are considered to exercise a “public function in the general interest,” and are appointed and assigned through a highly-regulated process which provides little opportunity to create distinctive schools ; their responsibilities and working conditions are similarly specified, in large part through a process in which the teacher and other unions play a large part. Thus the staff of a school are assigned (*affecté*) there, but they are personnel of the State and not of the school and their employment is managed by some level of government and not by the school.⁸⁶

Staff of private schools not under contract, by contrast, are employees of the school or its sponsor, which contracts with them, pays their salaries, and can define their obligations with considerable freedom, though always subject to the laws governing employer/ worker relations in the private sector (Durand- Prinborgne 1998, 126, 432). One authority notes that the legal status of teachers in private schools under contract is particularly complex and creates many problems for the schools.⁸⁷

The situation of staff of private schools under contract, though, is considerably more complicated. On the one hand they work for a private employer, Durand- Prinborgne writes, and thus might not be covered by the detailed prescriptions of public law that apply to public school teachers, but on the other hand they exercise a public function

in private schools which provide public education. A further complication is that the act of educating has always been considered rather more independent of hierarchical controls than other aspects of public administration.⁸⁸ There was a disagreement between the two supreme jurisdictions. The Cour de Cassation analyzed the relationship between the teacher and the management of the school as an ordinary private-law employment contract, while the Conseil d'Etat concluded that the teacher was linked to the State by a public-law contract. To solve this problem, a law enacted in 2005, the *loi Censi*, specified that the private-law employment contract did not apply to the exercise of teaching functions paid for by the State.

The *loi Debré* provided that instruction in classes under a *contrat d'association* would be provided either by teachers who were State employees or by teachers under individual contract with the State; the latter is the usual practice. In either case, this makes them public servants, employed by the State and not by the school. Until 1985, prospective teachers were nominated by the school's director and approved by the State, but since 1985 they "are tied by a public law contract to the State, which pays them directly," though they are not part of the civil service (*fonction publique*).⁸⁹ A teacher is nominated for a position in a school by the educational authorities, and the director can accept or refuse the appointment. Often, of course, there is prior consultation before a nomination is made. Since the director has responsibility for protecting the distinctive character of the school, he or she can take religion into account in deciding whom to accept for a teaching position in the school.⁹⁰

A procedure was established in 1993 through consultation between the Ministry and the Catholic education leadership under which, on the basis of competitive examination, a list is established of teachers eligible for positions in schools under a *contrat d'association*. An effort has been made to make the situation and rights of these teachers so far as possible similar to those of teachers working in public schools. The details are too complex to enter into here.⁹¹

Teachers in *contrat simple* schools, by contrast, have a civil law contract with the school, and the director of the school can hire and fire (subject to due process required by employment law). In the Catholic schools under *contrat simple*, it is the diocesan director of education who makes personnel appointments, after approval by the government official.⁹²

Teachers in non-public schools under either type of contract, even if appointed by the State, are under the authority of the principal of the school. The principal is not selected or appointed by the State, but by the board of the school, though he or she is

paid from the operational funds provided to the school by the State and local authorities.

During the debate over adoption of the *loi Guermeur*, in 1977, some senators took exception to the provision requiring teachers to respect the distinctive character (*caractère propre*) of the school. This, they argued, was a violation of freedom of conscience. In an important decision rejecting this challenge, the Constitutional Court concluded that educational freedom (and thus the right to protect the distinctiveness of a school) was rooted in the freedom of association, which it had asserted in a 1971 decision. Educational freedom (which was also an individual right) could be realized only under conditions of structural pluralism. Pluralism rested upon differences, and differences could not be maintained without the right to take them into account in appointing staff. Teachers in a non-public school could be required to respect its distinctive character.⁹³

Teachers who work in non-public schools under contract are thus obligated to take the distinctive character of the school into account when teaching and otherwise comporting themselves. In the decision based upon the challenge to the *loi Guermeur* of 1977, the Constitutional Court made a distinction between an inappropriate requirement that a teacher pretend to beliefs which he or she did not hold, and an appropriate requirement that a teacher refrain from statements that might compromise the distinctive character of the school. “The obligation upon teachers to respect the distinctive character of the school, if it creates a duty of reserve, could not be interpreted as allowing an attack upon their freedom of conscience.” Thus, they cannot be required to adhere to the doctrines of the Catholic Church.⁹⁴

Failure to comply with the requirement of respect for the distinctive character of the school may make a teacher subject to disciplinary action such as suspension or dismissal for “behavior incompatible with the exercise of functions in the establishment under consideration,” but in fact there have been almost no cases involving conflict over classroom behavior.⁹⁵ ⁹⁶ The controversial cases have arisen from discipline following actions of the teacher outside the school which are inconsistent with the character of the school. There have been cases involving divorced teachers in Catholic schools who were dismissed for remarrying without permission of church authorities. While decisions have gone both ways, it appears that school authorities are legally justified when they take such actions. A 1978 court decision, involving a school under a simple contract, found that the religious convictions of a teacher “had been voluntarily incorporated into the [employment] contract of which they became an essential and determining part.”⁹⁷ The close

connection, for confessional schools, between instruction and education in the broader sense makes it appropriate for these schools to be concerned about the message that children receive from the way of life and the moral choices of their teachers.

Staff of public schools, whether teachers or non-teachers, are under an obligation to respect the secular character (*laïcité*) of the school, not only in their teaching but also in their behavior ; the courts have upheld a dismissal of a school staff member who insisted upon wearing an Islamic headscarf (*foulard islamique* or *hijab*).⁹⁸ Teachers in public schools are not permitted to promote their own opinions or beliefs, but neither are they obligated to “dispense an official ideology.” The *Circulaire Jospin*, issued in December 1989 in response to the controversy over girls wearing the *hijab*,⁹⁹ warned that, since “the public educational system is secular [*laïc*],” teachers must

avoid any distinctive mark of a philosophical, religious or political nature which offends the freedom of conscience of the children as well as the recognized educational role of families. The teacher who contravenes this rule would commit a grave error. Because of the disruption that this would cause the functioning of the school, he would be subject to being suspended immediately while awaiting disciplinary action.¹⁰⁰

Nor is this a new theme; in 1886 Jules Ferry, the prime mover of the creation of a secular public school system, assured his fellow legislators that “if a public [school] teacher forgot himself sufficiently to create in his school a hostile instruction, outraging religious beliefs, he would be severely and rapidly disciplined.”¹⁰¹ In 1902, the Tribunal des Conflits concluded that such an attitude constituted a personal error involving the responsibilities of the teacher and not a failure of the State’s provision of service.

According to some observers, the *loi Debré* and *loi Guermeur* have promoted the freedom of teachers as well as of families and schools. Teachers can now choose whether to work in a public or non-public school without consequences for their salaries, benefits, or professional advancement. The position of parity with teachers in public schools has become so significant financially for many non- public school teachers that they are lukewarm supporters of the independence of the schools in which they work. This became an issue in 1984, when the Socialist government attempted to bring the contracted schools into the public system.

About 11 percent of the elementary teachers paid by the state, in 1996-97, and 20 percent of the secondary teachers, work in private schools under contract.¹⁰²

Accountability for school quality

The national Ministry issues curriculum programs which public schools and private schools under *contrat d'association* must follow, unless they have received approval of an experimental alternative approach. Primary schools under *contrat simple* have somewhat more discretion, though they must “prepare for the official examinations, use schoolbooks which have not been forbidden by the Ministry National Education, [and] organize instruction in the basic subjects with reference to the [curriculum] programs and to the general rules about hours of instruction for public schooling.” The amount of time devoted to each required subject cannot be more than 20 percent less than that prescribed for public schools.¹⁰³

The primary control over the quality of schools, however, derives from the State's monopoly of awarding qualifications (*monopole de collation des grades*) generally recognized by employers as well as by higher education on the basis of State-administered examinations. This monopoly, while deriving from Napoleon's establishment of a single authority for secondary and higher education, was formally instituted in 1880 and most recently reaffirmed by a law adopted in 1984.¹⁰⁴ Thus there is no such thing as a private-education *baccalauréat*, and private schools are forced to conform their instruction to the goals set by government for public schools.

There is no system of required national testing that could be used to hold elementary schools accountable for academic results. The system of public inspection extends to non-public schools, but is concerned primarily to ensure that the national curriculum is followed, not that instruction produces satisfactory results. Schools which are not under contract with the State are subject to oversight to ensure that they meet the minimal norms for required knowledge and skill, and satisfy the right of children to an adequate education.¹⁰⁵

In compulsory full-time education, pupils are continuously assessed by teachers throughout the whole of their primary, intermediate and secondary schooling. Pupils undergo tests to assess their ability in reading, writing and mathematics at the start of the third year of compulsory education.

The work of primary and intermediate schools is organized into successive stages of

teaching. The board of teachers in a school can decide that a pupil should repeat a year at the end of a complete stage. Parents can appeal against that decision.

All pupils attend intermediate schools (*collèges*) at the end of primary schooling. On completion of intermediate schooling, pupils are awarded a *brevet* (national certificate) provided they obtain satisfactory results in their final two years and a national examination. Continuation of their schooling in an upper secondary school (*lycée*) is not dependent on the award of the *brevet*.

All pupils are assessed at the start of their first year at a *lycée*.

The three years of LEGT (*Lycée d'enseignement général et technologique*: general or technical upper secondary school) lead to the national examination of the *baccalauréat* that pupils must obtain to enter higher education.

Vocational lycées offer pupils two-year courses leading to a *certificat d'aptitude professionnelle*, (CAP, or 'certificate of professional qualification'), or a *brevet d'études professionnelles* (BEP, or 'certificate in vocational studies') and then, after two further years, to the *baccalauréat professionnel* (vocational baccalaureate) which is intended to qualify holders for entry into working life but may also enable them to continue their studies.¹⁰⁶

A comparative study of public and non-public schools found that the latter had a significantly lower rate of retention in grade and that, in consequence, their pupils were somewhat younger at a given grade. Comparing pupils who had received their entire education to date in public or in non-public schools, the study found that it was in particular those at risk of failure and those from families of lower status who benefitted most from non-public schooling. As a result, there was almost no gap between the baccalaureate results of the children of workers (86.6 percent passed) and of senior executives (87.9 percent) who had attended exclusively non-public schools, in contrast with a significant gap (91.1 percent versus 78.7 percent) for those who had attended exclusively public schools. "It is incontestable that within non-public education the difference in success based upon social origin has generally been reduced."¹⁰⁷

It may be, the study suggests, "that working-class children succeed better in non-public schools because they are given more consideration and support (they are 'clients' like everyone else), because a less elitist and less selective viewpoint is applied to them, because they are better supervised or benefit from smaller numbers . . . , or

again because the teachers are ‘better’ or better trained (though we know that there are more teachers without full qualification in non-public schools).” Or perhaps it is something to do with the attitudes toward education prevailing in the Catholic sector. It seems clear, at least, that public schools decide, earlier than do non-public schools, whether a pupil is capable of academic achievement, and that this has a continuing effect.¹⁰⁸

The authors challenge the assumption that public education in France is more ‘democratic’ because it enrolls a higher proportion of working-class children than does non-public education; in fact, it is less democratic because of the greater differences in success that it creates over the course of a child’s schooling and the massive and premature derailing of the education of working-class children.¹⁰⁹

In schools that receive public subsidies under the *Loi Debré*, teachers are required to follow the curriculum defined by the national education authorities. Government supervision of schools under contract consists in ensuring that:

- the national rules concerning in particular school timetables and curricula are respected;
- the pupils’ right to freedom of thought is strictly observed, as required by law;
- the school admits pupils regardless of national origin, opinion and religion; and
- requirements of administrative and financial control are met.

Teaching of values

Article L. 111-1 of the Education Code states that

the right to education is guaranteed to each person to allow him to cultivate his personality, to elevate his initial and continued level of development, to make his way in social and professional life, to exercise his citizenship.

Article L. 511-1 stresses the right of pupils in intermediate and secondary schools to enjoy freedom of information and of expression, respecting pluralism and the principle of neutrality. This principle has long been claimed as an essential hallmark

of public education, which should not take a position on religious or political questions.¹¹⁰

This concern must be seen within the context of a tradition according to which the public school was perceived, by many Catholics, as anything but neutral, leading to lasting suspicions that *laïcité*, religious neutrality, was merely a cover for *laïcisme*, a crusading secularism determined to root out religious “superstition” in the rising generation.¹¹¹ Conflicts between 1880 and World War I have left a continuing suspicion on both sides. A petition against the *loi Debré*, organized by the National Committee for Secular Action (CNAL), collected ten million signatures, while two decades later efforts on the part of a Socialist government to create “a great service of national education which is public, unified and secular” led to massive demonstrations in 1984 by supporters of the existing arrangements for contracts with private schools, and contributed to the defeat of the Socialists two years later.¹¹²

Despite the strict neutrality of the public schools – philosophers of education and supporters of confessional schooling would challenge the claim that education can ever be *neutral*, but that is beyond the scope of this discussion – they have long accommodated religious freedom through keeping Wednesday afternoon free for religious instruction provided outside of school. A much more important exception is represented by the schools in the three *départements* that make up Alsace/Lorraine, which was incorporated into Germany in 1871 and so was not affected by the laicisation of public schools in the other parts of France. When the region was re-incorporated into France after World War II, religious instruction remained mandatory in public schools and currently amounts to one hour a week, with the option of an additional hour, unless parents request excusal. Many of the schools are organized on a confessional basis.¹¹³

Teachers in non-public schools that do not receive public funds are subject to state supervision only in extreme cases, when there is a question about their support for law and order, morality, and health and social welfare measures. The *Loi Falloux* of 1850 on non-public secondary schooling, still partly in force, stipulates that the educational methods of private schools may be inspected but only in view of verifying that they are not contrary to morality, to the *Constitution* or to law. Inspectors may, for example, examine the textbooks used to check whether they are inculcating unlawful messages.¹¹⁴

There have been many attempts, since the 1880s, to elaborate a *morale laïque* that could take the place of religion as the basis for the teaching of morality in neutral public schools.¹¹⁵ A recent notable effort denied that the secular public school had ever been truly neutral; under the Third Republic, it was intended to be the

instrument of a profound ideological transformation of the nation, to establish bourgeois republicanism.

The debate about *laïcité* remains heated in France. As André Legrand wrote, “its sharpness is evident in reading the positions taken by two authors who served together on the Stasi Commission. Since 1990, Jean Baubérot has argued for *un nouveau pacte laïque*, for a ‘modernization’ of *laïcité*, in the interest of *laïcité* itself, of its dynamism and its vitality, and has contrasted the traditional *laïcité* understood as simple neutrality, which he believes is being outmoded, with a *laïcité-pluralisme* which is more ‘modern’. On the other side, Henri Pena-Ruiz, challenging in 2004 those who speak of an ‘open’ *laïcité*, insists on rejecting as undermining *laïcité* any qualification of it by the addition of an adjective. The *laïcité* of discussion and negotiation of Baubérot is thus opposed by the absolute *laïcité* of Pena-Ruiz, which is based on values clearly proclaimed and supported by the secular State and which should not be confused with a general indifference or a relativism which would balance the scales equally between the just and the unjust, the true and the false . . .”¹¹⁶

The idea has arisen that an inadequate knowledge about religion is a problem, including for instruction in certain themes in history or in philosophy. Within the secular camp, there has begun to be a demand for instruction in the history of religions in public schools, seeing this as not only a way to improve the knowledge of the pupils but also as a means of developing tolerance among elements of a population which is more and more diverse. After the Joutard Report in 1989, commissioned by Lionel Jospin, the Report of Régis Debray in 2002, at the request of Jack Lang, recommended transitioning from a “*laïcité d’incompétence*” (religion doesn’t matter to us) to a “*laïcité d’intelligence*” (it is our responsibility to understand religion). This strategy, which aroused opposition from both the anti-clerical hard-liners and the representatives of certain religions has not yet produced any concrete results. The discussion has been abandoned with the return of the Right to power.

There are those, indeed, who doubt that it would be possible to define or to invent a “new unifying ethic, acceptable to all; it has been suggested that that “creating a secular morality [*l’édification d’une morale laïque*] has thus been a series of failures.”¹¹⁷ A Catholic leader charges that “in the name of a cramped and for a long time aggressive concept of secularity, the educational system brackets and sometimes censors more or less consciously any reflection on the meaning of existence and the foundations of morality, any questions about transcendence, any religious questioning.”¹¹⁸

Concluding remarks

It can scarcely be doubted that, when the *loi Debré* was discussed and adopted, no one was able to define very clearly the two notions: 'distinctive character' and 'recognized educational need.' Everyone could have his own idea about this, but the ambiguity became fully evident only with experience. For the first of them, at least, thirty-five years have not really brought clarity, as the jurisprudence demonstrates.¹¹⁹

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